
How States Can Make the Most of Their Rainy Day Funds.

They can effectively smooth economic bumps. But it's important to have clear rules for how and when to use the money.

Texas policymakers are grappling with an unusual question: how — and even if — to spend some of the state's ample savings. As of the end of the last fiscal year, the state's rainy day fund had amassed \$9.7 billion, the largest fund in the country as measured in dollars.

That may seem like a welcome quandary. After all, some states lack a robust savings account like the Lone Star State's Economic Stabilization Fund. But Texas lawmakers disagree on how to use their fund, and similar arguments are playing out in many other states where rainy day reserves have grown, leaving policymakers to debate whether they should tap them and for what reasons.

State government budgets are greatly affected by fluctuations in the economy. During boom periods, tax revenue can exceed a state's spending needs and produce a surplus. But when the economy slows, tax payments decrease while mandatory costs stay constant or increase. Between 2003 and 2007, state tax revenue grew by a robust 7 percent on average annually. But between 2008 and 2010, when the recession hit, states experienced the worst revenue downturn in decades, forcing many legislatures and budget officials to make painful cuts, raise taxes or both. They had little choice. State policymakers have only limited influence over the business cycle and changes in tax revenue — and no control over factors such as natural disasters that drive revenue volatility and wreak havoc on state budgets.

To minimize the need for uncomfortable choices between raising taxes or cutting spending, 48 states have created budget stabilization funds — rainy day funds — that take advantage of boom times by directing surplus revenue into savings that can offset future shortfalls. However, many of these funds lack rules to effectively smooth the ups and downs in revenue. Designing a robust fund, and knowing how and when to use it, gives state and local officials a critical tool for managing an economic slowdown or natural disaster. A well-managed rainy day fund can also help raise a state's bond rating, which in turn lowers the cost of borrowing and frees budget resources for other uses. But creating clearly defined funds with specific operating instructions is crucial to ensuring that these set-aside reserves are used to effectively safeguard a state's fiscal health.

First, state policymakers need to differentiate between one-time, non-recurring revenue — such as a federal grant for school construction or money from a legal settlement — and ongoing sources of revenue. Without doing so, they risk using a finite financial resource to fund ongoing costs, leading to structural budget problems. In Utah, policymakers recently enacted rule changes that require legislators to treat above-trend revenue — revenue that exceeds a 15-year average growth rate — as one-time revenue. So when lawmakers identified \$116 million in above-trend revenue for fiscal 2016,

they designated it as a one-time source of money, ensuring that it would not be used to pay for ongoing expenditures.

Moving the funds into a “one-time bucket” had an important effect, says state Rep. Brad Wilson, who proposed the rule change. “It helped all the lawmakers who were paying attention to the budgeting process understand we are, in fact, above trend. We are at a point in the business cycle where we should be preparing for lean times again.”

Second, defining a fund’s savings rules helps states smooth over bumps in the economic cycle. In Connecticut, state officials track and project radical shifts in the stock market, a wise practice given that nearly 40 percent of the state’s tax receipts come from capital gains, dividends and other investment earnings paid to the many Connecticut residents whose income is tied to Wall Street. Beginning in 2020, whenever the state takes in above-average revenue from capital gains or the corporate income tax, those funds will be automatically deposited in the emergency reserve. Connecticut law also outlines conditions for using the fund — essentially clarifying just what “rain” means for a rainy day fund.

Understanding the nature of revenue, clearly designing a rainy day fund’s rules for saving, and stipulating just how and when the money can be spent will not only help lawmakers and budget managers offset periods of economic volatility but also make them better and more responsible stewards of the taxpayers’ money.

GOVERNING.COM

BY SUSAN K. URAHN | JUNE 21, 2017

Executive vice president and chief program officer for the Pew Charitable Trusts

TAX - NEW HAMPSHIRE

[Appeal of Public Service Company of New Hampshire](#)

Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2392541

Taxpayer appealed order of Board of Tax and Land Appeals denying 77 of its 86 individual tax abatement appeals on its property.

The Supreme Court of New Hampshire held that:

- Taxpayer failed to meet burden of providing evidence that utility regulatory environment in which it operated impacted market value of property to such degree to make assessments disproportional;
- Findings by Board that appraisals of property presented by taxpayer did not result in credible opinions of market value were supported by record;
- Judicial estoppel did not apply to bar municipalities from assessing property at value greater than
- Department of Revenue Administration’s assessed value; and Board’s decision did not violate state constitutional requirement that taxation be uniform and proportional.

Taxpayer failed to meet its burden of providing sufficient probative evidence that utility regulatory environment in which it operated impacted market value of its utility property to such degree as to make municipal assessments disproportional in Board of Tax and Land Appeals’ denial of 77 of its 86

individual tax abatement appeals. While taxpayer relied upon impact that regulation had upon its ability to set rates and impact that regulation would have upon sale of utility, as, in such sale, Public Utilities Commission approval was required, fact that Commission disfavored passing on acquisition costs to customers did not mean practice was forbidden, as it could approve sale and pass costs to customers provided that it found such sale to be for public good, and identifying regulation that might impact market value of property was insufficient.

Findings by Board of Tax and Land Appeals that appraisals of utility property presented by taxpayer did not result in credible opinions of market value were supported by record in its denial of 77 of taxpayer's 86 individual tax abatement appeals on property. First appraiser did not consider possibility of sale of any of key components of property, but Public Utilities Commission concluded that taxpayer's hydroelectric plants could be sold separately and for higher value, first appraiser used flawed income approach, as he did not have specific revenue or expense information, second appraiser shifted how much weight he placed upon his approach for differing years but provided no support for deduction for what he called non-taxable, pollution control items, and second appraiser did not provide independent opinion of market value of property in individual towns.

Judicial estoppel did not apply to bar municipalities from assessing taxpayer's utility property at value greater than Department of Revenue Administration's assessed value, even though municipalities did not challenge Department's assessment before Board of Tax and Land Appeals denied 77 of taxpayer's 86 individual tax abatement appeals. Department's equalization process was not legal proceeding in which municipalities were litigants, and taxpayer did not show that municipalities took inconsistent positions, as municipalities submitted their local assessed values to Department, which unilaterally substituted allocated values from its appraisal for local assessed values supplied by municipalities and, thus, position municipalities were asserting was that their local assessed values represented correct market value of property, which was consistent with assessing taxes based upon those values.

Board of Tax and Land Appeals' decision to deny 77 of taxpayer's 86 individual tax abatement appeals on its utility property did not violate state constitutional requirement that taxation be uniform and proportional, despite claim that it allowed local municipal assessments to be significantly greater than Department of Revenue Administration's assessments used to determine municipality's share of county taxes. Taxpayer paid same proportion of local taxes, regardless of value of county taxes owed by municipality, and, thus, it was not being taxed disproportionately compared to other municipal residents, and taxpayer could not show that it was harmed, as Department's valuations of property did not yield accurate opinion of market value and, thus, property was effectively being value disproportionately lower at county level.

TAX - NEW HAMPSHIRE

[SegTEL, Inc. v. City of Nashua](#)

Supreme Court of New Hampshire - June 9, 2017 - A.3d - 2017 WL 2511319

Telecommunications provider, which used poles and conduits on city's right of way pursuant to pole attachment agreements with utility providers, brought action against city seeking declaratory judgment that city was not entitled to impose property taxes and seeking to strike city's tax assessment.

The Superior Court granted summary judgment to provider. City appealed.

The Supreme Court of New Hampshire held that city lacked authority to tax telecommunications company for use of poles and conduits over rights of way owned by city, where company did not own any poles or conduits within city, did not have its own license from city authorizing its occupation of city's rights of way, and used poles and conduits pursuant to pole attachment agreements with utility providers that did not require company to pay property taxes assessed by city.

Indiana to Cancel Public-Private Interstate Contract.

INDIANAPOLIS (AP) — The state of Indiana has reached agreements to take control of a long-delayed section of the Interstate 69 extension three years after hiring a private developer to complete the work, the Indiana Department of Transportation said Friday.

The Indiana Finance Authority, the privately run I-69 Development Partners and the company's bond holders reached settlement agreements in principle for the state of Indiana to assume control of the halfway-completed Section 5 between Bloomington and Martinsville by July 31, state officials said. The deal is subject to approval by the Finance Authority's board.

Dan Huges, Indiana Public Finance director, said the deals will not increase the overall project cost to taxpayers and may provide some savings. The original cost of the project in current dollars was about \$590 million over 35 years, and the new agreements and financing structure total about \$560 million, he said.

Section 5, which is about 21 miles long, has been plagued by delays since work started on it in 2014. It was originally scheduled to be completed in October 2016, but the Finance Authority said in a notice to bond holders earlier this month that it estimates work on Section 5 to be substantially complete by Aug. 31, 2018.

"I am delighted for Indiana taxpayers that we have reached an agreement for the State to assume control and finish this project," Governor Eric J. Holcomb said in a statement.

The Finance authority will issue lower-interest highway-revenue bonds that are expected to be rated AA+. Those will fully replace the developer's private-activity bonds, which were originally rated at BBB-, Indiana officials said. I-69 Development Partners will provide an additional \$12 million to bondholders and \$50 million to the Finance Authority as part of the settlement, INDOT said.

A message seeking comment was left for I-69 Development Partners on Friday.

The agreements will release the state from future liabilities or claims with bondholders, I-69 Development Partners, the design-builder Isolux Corsan and insurance and surety companies, state officials said. However, the state will assume all future financial risk to operate, maintain and preserve the roadway over 35 years. The developer previously had assumed that risk.

Currently, more than 30 subcontractors are working on the roadway and that will continue, state officials said.

Subcontractors have repeatedly halted work because of payment disputes with Isolux Corsan. Sections 1 through 4 of the I-69 extension between Evansville and Bloomington are complete. INDOT has started surveying work on Section 6 from Martinsville to Indianapolis.

By: Associated Press June 19, 2017 9:41 am

KEN KUSMER

Associated Press

[U.S. DOT Offers Guidance on Public-Private Partnerships.](#)

As debate of the pros and cons of public-private partnerships heightens in light of President Donald Trump's fondness for infrastructure privatization, the U.S. Department of Transportation has offered a look at the ups and downs of bringing private sector players into the conversation early.

A new (fairly technical) [DOT paper](#) outlines 17 ways to engage the private sector, across three major phases of project development: planning, pre-procurement and post-procurement. During each, the paper suggests, some approaches seem to work well, shortening timelines, fostering information sharing, improving technical and financial innovation, and reducing risk (for companies and taxpayers). Others have mixed results.

Take "unsolicited proposals," for example — one of four top strategies the paper recommends during the planning phase.

State or local agencies can open their doors to unsolicited proposals for projects or facets of projects. LA Metro, since announcing it would accept them in February 2016, has received 75 on a variety of ideas, not only opportunities for public-private partnerships. Of these, 56 made it through an initial review that indicated the agency could consider the proposal; 16 went on to phase two for a more detailed analysis. Five projects are currently underway, and two more are being recommended for implementation.

In a webinar this week about DOT's paper, LA Metro's Chief Innovation Officer Joshua Schank said the decision to open up to unsolicited proposals was made in anticipation of voters passing an indefinite sales tax increase for transportation last November. The agency wanted to involve the private sector in new projects, but hadn't been successful so far.

"In fact, we've struggled to develop P3s that work," he said. LA Metro has put out requests for proposals or information before and received little enthusiasm. "[Accepting unsolicited proposals] avoids that to some extent. Because it involves the private sector earlier, we know when we go out that there is some interest."

And though some doubted that the private sector would respond, Schank said, "we have gotten recommendations for things that we might never have considered under other circumstances because people feel free to submit things that don't take a tremendous amount of effort."

The downside? It takes a lot of time and effort for the agency to evaluate them all fairly in its promised 60-day time frame.

The DOT paper gives unsolicited proposals a medium-positive score for maintaining or reducing costs, and adding value and fostering innovation. The strategy garners low marks for increasing competition, however: Though a company submitting a proposal still must go through a public bid process, the agency might show bias toward the initial proposer.

What limited evidence exists suggests that unsolicited proposals work best when they can speed up an already planned and environmentally assessed project.

Several are being considered in Los Angeles around the West Santa Ana Branch and Sepulveda transit corridors. In the first instance, the line has been planned and is going through environmental review, but the community is clamoring for faster delivery.

Schank said private companies have also expressed interest in working with the agency on pre-development agreements (PDAs), another early involvement strategy covered in DOT's paper. Using this approach, contractors would attempt to design a financially feasible plan for a relatively undefined project, and get right of first refusal to be a private partner on it should the agency decide to proceed.

Again, as with unsolicited proposals, the paper notes this approach can reduce competition and fail to decrease risk for the public sector (yet recommends it as a top strategy). PDAs also rank well for adding value and maintaining or reducing cost or schedule, and for decreasing risk for private sector partners.

Donald Cohen, executive director of In the Public Interest policy and research center, says it can be helpful to involve private players early to source ideas, but when they're asked to make financial projections too soon, "you're predisposing the answer."

He points to the Value for Money (VFM) analyses often conducted in advance of large infrastructure projects, and the decision whether to use more expensive private financing (which can be quicker) or tax-exempt public financing. In 2015, he wrote in a Miami Herald op-ed, Indianapolis reviewed the VFM process for a proposed new courthouse and justice center. The city's analysis found that using public financing would cost \$516 million less than a public-private partnership. The private firm that conducted the first VFM found the private option would be cheaper.

"But we've found that in political [situations] when a VFM comes up with a dollar number, that becomes a fact in the discussion," says Cohen. He says it's good to ask the private sector what they can offer in terms of innovation and efficiency, but that doesn't mean projects can't still be publicly financed and owned.

He also cautions that even the idea-gathering phase can tip the scale, as it can promote a feedback loop of potentially misplaced trust. "Once you make the decision you want to do [a project as a public-private partnership] you stop evaluating whether you should do it," says Cohen.

NEXT CITY

BY JEN KINNEY | JUNE 21, 2017

Jen Kinney is a freelance writer and documentary photographer. Her work has also appeared in Satellite Magazine, High Country News online, and the Anchorage Press. See her work at jakinney.com.

[Will It Soon Be Game over for Tax-Exempt Financing of Professional Sports Stadiums?](#)

Public financing, including tax-exempt bond financing, of facilities used by professional sport teams has long been a controversial topic, with advocates and opponents disagreeing over whether the public benefits sufficiently to justify public subsidies. [Since 2000, over \\$3.2 billion of tax exempt bonds have been issued to finance the construction and renovation of 36 sports stadiums.](#)

[A bill](#) has been introduced that would eliminate the availability of federally tax-exempt bonds for stadium financings. Under existing tax law, use of a stadium by the applicable professional sports team constitutes “private use,” but taxable “private activity bond” status, which is triggered by “private use” of the financed facility combined with the presence of “private security or payment” for the applicable bonds, can be avoided by structuring the bonds to be payable from tax or other revenues unrelated to the financed stadium.

The bill would amend the Internal Revenue Code to treat bonds used to finance a “professional sports stadium” as automatically meeting the “private security or payment” test, thus rendering any such bonds taxable irrespective of the source of payment.

This bill is identical to a [version](#) introduced in the House of Representatives in February and a slight departure from prior versions in the House that extended the exclusion from tax-exempt financing to a broader category of “entertainment” facilities.

What’s new this time? There are versions of legislation intended to terminate tax-exempt financing of professional sports stadiums in both the House and Senate, arguably evidencing an increased likelihood of advancement.

The National Law Review

Wednesday, June 21, 2017

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[CDFA Fundamentals of Economic Development Finance Course.](#)

August 7, 2017

Minneapolis, MN

The Fundamentals of Economic Development Finance Course is the foundation for all of CDFA’s educational offerings. This course will help you understand the variety of development finance tools available, from bonds, tax credits and TIF, to federal financing programs, RLFs, and access to capital lending resources.

The Fundamentals Course is based on [CDFA’s Practitioner’s Guide to Economic Development Finance](#), the only comprehensive reference guide dedicated to building and utilizing the development finance toolbox. The Practitioner’s Guide provides the insight and practical information needed to critically understand how economic development is financed and the tools, strategies and techniques used to build strong communities.

This course qualifies for the CDFA Training Institute’s [Development Finance Certified Professional \(DFCP\) Program](#). Participants may register for one, two, or three courses during CDFA Summer School. Complete three courses, and you will have fulfilled half of the requirements for the DFCP Program. Join us in Minneapolis, and start down the road to personal and professional advancement today.

To learn more, and to register, [click here](#).

[Commentary: With the Trump Administration, 'Strategic Patience' on Infrastructure May Be the Key.](#)

The phrase “strategic patience” has been used to describe the Obama administration’s approach to North Korea and its various disturbing initiatives. The idea was that the U.S. would study up on the situation and be patient, avoiding a headlong rush into any approaches that couldn’t be counted on to bear results. The patience part was the biggest challenge, as critics asked: where does it begin and end?

Although strategic patience may not be best alternative towards North Korea, it may be the best approach to infrastructure and the municipal market. We keep hearing about various proposals from federal officials that may be expected to gather momentum at some point in the not too distant future. No clear funding source for the proposed \$200 billion of federal support has been locked in at this point. The current consideration appears to be how does one trade using that information? The message has been inconclusive. Even though uncertainty is the trader’s friend, discerning the direction and speed is also key.

[Continue reading.](#)

The Bond Buyer

By John Hallacy

Published June 20 2017, 11:21am EDT

[S&P: Texas Budget Scorecard: The 2018-19 Biennium.](#)

On June 12, 2017, Texas Governor Greg Abbott signed the \$217 billion biennium budget, but not before vetoing \$120 million. The two-year budget is about \$360 million higher than in the prior biennium (an increase of 0.2%).

[Continue Reading](#)

Jun. 19, 2017

[S&P: Alaska 'AA+' GO Debt Rating Placed On Watch Negative Due To Fiscal Plan, Budget Impasse.](#)

S&P Global Ratings has placed its ‘AA+’ general obligation (GO) rating, ‘AA’ appropriation rating, and ‘A+’ moral obligation rating on the state of Alaska’s debt on CreditWatch with negative implications.

[Continue Reading](#)

Jun. 20, 2017

S&P: For Some U.S. State Budgets, Eleventh-Hour Negotiations Prevail.

As the end of June approaches, several states are nearing the conclusion of their 2017 fiscal year without having finalized budgets for fiscal 2018. While some states, such as Pennsylvania and Illinois, have become notorious for their late budgets, or no budget adoption at all, they tend to be the exception and not the rule.

[Continue Reading](#)

Jun. 22, 2017

S&P Credit FAQ: Proposed Criteria For U.S. And Canadian Not-For-Profit Acute Care Health Care Organizations.

On June 8, 2017, S&P Global Ratings published a request for comment (RFC) on revised criteria for U.S. not-for-profit health care organizations (“U.S. And Canadian Not-For-Profit Acute Care Health Care Organizations”).

[Continue Reading](#)

Jun. 8, 2017

U.S. Municipal Sales to Sink to \$7.56 bln Next Week.

Sales of bonds and notes by U.S. states, cities, schools and other issuers will fall to \$7.56 billion next week, down from more than \$11.2 billion this week, according to Thomson Reuters estimates on Friday.

Debt issuance so far this year in the U.S. municipal market totals \$179.3 billion, a drop of 12.8 percent from the same period in 2016.

Late last week, Bank of America Merrill Lynch lowered its full-year issuance forecast to \$440 billion from \$470 billion, citing lower advance refundings of debt coming to market.

Meanwhile, the muni market is reaching an annual peak in terms of reinvestment cash flowing into investors’ pockets from muni bond principal and coupon payments. Those payments are expected to total \$46.6 billion in July and \$43 billion in August, according to BofA.

Two New York deals top next week’s negotiated offerings. New York state’s Dormitory Authority will sell \$1.72 billion of state personal income tax revenue bonds through Morgan Stanley & Co. Underwriters will hold a retail presale period for the highly rated bonds on Tuesday ahead of formal pricing on Wednesday.

Reuters

Fri Jun 23, 2017 | 4:25pm EDT

[Issue Price: Notes from the Field.](#)

We are [two weeks into](#) the [new issue price regulations](#). Here are a [few more observations](#) from the field. As expected, most of the action flows from the [hold the offering price rule](#).

[Continue Reading](#)

The Public Finance Tax Blog

By Johnny Hutchinson on June 22, 2017

Squire Patton Boggs

[USDA Rural Community Development Initiative + Grant Application Tips.](#)

July 14, 2017

1:00 PM Eastern

The U.S. Department of Agriculture is now accepting applications for the Rural Community Development Initiative (RCDI). This program provides millions of dollars of grants to government agencies, non profits, and federally recognized tribes to support housing, community facilities, and community or economic development programs in rural areas. This round of the RCDI program will provide \$4 million of funding, and applications are due by July 25th. During this special webinar from CDFA, learn from expert speakers and previous awardees as we discuss the RCDI program, how to apply, and recommendations for successful applications.

To learn more, and to register, [click here](#).

[MSRB Files Proposed Amendments to Municipal Fund Security Advertising Requirements.](#)

The Municipal Securities Rulemaking Board (MSRB) filed with the Securities Exchange Commission (SEC) proposed amendments to [MSRB Rule G-21\(e\)](#) related to municipal fund security product advertisements. The MSRB is proposing amendments to Rule G-21(e) to address important regulatory developments and to enhance protections for investors in municipal fund securities. The proposed amendments reflect changes to SEC rules governing money market fund advertisements and improve regulatory consistency of disclosure requirements for those municipal fund securities that invest in money market funds. [View the filing](#).

The MSRB originally proposed these amendments as part of a broader [request for comment on updating and harmonizing certain provisions of its municipal securities dealer advertising rule and establishing similar advertising regulations for municipal advisors](#). The MSRB continues to consider comments received from market participants on the other aspects of its proposal.

Australian Super Funds Open-Minded on US Infrastructure as Trump Plots \$1 trl Spend.

Australian superannuation funds are prepared to invest in new infrastructure projects in the US if they are “structured right” as President Trump plans a \$US1 trillion spending spree.

Hostplus directors Mark Vaile and Peter Collins were on their way back to Australia last night following meetings with US officials in Washington as part of a superannuation delegation discussing infrastructure investment opportunities.

The Australians have been keen to promote superannuation funds as “reliable trustworthy owners” of infrastructure, stressing to US officials they are prepared to own assets for the long term and have “a community licence to exist,” Hostplus chief investment officer Sam Sicilia told The Australian Financial Review.

The super funds have stressed that while they expect to earn “reasonable” returns of between 8 and 12 per cent on their infrastructure investments, they do not plan to squeeze excessive returns out of them, saying that if investors do not “behave,” they lose their licence to operate.

US President Donald Trump is planning a \$US1 trillion infrastructure investment program over the next decade, with about 80 per cent of the cost to be funded by the private sector and states.

IFM Investors, which has an office in New York, has been encouraging US funds to “buy into” the infrastructure story, Mr Sicilia said. IFM Investors chief executive Brett Himbury met with US Vice President Mike Pence last week to discuss America’s infrastructure plan.

Australian superannuation funds have traditionally been reluctant to invest in new infrastructure projects like tollroads before knowing how many cars will use them for fear of losing money.

But Mr Sicilia said funds had “long time horizons” and they could invest in new projects if they were structured appropriately.

The Australian have been marketing their experience in owning and managing infrastructure assets to the US government, as well as explaining how asset recycling schemes work. Many US infrastructure assets are owned by municipalities who have not had any incentives to sell them.

Martin Fahy, CEO of the Association of Superannuation Funds of Australia, said the US meetings showed Australian funds were “world leaders” in the international infrastructure market.

Australian fund needed to invest money overseas to avoid investments being too concentrated in Australia, he said.

Finding overseas infrastructure investments has typically been difficult for Australian funds because of intense competition for assets like London City Airport, which was sold last year to Canadian pension funds for £2 billion.

But if President Trump’s infrastructure spending plan goes ahead, a broad range of infrastructure projects, both new projects and upgrades to existing assets, should open up for investment.

Australian investors can currently invest in US infrastructure through municipal bonds, which are used to fund many projects. But investors prefer direct investments in assets so they can have a role

in how the assets are operated rather than being passive investors, Mr Fahy said.

Australian superannuation assets are currently worth a record \$2.3 trillion. Infrastructure typically accounts for about 5 per cent of superannuation portfolios.

Other countries are also eyeing US infrastructure investments. US private equity firm Blackstone and Saudi Arabia's Public Investment Fund said in May they planned to create a US\$40 billion fund to invest in infrastructure projects, mainly in the US.

AFR Weekend

by Jenny Wiggins

Jun 22 2017 at 5:15 PM

[Big Illinois Bondholders Unlikely to Sell if Rating Cut to Junk.](#)

(Bloomberg) — If Illinois' debt gets downgraded to junk status next month, it's unlikely there will be a stampede to the exits by the largest bondholders.

The seven largest holders of the debt, who collectively hold about \$5.9 billion of the \$23 billion in outstanding state general-obligation bonds, according to data compiled by Bloomberg, all said they will not be forced to sell should the bonds fall below investment grade.

The firms, each of which run mutual funds, said they can own varying amounts of junk-rated debt and can exercise their discretion to avoid unloading bonds under fire-sale conditions.

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

If the state doesn't enact a plan that reins in its chronic deficit, S&P warned, Illinois will likely lose its investment-grade status around July 1.

Here are the seven largest holders of Illinois state debt, from largest to smallest. All derivatives, fully refunded and insured bonds are excluded from these calculations. Any zero coupon bonds are shown at accreted value.

Fidelity Investments: \$1.77 billion

Fidelity, without addressing Illinois specifically, said in an email from spokeswoman Sophie Launay that its taxable and tax-exempt bond funds may invest in securities of less than investment-grade quality.

Vanguard Group: \$1.44 billion

Vanguard spokesman Freddy Martino said in an email that the firm's actively managed investment grade national municipal bond funds are allowed to have as much as 5 percent of assets invested in junk-rated securities and that currently the funds were not close to that threshold.

Nuveen Investments: \$854 million

John Miller, co-head of fixed-income at Nuveen, said the company's Illinois debt is held in funds that can own debt rated below investment grade. Some of the funds can have as much as 50 percent of their money in that category, he added.

Dodge & Cox: \$561 million

The \$50 billion Dodge & Cox Income Fund can own up to 20 percent in non-investment grade debt, spokesman Steven Gorski wrote in an email.

AllianceBernstein: \$545 million

Guy Davidson, director of municipal bonds at AllianceBernstein, said in an email his firm could continue to hold its Illinois bonds if they were cut to junk.

Wells Fargo Asset Management: \$441 million

"Our fund prospectuses allow for flexibility to retain securities that fall below investment grade, specifically to reduce the need to pressure sales following a downgrade," Lyle Fitterer, head of tax-exempt fixed income at Wells Fargo Asset Management, wrote in an email.

BlackRock: \$334 million

Peter Hayes, head of municipal bonds at BlackRock, said his company could continue to hold its Illinois bonds if they were cut to junk.

Crain's Chicago Business

June 21, 2017

[The Technical Case For Continuing To Love Municipal Bonds.](#)

Summary

- Despite the low interest rate environment, State and Local governments are reluctant to borrow for new money purposes.
- Demand continues to grow for tax-exempt municipal securities as supply shrinks creating enhanced value for investors.
- Europeans and a host of Japanese, Chinese and others have discovered a sovereign market (The United States Municipal Bond Market) almost as highly regarded as US Treasuries.
- There's also a perfect storm of technicals to support the municipal investor.

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Seeking Alpha

by Andres Capital Management

*Registered investment advisor, debt, bonds, medium-term horizon
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Chicago Schools Now Paying 9% on Adjustable Rate Bonds.

- **Distict pays penalty yields after choosing not to remarket**
- **Rising variable-rate debt costs recall 2008 credit crisis**

Chicago's school system is paying bond-market penalties similar to those seen during last decade's credit crisis.

The junk-rated district, reeling from escalating pension costs and fallout from the Illinois budget gridlock, has been stuck paying punitive interest rates on \$167.5 million of adjustable-rate bonds after choosing not to attempt to remarket the bonds. The rate on the bonds, which are supposed to stay extremely low because investors can resell them to banks periodically, jumped to a maximum 9 percent on March 1 from 4.64 percent the week before and has stayed there ever since, according to data compiled by Bloomberg.

The spiraling interest bills are reminiscent of the chaos that erupted in the wake of the Lehman Brothers Holdings Inc.'s bankruptcy in 2008, when state and local governments were stung by soaring costs after investors sold the variable-rate securities en masse just as banks were scrambling to raise cash. In Chicago's case, though, it reflects how skittish investors have become about holding the debt of the cash-strapped school system.

"Chicago Public Schools has been unable to create a fiscally responsible budget and it relies on outside sources that, as we see, sometimes comes through and sometimes don't," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which manages \$6 billion of municipal bonds, including about \$3 million of insured Chicago school debt. "That's unsettling investors."

The school district agreed this week to pay a rate of 6.39 percent — subject to adjustment — for a short-term \$275 million loan from JPMorgan Chase & Co. to help make a pension payment and cover the cost of staying open through the end of the school year. The schools didn't receive \$215 million more in state aid to make the retirement-fund contribution after a measure was vetoed by Governor Bruce Rauner. Illinois has failed to pass a budget for more than two years as the Republican governor and Democrat-led legislature battle over how to close the state's chronic budget deficits.

Michael Passman, a spokesman for Chicago's schools, wrote in an email that the district is waiting for "a more opportune time" to remarket the bonds.

Bloomberg Markets

By Martin Z Braun

June 20, 2017, 11:21 AM PDT June 21, 2017, 11:58 AM PDT

Bloomberg clients: We'll be doing a TOPLive Q&A on Thursday, June 22 at noon ET, moderated by Martin Z. Braun, in which you can ask Joe Mysak questions about the latest with Connecticut, its debt downgrades, budget deficit and more. You can watch it here. If you want to ask a question, please send to TOPLive@bloomberg.net

[KPM Weekly Rate Update.](#)

[Read the Update.](#)

KPM Financial | Jun. 20

[Municipal Market Snapshot.](#)

[Read the Snapshot.](#)

Hutchinson, Shockey, Erley & Co. | Jun. 20

[Many MA Firms Have Yet to Get Their Advisors Qualified.](#)

WASHINGTON - As the deadline for municipal advisors to pass their qualification exam approaches, roughly 26% of registered firms have no advisors who have qualified, potentially leaving issuers with fewer firms on which to rely, according to regulators.

Those firms have until Sept. 12 to either have an advisor pass the Series 50 exam or get out of the business.

[Continue reading.](#)

The Bond Buyer

By Jack Casey

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[Social Finance Launches First Pay For Success Project Focused Exclusively on Workforce Development!](#)

Social Finance is excited to announce the launch of the [Massachusetts Pathways to Economic Advancement Pay for Success Project](#)! The project will support 2,000 immigrants and refugees in Greater Boston to make successful transitions to employment, higher wage jobs, and higher education.

[Read more.](#)

[MSRB Publishes Guide for Customer and Municipal Advisory Client](#)

[Complaint Problem and Product Codes \(and Webinar\).](#)

The Municipal Securities Rulemaking Board (MSRB) reminds regulated entities, which include brokers, dealers, municipal securities dealers and municipal advisors, of the October 13, 2017 effective date for amendments to rules related to customer and municipal advisory client complaints. [Read the January 18, 2017 approval notice for amendments to MSRB Rules G-10, G-8 and G-9.](#)

The amendments require, in part, that regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients using a standard set of product and problem codes. [The MSRB Rule G-8 Customer and Municipal Advisory Client Complaint Problem and Product Codes Guide is now available.](#)

The MSRB, in coordination with FINRA in the interest of consistency for those regulated entities that are also FINRA members, developed codes for the electronic complaint log required by Rule G-8 based on product and problem codes required by FINRA Rule 4530, but tailored to address municipal securities and municipal advisory activities. FINRA, in coordination with the MSRB, incorporates in its Rule 4530 product and problem codes explanations relating to municipal securities and municipal advisory activities, and includes Problem Code 15, Municipal Advisor Conflict of Interest, to address allegations relating to municipal advisor conflicts of interest.

The MSRB will host an educational webinar about the amendments to Rules G-10, G-8 and G-9 on Thursday, July 13, 2017 at 3:00 p.m. ET. [Register here.](#)

[Reminder: Comments on Draft Amendments to MSRB Rule G-34 on CUSIP Numbers Due Next Friday, June 30.](#)

[Read the RFC.](#)

[A Risky Fix to Repair a City's Gutted Streetlight Grid.](#)

TULSA, Okla. — For years, residents in this cash-strapped city watched helplessly as thieves gutted 33 miles (53 kilometers) of streetlight wiring, plunging long stretches of roadway into darkness. The thousands of dollars criminals pocketed at off-the-books salvage yards wreaked millions of dollars in damage.

Now Tulsa is scrambling to make patchwork repairs to its decimated grid, opting for a quick fix to appease frustrated motorists, including 48-year-old resident Bill White, who says broken streetlights could become a liability for the city and a hazard for drivers, not to mention an eyesore.

“If I’m visiting the city from the airport, what’s going to be my first impression?” White said. “Am I still in the country?”

Copper thieves have pillaged lighting grids in cities large and small across the nation, causing municipal budgets to skyrocket. Law enforcement agencies estimated that the copper theft racket was costing cities \$1 billion a year. At peak demand, copper went for around \$4 per pound; it fetches about half that now. Scrap aluminum hovers around 40 cents.

The lighting dilemma in Tulsa also tells the larger story of the country's deteriorating infrastructure due to decades of neglect, deferred maintenance and unwillingness by officials to make tough funding decisions. Many bridges and overpasses are obsolete; roads are pocked with potholes; sewer systems are time bombs. Some federal officials estimated it would take about \$1 trillion to fix the mess.

"Tulsa has the problem that almost every city in the country has: Their maintenance costs are outside what they can afford, so they're making piecemeal repairs just because of the cash flow," said Sean Crotty, an assistant professor of geography at Texas Christian University.

Cities that can afford more expensive solutions have overhauled their lighting grids with solar or LED technology. Last year, Detroit completed a \$185 million conversion of its archaic streetlight system to LED — light-emitting diode — after emerging from bankruptcy. The cost of an LED overhaul, though, could get "staggeringly expensive," explained Crotty, referencing San Diego as one example.

"Just the pole itself on a highway is a shocking, expensive thing: \$60,000 per post," said Crotty, who's also a faculty member in the university's Center for Urban Studies.

In an effort to switch most of the lights back on by December, the city is using cheaper, less-durable aluminum wiring instead of more reliable copper and gambling that theft-deterrent doors and stickers affixed to light poles exclaiming in English and Spanish, "We Use Aluminum Wire" will be enough to thwart would-be criminals.

But what the state's second-largest city is looking to save for the sake of convenience and immediacy could end up throwing its streetlight grid into chaos again, city officials and urban designers say.

"Even with aluminum, really, as long as these materials remain valuable, there's no magic bullet," said Terry Ball, the director of Tulsa's streets and storm water department, which began tracking the thefts in 2014. "There's no one approach you can take."

There's also no guarantee how long aluminum wiring will hold up, especially given Oklahoma's wild weather swings. Many of the light poles themselves date to the 1960s and 1970s. One industry group says copper is still the better option, even if it costs more.

"Copper is the standard conductor metal against which all other conductor materials are measured," said Thomas Passek, the president of the Copper Development Association Inc. "Although first-time cost may favor other materials, municipalities should consider the total cost of ownership."

But in these dire budget times, Tulsa's mayor, G.T. Bynum, said his city of about 400,000 people has little choice but to go with "the least expensive, still expensive option" to the tune of around \$3 million.

Ilyas Bhatti, an associate professor of design and construction management at the Wentworth Institute of Technology in Boston, said cities such as Tulsa run the risk of having "the same problems, trading one precious metal for another metal."

"To some, (criminals) may think (aluminum) is silver" when they cut the line," Bhatti said.

In Tulsa, which allocates only \$68,000 a year for streetlight repairs, the cost to outfit its 6,000 or so lights with LED would be somewhere between \$12 million and \$15 million, said Tracy Nyholm, the traffic operations planning manager.

Ball, the streets and storm water department director, said the only way the city will be able to afford better technology is through a sales tax, bond package or grant. And even then, those options could be at least five or more years off, he said.

Until then, Tulsa is gambling on a quick fix and hoping cheaper options come along sooner than later.

“The thing when you get into electronics, you buy it one day and the next day, it’s obsolete,” Ball said. “Two years from now, there may be a whole new light bulb we don’t even know about.”

By THE ASSOCIATED PRESS

JUNE 25, 2017, 11:57 A.M. E.D.T.

[After Puerto Rico’s Debt Crisis, Worries Shift to Virgin Islands.](#)

CHARLOTTE AMALIE, V.I. — The United States Virgin Islands is best known for its powdery beaches and turquoise bays, a constant draw for the tourists who frequent this tiny American territory.

Yet away from the beaches the mood is ominous, as government officials scramble to stave off the same kind of fiscal collapse that has already engulfed its neighbor Puerto Rico.

The public debts of the Virgin Islands are much smaller than those of Puerto Rico, which effectively declared bankruptcy in May. But so is its population, and therefore its ability to pay. This tropical territory of roughly 100,000 people owes some \$6.5 billion to pensioners and creditors.

Now, a combination of factors — insufficient tax revenue, a weak pension system, the loss of a major employer and a new reluctance in the markets to lend the Virgin Islands any more money — has made it almost impossible for the government to meet its obligations. In January, the Virgin Islands found itself unable to borrow and nearly out of funds for basic government operations.

The sudden cash crunch was a warning sign that the financial troubles that brought Puerto Rico to its knees could soon spread. All of America’s far-flung territories, among them American Samoa, Guam and the Northern Mariana Islands, appear vulnerable.

“I don’t think you can say it’s a crisis, but they have challenges — high debt, weak economies and unfunded pensions,” said Jim Millstein, whose firm, Millstein & Company, advised Puerto Rico on its economic affairs and debt restructuring until this year and has reviewed the situation in Guam and the Virgin Islands. He called the combination of challenges in the territories “a recipe for trouble in the future.”

For decades, these distant clusters of islands in the Caribbean and the Pacific have played critical roles as American listening posts, wartime staging grounds, practice bombing ranges and even re-entry points for astronauts splashing down in the Pacific.

The military presence buoyed their small economies, and a federal tax subsidy made it relatively easy for them to issue bonds. Over the years, they have collectively borrowed billions of dollars to build roads, run schools, treat drinking water and fund hospitals.

Congress has generally relied on the Government Accountability Office to monitor the financial health of the territories, but it did not intervene over the years when the auditors brought back reports of “formidable fiscal challenges” or “serious internal control weaknesses” on the islands. Not, at least, until Puerto Rico went over the edge.

Now the G.A.O. auditors are back, re-examining the debt and repayment ability of each territory, amid concerns that other crushing debt burdens may have escaped notice. An agency spokesman, Fuller O. Griffith, said it would report by the end of the year on “federal options to avert the future indebtedness of territories.” It is not clear what those options will be.

“Washington can’t appropriately manage its relationship with the states, much less the territories,” said Matt Fabian, a partner at Municipal Market Analytics.

Even the states are not immune, despite their legal status as sovereigns. Illinois, stuck in political gridlock, is just days from entering its new fiscal year without a balanced budget, in violation of its own constitution. The ratings agencies warn that Illinois’s bond rating is in peril of being downgraded to junk. Once that happens, as the territories show, hedge funds move in and economic management becomes a series of unpleasant choices.

American Samoa, one of the smallest territories, lost one of the biggest engines of its economy in December when a big tuna cannery closed after being required to pay the federal minimum wage. Moody’s Investors Service then put the territory’s debt under negative outlook, citing its fragile economy.

In the Northern Mariana Islands, the depleted public pension fund was wreaking such fiscal havoc in 2012 that the territory declared it bankrupt, but the case was thrown out. The government then tried cutting all retirees’ pensions 25 percent, but the retirees have been fighting the cuts, and the fund is nearly exhausted anyway.

Even Guam, which enjoys the economic benefit of several large American military installations, has been having qualms about its debt after Puerto Rico’s default.

“Puerto Rico’s troubles provide a teachable moment for Guam,” said Benjamin Cruz, the speaker of the legislature, who recently helped defeat a proposal to borrow \$75 million to pay tax refunds. “Spending borrowed money is too easy.”

But the debt dilemma is now most acute in the Virgin Islands — the three main islands are St. Thomas, St. Croix and St. John — where the government has been struggling ever since a giant refinery closed in 2012, wiping out the territory’s biggest nongovernment employer and a mainstay of its tax base.

Its troubles began to snowball last July, when Puerto Rico defaulted on most of its debts.

Last August, Fitch downgraded the Virgin Islands’ debt to junk, citing the territory’s chronic budget deficits and habit of borrowing to plug the holes, like Puerto Rico.

More downgrades followed, and in December, Standard & Poor’s dealt the territory a rare “superdowngrade” — seven notches in one fell swoop — leaving it squarely in the junk-bond realm. That scared away investors and forced it to cancel a planned bond offering in January.

The failed bond deal meant there was not enough cash to pay for basic government operations in February or March. As a stopgap, the territory diverted its workers’ pension contributions.

The Virgin Islands' governor, Kenneth E. Mapp, said he had no intention of defaulting on any bonds.

"I didn't ask anybody for debt relief, so don't put me in the debt-relief boat," Mr. Mapp said in an interview at Government House, the ornate seat of the territorial government, perched on a hillside overlooking the lush palms and bougainvillea of the capital, Charlotte Amalie, located on St. Thomas.

Still, Mr. Mapp is contending with many of the same problems that proved too much for Puerto Rico, driving it in May to seek bankruptcylike protection under a new law for insolvent territories, known as Promesa. Puerto Rico is now embroiled in heated negotiations over how to reduce its roughly \$123 billion in debts and unfunded pensions.

When Congress drafted the Promesa law last year, it made it possible for the other American territories to seek the same kind of help.

Now, even though the Virgin Islands maintains it has no intention of defaulting on its debts — and has even given creditors new protections — the mere prospect of bankruptcy has spooked the markets, putting borrowed money beyond the territory's reach and greatly limiting its options.

In something of a self-fulfilling prophecy, by giving territories the option to declare bankruptcy, Congress seems to have made such an outcome more likely.

"That innocuous provision, when sent to the bond market, said, 'Here's an escape valve for your debt obligations,'" said Mr. Mapp. "That changed the whole paradigm."

The problem is that in Puerto Rico, Promesa is turning out to shred the many legal mechanisms that governmental borrowers use to make their debts secure. These include liens and allowing creditors access to the courts.

"Under Promesa, all the security structures are dissolving," Mr. Fabian said.

Investors who thought they were secured creditors before now find themselves holding moral obligation pledges, which are not enforceable.

After the Virgin Islands' bond offer fell through in January, the fuel supplier to its electric authority stopped shipments, saying it had not been paid; the authority was already in court with its previous fuel supplier, which had not been paid either.

Then came the House of Representatives' plan to repeal and replace the Affordable Care Act. Mr. Mapp saw the federal money that the Virgin Islands relies on for its public hospitals going up in smoke.

Mr. Mapp scrambled. He reactivated a five-year economic plan that had been languishing and pushed higher taxes on alcohol, cigarettes and soft drinks through the legislature. He fought for a permanent electric rate increase. He got \$18 million in new federal funds for health care. He struck a deal to tax Airbnb rentals.

He hired collection agents to go after delinquent property and income taxes. He scheduled auctions for delinquent properties. He hired a team to work on the pension system, which is in severe distress, with only about six years' worth of assets left.

Until recently, the pension system was chasing high returns by investing in high-risk assets, like a \$50 million placement in life viaticals — an insurance play that is, in effect, a bet that a selected group of elderly people will die soon. It also made loans to an insolvent inter-island airline, a resort

that went bankrupt, and a major franchisee of KFC restaurants. The territory's inspector general has declared the loans illegal.

Mr. Mapp said he hoped to start restructuring the pension system in the fall. Already, he said, the government had stopped diverting the workers' pension contributions, as residents began filing their tax returns and payments in April. The tax payments eased the immediate liquidity crisis.

Recently, he met with the Treasury Secretary, Steven Mnuchin, to discuss possible incentives to attract tech business to the Virgin Islands. And he hopes to return to the capital markets.

"The fact that we didn't complete the sale in January gives the impression that our market access is constrained," said Valdamier O. Collens, the territorial finance commissioner.

Investors have nothing to worry about, said the governor. For decades, the Virgin Islands has used a lockbox arrangement that makes default all but impossible.

Merchants collect sales taxes and send the money to a trustee for the bondholders. Not a cent goes to the territorial government, including the pension fund, until the bond trustee gets enough to make all scheduled bond payments for the coming year.

"We have no access to the moneys before the bondholders are paid," Mr. Mapp said. "These moneys are taken out of the pie before the pie is even in the oven. Our debt has never been in jeopardy."

But in Puerto Rico, such lockbox arrangements have turned out to be one of the thorniest disputes of the bankruptcy proceedings. And Mr. Collens, the finance commissioner, is all too aware that the same dynamic could upend the Virgin Islands, too.

"We know that there has been a contagion effect with Puerto Rico," Mr. Collens said. "The market saw that by the stroke of a pen, Congress could create a Promesa for the rest of the territories."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JUNE 25, 2017

[NFMA Recommended Best Practices in Disclosure for Local Government General Obligation Debt.](#)

The NFMA Disclosure Committee released the Recommended Best Practices in Disclosure for Local Government General Obligation Debt, draft dated June 22, 2017.

Comments will be taken through September 30, 2017, after which a final version will be prepared.

To view the paper, [click here](#).

[MSRB: See How Government Finance Professionals Use the MSRB's EMMA](#)

Website when Issuing Bonds.

[Watch video.](#)

MSRB: Hear From Government Finance Professionals About How EMMA Helps With Fulfilling Disclosure Obligations.

[Watch video.](#)

- [MSRB Publishes Guide for Customer and Municipal Advisory Client Complaint Problem and Product Codes.](#)
 - [Former GSA Head Reiterates Urgency for Scoring Reform.](#)
 - [BE AWARE: Governments Being Hit by Sophisticated Electronic Fraud Scams.](#)
 - [GFOA Alert: Public-Private Partnerships \(P3\).](#)
 - [Early Tax Abatement Disclosures Under GASB 77: Incomplete, Mislabeled – and Occasionally Spectacular.](#)
 - [California Taxpayers Action Network v. Taber Construction, Inc.](#) – Court of Appeal holds that tax objector alleged sufficient facts to state cause of action against contractor, as corporate consultant, for violation of conflict of interest provision in statute barring public officials or employees from being personally financially interested in contracts they formed in their official capacities, stemming from contractor’s lease-leaseback construction contracts with school district. *On remand, this case appears poised to invalidate the entire lease-leaseback construction contract system as currently configured.*
 - And finally, You’ve Been a Very Naughty Boy, Prepare for Strict Scrutiny is brought to us this week by [For the People Theatres of N.Y. Inc. v. City of New York](#), which dealt with zoning regs for adult businesses. You’ll doubtless be pleased to learn that your “specified anatomical areas” are subject to intermediate scrutiny. But you should probably run this by HR prior to office-wide implementation of any such scrutiny.
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SCHOOL FINANCE - CALIFORNIA

California Taxpayers Action Network v. Taber Construction, Inc.

Court of Appeal, First District, Division 2, California - May 2, 2017 - Cal.Rptr.3d - 12 Cal.App.5th 115 - 2017 WL 2365295

Objector brought a reverse validation action to challenge a lease-leaseback agreement for construction of school facilities.

The Superior Court sustained demurrer without leave to amend. Objector appealed.

The Court of Appeal held that:

- School construction lease-leaseback arrangement was authorized by statute;

- Leaseback did not require competitive bidding;
- Taxpayer failed to allege facts sufficient to state claim for breach of fiduciary duty;
- Lease-leaseback agreement was not void as a breach of the public trust;
- Objector had standing to bring a conflict of interest claim; and
- Objector stated a conflict of interest claim.

School district's lease-leaseback of its real property to contractor for construction of school facilities was authorized by the 2014 version of the school construction lease-leaseback statute, notwithstanding objector's argument that the agreement should be deemed a sham and subterfuge to avoid competitive bidding requirements, even though the agreement failed to provide financing, since the lease was for the purposes of construction, and the agreement provided for the title to vest in the school district at the end of the lease term.

The 2014 version of the statute authorizing a school district to lease real property to a contractor for a construction project without advertising for bids also allows the contractor to lease the property with improvements back to the school district, even if the district has not advertised for bids.

Objector failed to allege facts sufficient to state claim for breach of fiduciary duty against school district and contractor related to school board's approval of expenditures for school construction project pursuant to lease-leaseback agreement. Objector's complaint requested that contractor return money paid to it under lease-leaseback agreement, but did not allege that contractor was subject to fiduciary duty, complaint did not allege that school board profited from transactions and did not request restitution or disgorgement of profits, and relief sought for alleged breach of fiduciary duty was against contractor, a party that did not have a fiduciary duty.

School district's lease-leaseback agreement for a school construction project without competitive bidding was not void as a breach of the public trust, absent evidence that any member of the school board had a personal interest in the lease-leaseback agreement.

Court of Appeal would address school district's and contractor's argument that objector lacked standing to bring a claim of conflict of interest challenging lease-leaseback construction agreement, even though district and contractor raised the argument for the first time in opposition to objector's appeal from the judgment sustaining demurrer without leave to amend.

Objector alleged sufficient facts to state cause of action against contractor, as corporate consultant, for violation of conflict of interest provision in statute barring public officials or employees from being personally financially interested in contracts they formed in their official capacities, stemming from contractor's lease-leaseback construction contracts with school district. Taxpayer alleged that contractor served as a professional consultant to district and had a hand in designing and developing the construction plan, which was sufficient to state that contractor was an employee for purposes of statute and participated in making contracts, and taxpayer's allegations sufficiently stated that contractor was financially interested in contracts for purposes of statute.

REDEVELOPMENT AGENCIES - CALIFORNIA

[City of Galt v. Cohen](#)

Court of Appeal, Third District, California - June 2, 2017 - Cal.Rptr.3d - 2017 WL 2391690 - 17 Cal. Daily Op. Serv. 5266

City filed petition for writ of mandate challenging Department of Finance determination that

cooperative agreement between city and former redevelopment agency, which obligated agency to issue tax allocation bonds to finance city redevelopment projects, was unenforceable under freeze component of law dissolving redevelopment agencies.

The Superior Court affirmed, and city appealed.

The Court of Appeal held that:

- Projects were not enforceable obligations under law dissolving redevelopment agencies;
- Statute providing that tax allocation bonds issued before last day of year “shall be used for the purposes for which the bonds were sold” retroactively applied ;
- Department did not unconstitutionally impair bond agreements when it determined that proceeds could not be used to fund projects listed in cooperative agreement;
- Cooperative agreement did not give rise to enforceable obligations, despite validation judgment; and
- Equitable estoppel did not apply.

Projects named in cooperative agreement between city and former redevelopment agency and meant to be financed with proceeds of bonds issued by redevelopment agency were not enforceable obligations under law dissolving redevelopment agencies, although payment of the bond debt was enforceable.

Statute providing that tax allocation bonds issued on or before last day of year “shall be used for the purposes for which the bonds were sold” retroactively applied to bonds which redevelopment authority issued after that date, even though bonds were issued prior to effective date of statute. Specific reference to the date of bond issuance in the statute evinced the Legislature’s intent concerning the application of the provision, whether retroactive or prospective.

City lacked standing to argue that not allowing it to use tax allocation bond proceeds to fund projects in cooperative agreement with since-dissolved redevelopment agency unconstitutionally impaired contracts. City lacked any standing to complain that state was impairing its own rights, and city had no standing to assert the rights of the bondholders.

Department of Finance did not unconstitutionally impair bond agreements when it determined that tax allocation bond proceeds could not be used to fund projects listed in cooperative agreement between city and since-dissolved redevelopment agency, which had issued the bonds. Redevelopment agency did not have any obligation to the bondholders to use the bond proceeds to fund the projects, but rather was obliged to make the payments required, and there was nothing to indicate that bondholders would not be paid.

Cooperative agreement between city and since-dissolved redevelopment agency, by itself, did not give rise to enforceable obligations, and thus city could not use proceeds of tax allocation bonds issued by redevelopment agency to complete the cooperative agreement projects despite judgment validating the cooperative agreement. Validation judgment was conclusive and binding as to the cooperative agreement but not to any other contracts, cooperative agreement essentially contained a wish list of projects and the amount redevelopment agency was willing to put toward those projects but did not commit funds obtained by issuing the tax allocation bonds, and projects were not “enforceable obligations” under law dissolving redevelopment agencies.

Department of Finance was not equitably estopped from challenging city’s use of proceeds from tax allocation bonds issued by redevelopment agency to fund projects listed in cooperative agreement between city and former redevelopment agency. Any reliance on Department’s failure to object

sooner was not reasonable, as city did not avail itself of the statutory means of obtaining a “final and conclusive” determination of approval for subsequent payments for the proposed enforceable obligations and city entered into the agreement in an effort to avoid planned end of tax increment financing for redevelopment, and estoppel would nullify public policy that tax increment revenue should be used by local governments to fund core governmental services such as fire protection, police, and schools.

ELECTIONS - DELAWARE

[Young v. Red Clay Consolidated School District](#)

Court of Chancery of Delaware - May 24, 2017 - A.3d - 2017 WL 2448385

Residents who did not vote in school board special election filed action against school district, alleging that school district’s conduct in holding certain events at polling places on election day violated state constitution’s Elections Clause.

The Court of Chancery held that:

- Family-focused events at polling places on election day operated as a targeted reward that induced parents of students to vote in violation of Elections Clause;
- Family-focused events at polling places on election day operated as impediments to voting by the elderly and disabled in violation of Elections Clause;
- District’s campaign speech amounted to excessive partisan advocacy in violation of Elections Clause;
- Court would not issue injunction to enjoin conduct already prohibited by the Declaration of Rights; and
- Invalidity of special election was not warranted as a remedy.

ANNEXATION - GEORGIA

[City of Atlanta v. Mays](#)

Supreme Court of Georgia - June 5, 2017 - S.E.2d - 2017 WL 2414629

Residents of proposed annexation areas petitioned for declaratory judgment challenging annexations by city.

The Superior Court found the annexations to be invalid. City appealed.

The Supreme Court of Georgia held that:

- City’s purported annexation of five unincorporated areas of contiguous county would not have become effective until the first day of the month following the month during which the requirements for municipal annexations had been met, rather than the date the mayor signed each annexation ordinance, and
- House bill that provided for the creation of a newly incorporated city did not violate the Uniformity Clause.

Pursuant to statute governing the effective date of annexations, court declared that city’s purported annexation of five unincorporated areas of contiguous county would not have become effective until

the first day of the month following the month during which the requirements for municipal annexations had been met, rather than the date the mayor signed each annexation ordinance, and thus, was beyond the deadline for annexation set by house bill that created a newly incorporated city out of those unincorporated areas.

House bill that provided for the creation of a newly incorporated city did not violate the Uniformity Clause. Once five unincorporated areas of county were made part of newly incorporated city, the general law governing the effective dates of annexation operated to prevent another city from annexing those areas, and any annexation power of the city would have been subordinate to the General Assembly's power to annex and incorporate.

ZONING & LAND USE - MAINE

[Wolfram v. Town of North Haven](#)

Supreme Judicial Court of Maine - June 6, 2017 - A.3d - 2017 WL 2438530 - 2017 ME 114

Objector appealed from Board of Appeals decision to uphold a conditional use permit issued by planning board to property owner.

The Superior Court affirmed the Board of Appeals decision, and objector appealed.

The Supreme Judicial Court of Maine held that:

- Because property owner had two non-conforming structures on one lot, each could be enlarged by up to 33% of the ground area of the structure that it replaced and still remain in compliance with municipal ordinance;
- Ordinance provision that concerned the repair or replacement of a nonconforming structure damaged or destroyed by fire or cause other than the owner's willful act did not operate to prohibit the enlargement of an existing non-conforming structure;
- A 20% lot coverage restriction in municipal ordinance applicable to guest houses did not apply to a proposal to tear down a bungalow and rebuild it as an annex;
- Evidence was sufficient to support Board of Appeals finding that use of proposed annex to lodge would not have an adverse impact on the quiet possession of surrounding properties, as required for the issuance of a conditional use permit; and
- Evidence was insufficient to support objector's claim that a decision affirming the grant of a conditional use permit to applicant was the product of bias or procedural unfairness.

PUBLIC UTILITIES - MISSISSIPPI

[Mississippi Rural Water Association, Inc. v. Mississippi Public Service Commission](#)

Supreme Court of Mississippi - June 8, 2017 - So.3d - 2017 WL 2505083

Water utility association, on behalf of its nonprofit members, sought review of decision of the Mississippi Public Service Commission (MPSC) to adopt regulation requiring utilities to waive utility deposits for certified domestic violence victims for a period of 60 days.

The Chancery Court affirmed. Association appealed.

The Supreme Court of Mississippi held that customer deposits were included in the definition of the term “rate” as used in Public Utilities Act, which prohibited the MPSC from making rules that regulated the rates of nonprofit public utility association members, and thus MPSC lacked statutory authority to adopt regulation at issue.

ANNEXATION - MONTANA

[St. John v. City of Lewistown](#)

Supreme Court of Montana - May 30, 2017 - P.3d - 2017 WL 2334477 - 2017 MT 126

Land owners applied for a preliminary injunction and temporary restraining order to prevent city’s annexation of property.

The District Court granted summary judgment to city. Owners appealed.

The Supreme Court of Montana held that:

- City complied with statutory requirement for filing copy of plat or survey;
- City’s proposed annexed land was contiguous, as required by statutory procedures;
- City’s determination that annexation was in its best interest was unreviewable;
- City was allowed to require waivers to protest annexation in exchange for city’s water services;
- Owners were not denied equal protection by city’s decision of what property to annex; and
- Owners, as incidental beneficiaries, lacked standing to enforce contract between city and subdivision developer.

City seeking to annex contiguous land complied with statutory requirement for filing with county clerk and recorder copy of plat or survey. Even though corrected map identified partial lots to be annexed as “not a parcel,” and noted that no field survey was performed, map identified all land proposed to be annexed, map was recorded as certificate of survey, and annexation statute allowed for annexation of only portions of tracts of land that were being immediately serviced by city’s water.

City’s proposed annexed land was contiguous to existing annexed land and connected by road, also part of the annexation, as required by procedures for annexing contiguous land, despite contention that city used “hopscotch” method to skip certain parcels; tracts of land were deemed contiguous even though separated from city by road, road was indisputably an area of land, and roads could be considered contiguous to other land for purposes of annexation.

City’s determination that annexation of contiguous property was in its best interest was unreviewable, where city did not proceed contrary to statute, as city filed plat or survey and annexed area was contiguous, and city complied with statutory procedures regarding validity of protests to annexation.

City was allowed to require waivers to protest annexation in exchange for city’s water services, and therefore protests to annexation were validly discounted based on waivers, despite objecting land owners’ contention that waivers were signed under duress or fraud. Even if waivers were requested after utilities and annexation proceedings were initiated, owners were connected to city’s water supply for period of time and continued to receive service without request from city to sign a waiver, and owners were receiving utilities from city which, in exchange for those services, sought to annex property receiving benefit of those services.

City's decision of what property to annex was left to its discretion, absent failure to follow statutory directives, and therefore land owners were not denied equal protection by city's annexation; even though annexation distinguished between property owners whose property would and would not be annexed, annexation, by its very nature, was exercise of choosing one parcel over another to annex.

Land owners were not signatories to nor intended beneficiaries of contract between city and subdivision developer, and therefore owners were incidental beneficiaries who lacked standing to enforce contract in their action seeking to prevent city's annexation of properties; even if owners used roads located in subdivision, no owners lived in subdivision, their names were not in any part of contract, and they were not identified as third-party beneficiaries.

ZONING & LAND USE - NEW YORK

[Avella v. City of New York](#)

Court of Appeals of New York - June 6, 2017 - N.E.3d - 2017 WL 2427307 - 2017 N.Y. Slip Op. 04383

Hybrid Article 78 proceeding was brought against city and others, seeking injunctive and declaratory relief from proposed private development project that included construction of a large-scale retail complex and other facilities on parkland.

The Supreme Court, New York County, dismissed, and plaintiffs appealed. The Supreme Court, Appellate Division reversed. Appeal was taken.

The Court of Appeals held that proposed new developments on previously-authorized stadium site violated the public trust doctrine.

Legislative history of statute authorizing previous stadium project on site of parkland unambiguously demonstrated that the legislation did not authorize further non-public commercial developments on the tract of parkland but, rather, ensured that city was authorized to accommodate other public uses of the stadium and appurtenant facilities, and thus proposed new developments on the site violated the public trust doctrine. Legislative history demonstrated that the statute was intended to authorize the lease, rental or licensing of the stadium, not the construction of unrelated facilities, and that city requested the legislation to grant it the right to rent the stadium to private entities, not to construct new and unrelated facilities for private business purposes.

ZONING & LAND USE - NEW YORK

[For the People Theatres of N.Y. Inc. v. City of New York](#)

Court of Appeals of New York - June 6, 2017 - N.E.3d - 2017 WL 242729 - 2017 N.Y. Slip Op. 04385

Owners of putative adult businesses brought separate actions against city, seeking declaratory and injunctive relief based on First Amendment free speech challenges to zoning ordinance barring adult establishments from all residential zones and most commercial and manufacturing districts.

The Supreme Court, New York County, granted summary judgment to owners. City appealed, and actions were consolidated for purposes of appeal. The Supreme Court, Appellate Division, reversed. Owners appealed. The Court of Appeals affirmed as modified and remanded. After nonjury trial, the

Supreme Court, entered judgment for city with respect to bookstores and video stores. Owners appealed. The Supreme Court, Appellate Division, reversed in part, vacated in part, and remanded. On remand, the Supreme Court, entered judgment for owners. City appealed. The Supreme Court, Appellate Division, affirmed. City appealed.

The Court of Appeals held that:

- City had only a modest burden, at third stage of three-part burden-shifting framework for First Amendment challenge to zoning of adult businesses;
- Evidence established that owners' bookstores focused on sexually explicit activities and materials; and
- Evidence established that owners' eating or drinking establishments focused on sexually explicit activities and materials.

City had only a modest burden, at third stage of three-part burden-shifting framework for First Amendment free speech challenge in adult-use zoning context, of demonstrating that businesses affected by amendment to city's zoning ordinance for adult establishments, which amendment greatly reduced the significance of 60/40 percentage test for exempting eating or drinking establishments or bookstores from being considered adult businesses, retained a predominant focus on sexually explicit materials or activities, thereby fairly supporting city's rationale for amending the ordinance, i.e., to avoid sham compliance with 60/40 test, and also fairly supporting secondary effects of adult establishments as rationale for city zoning ordinance barring adult establishments from all residential zones and most commercial and manufacturing districts.

Evidence established, at third stage of three-part burden-shifting framework for First Amendment free speech challenge in adult-use zoning context, that the bookstores in question focused on sexually explicit activities and materials, thereby fairly supporting secondary effects of adult businesses as rationale for city zoning ordinance barring adult establishments from all residential zones and most commercial and manufacturing districts. All but one bookstore had peep booths for viewing adult films, with an average of about 17 booths per store, peep booths, by design, obviously promoted sexual activities, all bookstores used signage, displays, and layouts to promote sexually focused adult materials and activities, and many bookstores sold sex toys, adult novelties, and the like in nonadult sections of stores.

Evidence established, at third stage of three-part burden-shifting framework for First Amendment free speech challenge in adult-use zoning context, that the eating or drinking establishments in question focused on sexually explicit activities and materials, thereby fairly supporting secondary effects of adult businesses as rationale for city zoning ordinance barring adult establishments from all residential zones and most commercial and manufacturing districts. Topless dancing took place at all times daily for approximately 16 to 18 hours a day, and lap dances, a quintessentially sexual activity, were offered by dancers in both public and private areas.

OPEN MEETINGS - WASHINGTON

[Columbia Riverkeeper v. Port of Vancouver USA](#)

Supreme Court of Washington - June 8, 2017 - P.3d - 2017 WL 2483271

Environmental groups brought action against port, alleging that port violated the Open Public Meetings Act (OPMA) by conducting five executive sessions relating to the proposed lease of property for a large rail terminal.

The Superior Court granted partial summary judgment to port. Groups' petition for discretionary review was granted.

As matters of first impression, the Supreme Court, en banc, held that:

- OPMA's minimum price exception does not apply to general discussion of contextual factors that directly alter lowest acceptable value, and
- Executive sessions were not focused on setting minimum price itself, as required to invoke exception.

The Open Public Meetings Act's (OPMA) minimum price exception limits discussion in executive session to consideration of the lowest acceptable value to sell or lease property. To the extent that various factors directly alter the lowest acceptable value, the governing body may discuss how these factors impact the minimum price, but this limited scope does not permit a general discussion of the contextual factors themselves, and any such general discussion must occur at an open public meeting.

Port's five executive sessions included discussions of factors relevant to lease price for proposed large rail terminal, but were not focused on setting minimum price itself, as required to invoke Open Public Meetings Act's (OPMA) minimum price exception. Executive sessions involved discussions of duration of exclusivity agreement, proposed lessee's ability to pay for possible environmental cleanup, and construction timelines and costs.

[KBRA Releases Rating Report for MTA's Transportation Revenue Bonds.](#)

MTA's Transportation Revenue Bond Anticipation Notes, Series 2017B

Kroll Bond Rating Agency (KBRA) has assigned a short-term rating of K1+ to the Metropolitan Transportation Authority's (MTA) Transportation Revenue Bond Anticipation Notes, Series 2017B in an approximate amount of \$700 million. The Notes will be sold during the week of June 19, 2017.

KBRA also affirms the short-term rating of K1+ on the outstanding MTA Transportation Revenue Bond Anticipation Notes: Series 2017A-1; Series 2017A-2; Series 2015B-2e (Taxable); and Series 2015B-2f (Taxable).

MTA's Transportation Revenue Bonds, Series 2017B (Climate Bond Certified)

KBRA has assigned a long term rating of AA+ to the Metropolitan Transportation Authority's (MTA) Transportation Revenue Bonds, Series 2017B in an approximate amount of \$500 million. The Bonds will be sold during the week of June 26, 2017.

KBRA also affirms the long-term rating of AA+ with a Stable outlook on the outstanding MTA Transportation Revenue Bonds, except for bonds backed by a letter of credit or liquidity facility.

To access the full report, please click on the link below:

[MTA's Transportation Revenue Bonds](#)

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

[KBRA Rates the City of Los Angeles General Obligation Bonds Series 2017-A \(Taxable\) & General Obligation Refunding Bonds Series 2017-B \(Tax-Exempt\)](#)

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AA with a Stable Outlook to the General Obligation Bonds Series 2017-A (Taxable) and the General Obligation Refunding Bonds Series 2017-B (Tax-Exempt) for the City of Los Angeles. KBRA has also affirmed the AA rating and Stable Outlook on the City of Los Angeles' outstanding general obligation (G.O.) bonds. This rating applies to all of the City's outstanding general obligation bonds except for bonds backed by a letter of credit or liquidity facility.

This rating is based on KBRA's U.S. Local General Obligation Rating Methodology. KBRA's rating evaluation of the long-term credit quality of local government general obligation bonds focuses on four key rating determinants:

- Governance, Management Structure and Policies,
- Municipal Resources Base,
- Debt and Additional Continuing Obligations, and
- Financial Performance and Liquidity Position.

To access the full report, please click on the link below:

[City of Los Angeles G.O. Bonds Series 2017-A and 2017-B](#)

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

[KBRA Assigns AA Rating to Wisconsin's GO Refunding Bonds, 2017 Series 1](#)

Kroll Bond Rating Agency (KBRA) has assigned a AA long-term rating and Stable Outlook to the State of Wisconsin's General Obligation Refunding Bonds of 2017, Series 1. Concurrently, KBRA has affirmed the AA long-term rating and Stable Outlook on the state's outstanding general obligation bonds, excluding bonds backed by a letter of credit or liquidity facility, unless otherwise noted.

KBRA has also affirmed the K1+ ratings on the state's general obligation commercial paper (CP) program, the general obligation (GO) CP 2016 Series A Notes, and the State's GO extendible municipal commercial paper program.

Please click on the link below to access the report:

[State of Wisconsin G.O. Refunding Bonds](#)

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

[Reminder: Upcoming MSRB Webinar on Guidance for Solicitor Municipal](#)

[Advisors.](#)

Municipal Advisor Solicitor Guidance Webinar

Thursday, June 22, 2017

3:00 p.m. - 4:00 p.m. ET

MSRB staff will discuss the [recently published guidance](#) on the application of MSRB rules to solicitor municipal advisors. Under the MSRB's mandate to protect municipal entities and obligated persons, the MSRB has developed a core regulatory framework for all municipal advisors. The solicitor guidance comprehensively summarizes that framework and specifically addresses how that framework applies to solicitor municipal advisors, which will be discussed during this webinar.

[Register now.](#)

[Senators Aim to Stop Use of Municipal Funds to Finance Stadiums.](#)

A group of politicians who are tired of taxpayer money being used to build sports stadiums on Tuesday will introduce a bill in the Senate to prohibit the practice.

Cory Booker, D-N.J., and James Lankford, R-Okla., are sponsoring a bill that would prohibit teams from using municipal bonds, whose interest is exempt from federal taxes, to help finance stadium construction.

"Professional sports teams generate billions of dollars in revenue," Booker said in a statement. "There's no reason why we should give these multimillion-dollar businesses a federal tax break to build new stadiums. It's not fair to finance these expensive projects on the backs of taxpayers, especially when wealthy teams end up reaping most of the benefits."

A report in September by the Brookings Institution revealed that \$3.2 billion in federal taxpayer money, through municipal bonds, has been used to fund 36 newly built or renovated sports stadiums since 2000. The largest federal subsidies, according to the report, include the New York Yankees (\$431 million), the Chicago Bears (\$205 million), the New York Mets (\$185 million), the Cincinnati Bengals (\$164 million) and the Indianapolis Colts (\$163 million).

"Everyone likes free federal money to build their expensive stadiums, but with \$20 trillion in federal debt, this is waste that needs to be eliminated," Lankford said in a statement.

A similar bill was introduced by Congressman Steve Russell, R-Okla., into the House of Representatives in March 2016.

ESPN.com

Jun 13, 2017

Darren Rovell
ESPN Senior Writer

Rieger Report: Muni Market's Moot Reaction To Bond Insurers Credit Watch Negative.

So far, the municipal bond market has seen only a modest reaction to the recent negative credit watch being placed on the ratings of several bond insurers.

Month to date as of June 12, 2017, the S&P Municipal Bond Insured Index tracking over \$148 billion in par value of insured bonds has performed in sync with the overall market. The insured bond index has an average yield that is higher than the broader S&P Municipal Bond Investment Grade Index which tracks over \$1.5 trillion in par value. As an additional validation, the insured bond market performance as compared to larger more liquid bonds in the S&P National AMT-Free Municipal Index also seems to be at a parity, at least so far in June.

Year to date, the higher yielding bonds in the S&P Municipal Bond Insured Index have contributed to outperformance versus the rest of the investment grade market place.

By J.R. Rieger

Jun. 14, 2017 5:14 AM ET

Trump Infrastructure Plan Envisions Greater Role For Public-Private Partnerships.

Last week, the White House released an infrastructure “fact sheet”[1] (the “Fact Sheet”) that accompanied its proposed Fiscal Year 2018 budget.[2] The Fact Sheet includes an Infrastructure Initiative (the “Initiative”) that provides a glimpse into how the Trump administration may approach infrastructure policy. This client alert highlights major aspects of the Initiative with a focus on its potential impact on private investment in the infrastructure sector and, in particular, public-private partnerships or P3s.

Shifting Responsibility to States, Localities and Private Sector

The Initiative—like the budget—establishes the Trump administration’s target of \$1 trillion in infrastructure investment over 10 years. This goal dates back to the presidential campaign, when it was set forth in an October 2016 white paper[3] by senior policy advisors Wilbur Ross and Peter Navarro, who are currently serving, respectively, as Secretary of Commerce and Director of the White House National Trade Council. That paper envisioned \$167 billion of the \$1 trillion coming from equity investments made by the private sector, which would be subsidized by an 82 percent tax credit. Although it alluded to possible debt financing options, the paper did not specify the sources for the remaining balance of the investment.

The Initiative and budget provide more insight into the Trump administration’s contemplated approach, featuring a similar leveraging structure to the white paper. The budget calls for \$200 billion in direct federal outlays over 10 years designed to stimulate a trillion dollars in investment over the same time period, accompanied by cuts to programs such as TIGER and Capital Investment Grants (New Starts) as well as to the budget of the Army Corps of Engineers.[4]

The Fact Sheet indicates a plan to use a limited pool of federal dollars to make targeted investments

in high-priority projects and leverage more investment from state and local governments and the private sector. It refers, among its key principles, to appropriate divestment opportunities for the federal government and “self-help” or “independence” of state infrastructure investment efforts. Such reduced federal role would result in a mix of projects that includes those with national importance, those financed largely by state and local governments and those with dedicated revenue streams such as tolls or user fees attractive to private sector investors. How projects not meeting these criteria—for example, smaller projects in rural areas where states and localities lack sufficient funding and which are not revenue generating—would fare is not clear.

Enhanced Role for P3s

The Fact Sheet suggests that the administration will be looking to private investment through public-private partnerships, or P3s, to fund nationally significant projects, and accordingly the Initiative includes several proposals that could create more P3 opportunities. These proposals, which generally focus on the expansion of successful existing programs, indicate a strong interest in leveraging both private dollars and expertise in pursuing infrastructure projects. They include:

- **Expanding TIFIA.** The Initiative supports an expansion of TIFIA eligibility and suggests that increasing the TIFIA credit subsidy to \$1 billion annually (it is currently \$275–\$300 million) could leverage \$424 billion in total investment.
- **Funding WIFIA.** As we discussed in our January 2017 client alert, Water Act a “WIIN” for Infrastructure^[5], the Water Infrastructure Finance and Innovation Act, modeled on TIFIA, is now funded with \$20 million in budget authority. The Initiative adds its support for funding this program.
- **Lifting the cap and expanding eligibility for PABs.** The Initiative calls for removing the \$15 billion cap under current law for surface transportation Private Activity Bonds and expanding their eligibility beyond highway and freight transfer facilities to other non-federal public infrastructure.
- **Liberalizing tolling and incentivizing congestion mitigation.** The Initiative renews an Obama administration proposal to lift the restrictions on tolling of interstate highways and supports grant programs to incentivize states to mitigate congestion problems.
- **Encouraging alternative funding methods for Army Corps projects.** The Initiative promotes the Army Corps’ ability to participate in projects with non-federally financed components. One prominent flood mitigation project using a split delivery model with the Army Corps and a private developer is the Fargo-Moorhead Area Diversion Project; this project could prove to be a model for similar projects elsewhere.
- **Easing environmental reviews and permitting process.** The Initiative seeks to enhance the environmental review and permitting process, in particular by reducing layers of reviews and transferring responsibility for permitting to state and local officials where possible.

Congressional Process

The proposed budget will inform the budgetary process and represents the administration’s opening position at the start of the debate. Senate and House negotiators must each pass a budget resolution and reconcile any differences before October 1, 2017.

Advancing the Initiative’s policy programs will likely require a separate bill through the normal legislative process. The last major transportation legislation to be signed into law, the Fixing America’s Surface Transportation (FAST) Act of December 2015, was a five-year bill that reauthorized the core programs providing federal transportation funding to the states.

As with similar proposals in past administrations, we would expect a transportation bill proposed by

the administration based on the Initiative to face significant challenges. To the extent they are included in a proposed bill, certain elements—in particular the expansion of TIFIA, WIFIA and/or PABs—would, however, likely find support on both sides of the aisle and could facilitate cooperation. We will be monitoring congressional negotiations relating to infrastructure and the budget in the coming weeks and months and will provide updates on key issues for industry stakeholders.

Footnotes

[1] Fact Sheet: 2018 Budget: Infrastructure Initiative (May 23, 2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact_sheets/2018%20Budget%20Fact%20Sheet_Infrastructure%20Initiative.pdf.

[2] Budget of the US Government, Fiscal Year 2018: A New Foundation for American Greatness (May 23, 2017),

<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf>.

[3] Wilbur Ross and Peter Navarro, Trump Versus Clinton On Infrastructure (October 27, 2016), <http://peternavarro.com/sitebuildercontent/sitebuilderfiles/infrastructurereport.pdf>.

[4] Budget, supra note 2; America First: A Budget Blueprint to Make America Great Again (March 13, 2017),

https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf.

[5] Paul Epstein, Water Act a “WIIN” for Infrastructure (Jan. 3, 2017),

<http://www.shearman.com/en/newsinsights/publications/2017/01/water-act-a-wiin-for-infrastructure>.

Article by Paul J. Epstein

Last Updated: June 14 2017

Shearman & Sterling 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.

[MSRB Announces New Strategic Goals, Including Focus on Supporting Compliance and Enhancing the EMMA Website.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today articulated updated strategic goals that will guide the organization for the next several years and emphasize the importance of data, information and education in effective regulation of the municipal securities market.

“We are emerging from an intense period of rulemaking driven in part by the imperatives of the Dodd-Frank Act and the 2012 Securities and Exchange Commission Report on the Municipal Securities Market,” said MSRB Executive Director Lynnette Kelly. “It’s an appropriate time for the MSRB to shift our focus and assist regulated entities with their compliance efforts. Our updated goals prioritize initiatives such as issuing guidance, advisories and FAQs that will support that endeavor.”

The MSRB’s 2017 strategic goals also include expanding the utility of its Electronic Municipal Market Access (EMMA®) website to provide widespread access to municipal market data and tools that support fair transactions and facilitate decision-making, and maximizing the use of data to support market transparency and regulation. Additionally, the MSRB will conduct a comprehensive

analysis of relevant market data to maximize its availability, utility and quality for the benefit of all market stakeholders and the public.

A fourth strategic goal focuses on the MSRB's status as a self-regulatory organization, which ensures regulatory activities benefit from the insight of participants in the municipal securities marketplace. The MSRB plans to leverage the expertise inherent in the self-regulatory organization model to advance the integrity and efficiency of the municipal securities market.

The final strategic goal addresses financial stewardship. To carry out its Congressionally mandated mission, the MSRB must have financial stability and sustainability, and maintain sufficient reserves to operate without interruption, regardless of market conditions. The MSRB is committed to promoting financial sustainability by assessing fair and equitable fees, diversifying funding sources and spending responsibly.

The MSRB Board of Directors established the strategic goals after engaging in a long-term planning effort that included soliciting input from stakeholders, assessing changes in the market and considering the political, economic and technological environment. "These strategic priorities represent the interests of our stakeholders and a continued path to a fair and efficient municipal securities market," Kelly said.

The MSRB's updated strategic goals are:

1. Facilitate industry understanding of and compliance with MSRB rules through rule guidance, clarification and education in support of market efficiency.
2. Further evolve the EMMA website into a comprehensive transparency platform that meets the needs of municipal market participants and the public.
3. Optimize the use and dissemination of municipal market data to further support market transparency and inform regulation.
4. Leverage the MSRB's unique perspective and expertise as an independent self-regulatory organization.
5. Promote financial sustainability by assessing fair and equitable fees, diversifying funding sources and spending responsibly.

[More information about the goals is available here.](#)

Date: June 19, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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[MSRB Publishes Guide for Customer and Municipal Advisory Client Complaint Problem and Product Codes.](#)

The Municipal Securities Rulemaking Board (MSRB) reminds regulated entities, which include brokers, dealers, municipal securities dealers and municipal advisors, of the October 13, 2017 effective date for amendments to rules related to customer and municipal advisory client complaints. [Read the January 18, 2017 approval notice for amendments to MSRB Rules G-10, G-8 and G-9.](#) The amendments require, in part, that regulated entities keep an electronic complaint log of all written complaints of customers or municipal advisory clients using a standard set of product and problem

codes. [The MSRB Rule G-8 Customer and Municipal Advisory Client Complaint Problem and Product Codes Guide is now available.](#)

The MSRB, in coordination with FINRA in the interest of consistency for those regulated entities that are also FINRA members, developed codes for the electronic complaint log required by Rule G-8 based on product and problem codes required by FINRA Rule 4530, but tailored to address municipal securities and municipal advisory activities. FINRA, in coordination with the MSRB, incorporates in its Rule 4530 product and problem codes explanations relating to municipal securities and municipal advisory activities, and includes Problem Code 15, Municipal Advisor Conflict of Interest, to address allegations relating to municipal advisor conflicts of interest.

The MSRB will host an educational webinar about the amendments to Rules G-10, G-8 and G-9 on Thursday, July 13, 2017 at 3:00 p.m. ET. [Register here.](#)

TAX - CALIFORNIA

[Williams & Fickett v. County of Fresno](#)

Supreme Court of California, California - June 5, 2017 - 2017 WL 2417300 - 17 Cal. Daily Op. Serv. 5224

Taxpayer brought action against county for refund of personal property taxes.

The Superior Court sustained demurrer without leave to amend and dismissed the complaint. Taxpayer appealed. The Court of Appeal reversed.

The Supreme Court of California held that:

- Administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to file an application for assessment reduction, overruling *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, 272 P.2d 16;
- Administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to certify under penalty of perjury that the taxpayer is the “owner” of the property; and
- Supreme Court’s holding requiring administrative exhaustion would apply prospectively only.

To satisfy the exhaustion of administrative remedies requirement for a court action for a refund of tax on nonexempt assessed property based on the taxpayer’s nonownership of the property, a taxpayer must seek an assessment reduction through the assessment appeal process before the county board of equalization or a county assessment appeals board, or obtain a stipulation that such proceedings are unnecessary, since such an action seeks a “reduction in an assessment” on the local roll; overruling *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, 272 P.2d 16.

A taxpayer who erroneously has been assessed tax on nonexempt property the taxpayer does not own may certify or declare under penalty of perjury that the taxpayer is the “owner” of the property within the meaning of the Revenue and Taxation Code, as required to satisfy the exhaustion of administrative remedies requirement for a court action for a refund of tax based on the taxpayer’s nonownership of the property, since the taxpayer is a “person having a direct economic interest in the payment of the taxes on that property.”

Supreme Court would apply its holding in the present case, that administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to

file an application for assessment reduction, prospectively only, since taxpayers like the plaintiff in the present case might have reasonably relied on a prior Supreme Court decision to believe it was unnecessary to timely exhaust administrative remedies through the assessment appeal process.

TAX - NEW HAMPSHIRE

[Appeal of New Hampshire Electric Cooperative, Inc.](#)

Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2407213

Electric cooperative appealed an order of the Board of Tax and Land Appeals (BTLA) denying 16 of cooperative's 23 individual tax abatement appeals regarding its property located in 11 municipalities for one tax year and 12 municipalities for the subsequent tax year.

The Supreme Court of New Hampshire held that:

- BTLA was not required to find that market value equaled net book value;
- BTLA had sufficient evidence to properly reject Department of Revenue Administration (DRA) appraisals;
- Evidence was sufficient to support BTLA determination that cooperative's appraisals were not credible;
- Cooperative did not present sufficient credible evidence to prove disproportionality;
- Doctrine of judicial estoppel did not apply to prevent municipalities from using local assessment values; and
- BTLA did not violate requirements that taxation be uniform and proportional.

Board of Tax and Land Appeals (BTLA) had sufficient specific evidence in electric cooperative's tax abatement claim that, notwithstanding impact of regulation, market value of cooperative's property was not limited to its net book value, and thus BTLA was not required to find that market value equaled net book value, despite contention that Public Utilities Commission (PUC) would limit any utility purchaser to return based on net book value. Even though PUC disfavored passing acquisition costs to customers, PUC had approved sales above net book value, regulations on cooperative provided benefits, and BTLA heard expert testimony that cooperative's market value exceeded its net book value.

Board of Tax and Land Appeals (BTLA) had sufficient evidence from which it could properly reject Department of Revenue Administration (DRA) appraisals and allocated values in electric cooperative's tax abatement claim. BTLA examined DRA's appraisals, heard testimony from DRA's appraiser, and heard testimony from municipalities' experts that criticized DRA's procedures, assumptions, calculations, and conclusions, and BTLA was not required to accept testimony from DRA's appraiser that his allocation procedure based on original cost was proper.

Evidence was sufficient to support Board of Tax and Land Appeals (BTLA) determination in electric cooperative's tax abatement claim that cooperative's appraisals did not result in a credible opinion of market value. Appraiser limited his income analysis to simple arithmetic average of previous three years of expenses, and appraiser's opinion that buyer would not pay more for utility property than rate base was contradicted by seven of 11 sales that appraiser cited.

Board of Tax and Land Appeals (BTLA) made specific factual findings that supported its conclusion that electric cooperative had not presented sufficient credible evidence to meet its burden of proving disproportionality in its tax abatement claim, and thus there was no error in BTLA's statement that

cooperative's remaining criticisms of municipal assessors' appraisal methods could not, standing alone, carry cooperative's burden; BTLA's explanations for why it rejected cooperative's testimony and appraisals were supported by record, and evidence upon which cooperative relied to challenge other appraisals was primarily methodological.

Doctrine of judicial estoppel did not apply to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values; DRA equalization process was not legal proceeding, and municipalities did not take inconsistent positions, as they submitted local assessed values as correct market value of property to DRA.

Board of Tax and Land Appeals (BTLA) did not violate principles of uniform and proportional taxation by refusing to apply doctrine of judicial estoppel to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values. Purpose of doctrine was to protect integrity of judicial process by prohibiting parties from deliberately changing positions according to exigencies of moment, and purpose was not implicated.

[The Professor and the Madman on Bonds.](#)

This post is for those of you who like reading dictionaries (or about the making of dictionaries). Have you ever wondered why bonds are called bonds? To (try) to answer this question, let's review what the [Professor and the Madman](#) have to say.

[Continue reading.](#)

By Alexios Hadji on June 14, 2017

The Public Finance Tax Blog

Squire Patton Boggs

[S&P: Los Angeles' Balanced Budget Reflects Prudent Management And Strong Local Support.](#)

In our view, Los Angeles' \$9.2 billion budget-which was adopted by the City Council on May 24, 2017 and signed by the mayor on May 25, 2017-is balanced and includes reasonable revenue assumptions paired with restrained spending.

[Continue reading.](#)

Jun. 12, 2017

[S&P: Los Angeles GO Bond Rating Raised to 'AA', Due To Resolution Of](#)

LADWP Litigation, Robust Economy, And Strong Management.

S&P Global Ratings raised its long-term rating on the city of Los Angeles, Calif.'s outstanding general obligation (GO) bonds to 'AA' from 'AA-' and raised its rating to 'AA-' from 'A+' on the city's outstanding lease revenue and judgment obligation bonds.

[Continue reading.](#)

Jun. 9, 2017

S&P: Pennsylvania Pension Reform Doesn't Address Near-Term Credit Pressures.

Pennsylvania Governor Tom Wolf signed a pension reform measure into law on June 12, 2017. While the bill represents a bipartisan effort to address the commonwealth's long-term liabilities, it does not address the state's acute budgetary stress.

[Continue reading.](#)

Jun. 13, 2017

S&P: Minnesota 'AA+' General Obligation Debt Rating On Watch Negative On Nonappropriation Of Certificates Of Participation.

S&P Global Ratings has placed its 'AA+' rating on the State of Minnesota's general obligation debt on CreditWatch with negative implications.

[Continue reading.](#)

Jun. 15, 2017

Former GSA Head Reiterates Urgency for Scoring Reform.

Restrictive budgetary rules that make it difficult for the federal government to negotiate real estate leases need to be changed to allow more of these types of leases to be negotiated through P3s, argued Daniel Tangherlini, a former head of the U.S. General Services Administration in a June 8 [op-ed](#) for GovExec.com.

Federal scoring makes such projects very expensive for agencies to pursue because the Office of Management and Budget (OMB), treats as a capital lease any lease that ends in government ownership of the developed asset. An agency must record, or "score," in its budget the entire cost of a capital lease the year the agency enters into it. Operating leases, on the other hand, can be scored year by year.

"This has the effect of favoring operating costs, entitlements or tax expenditures over capital or

other asset-based funding priorities. These rules tilt spending toward transfers over investments, bypassing a first principle of infrastructure financing — user pays,” wrote Tangherlini, who chaired an NCPPP-Urban Land Institute advisory group that last year published a report on federal scoring, [Enabling Infrastructure Investment: Leveling the Playing Field for Federal Real Property](#).

NCPPP

P3 Digest: June 15, 2017

Former GSA Head Reiterates Urgency for Scoring Reform

Restrictive budgetary rules that make it difficult for the federal government to negotiate real estate leases

[Read more.](#)

NCPPP

June 15, 2017

Early Tax Abatement Disclosures Under GASB 77: Incomplete, Mislabeled - and Occasionally Spectacular.

Tax Policy

The Government Accounting Standards Board establishes accounting rules used by state and local governments. In this article, Greg LeRoy of Good Jobs First discusses state and local disclosures under the Board’s new accounting rule.

As of early June, more than a dozen local governments have issued Comprehensive Annual Financial Reports (CAFRs) reporting for the first time how much revenue they lost to economic development tax break programs. Some of these early disclosures are overly narrow, others are needlessly difficult to decipher—and a few go far beyond the basic requirements, providing taxpayers and investors outstanding new information.

The new reporting is pursuant to GASB Statement No. 77 on Tax Abatement Disclosures (see Weekly State Tax Report, January 27, 2017: “2017: A Landmark Year for Transparency on State and Local ‘Corporate Welfare’”). This is the first time GASB has ever set forth a Statement on any kind of tax expenditure. The 2014 Exposure Draft for what became Statement 77 in 2015 drew almost 300 comments, making it one of GASB’s most heavily-debated proposals ever.

Tale of Two Cities: Columbus and Birmingham

Emblematic of the two extremes seen so far under Statement 77 are two big cities, each confounding our expectations.

Columbus is Ohio’s biggest city and capital of the state that was by years the first to disclose company-specific tax abatement records online— in 1999! Columbus is also home to State Auditor

David Yost, who fought publicly several years ago with fellow Republican Gov. John Kasich over his office's right to audit Kasich's privatized JobsOhio agency.

Yet when it came to complying with GASB 77, Yost's office overruled Columbus City Auditor Hugh Dorrian (D), ordering a degraded Note that failed to capture the city's three largest economic development tax abatements. Courageously, Dorrian (an iconic figure in Ohio auditing circles who is soon to retire at age 81 after winning election 12 times) pushed back by inserting a second passage in the CAFR, also labeled "Tax Abatements." It references Statement 77, directs readers to the degraded Note, and then proceeds to disclose three abatement program payments totaling \$14.6 million (mostly rebates of municipal personal income taxes to downtown employers).

Birmingham is Alabama's largest city and that state has been both exceedingly generous and quite opaque in its economic development spending, only recently issuing its first state tax expenditure report, for example. It has also been far behind other states in failing to disclose company-specific incentive records (ranking 44th in Good Jobs First's most recent "report card" study on transparency).

Yet in its FY 2016 CAFR issued in November 2016, for which it was not yet subject to Statement 77, the "Pittsburgh of the South" published an astoundingly complete set of data. Taking up six pages, Birmingham's Note does not just state the aggregate cost of each abatement program. It also names every corporate recipient of more than \$1 million, details the cost of each such deal, and even includes the projected future-year costs of each agreement.

None of these additional records is required by GASB 77, and the future-year liabilities are not even mentioned by GASB as an optional possibility (although some commenters argued that if public employee pension and health care future liabilities are to be disclosed, so should future abatement charges).

New Mexico: Most-Advanced Disclosure Plan Will Facilitate Analysis

New Mexico State Auditor Tim Keller (D) has ambitious plans for putting GASB 77 on steroids. He has considerable statutory authority and is using it aggressively. (His zeal may reflect the fact that as a state senator, his two incentive disclosure bills passed the legislature unanimously only to be vetoed by Gov. Bill Richardson (D) and Gov. Susanna Martinez (R)).

Keller has issued electronic reporting templates to every locality and state body, instructing them to provide the names of every abatement recipient, as well as the cost of every deal. His office will then collect all of the spreadsheets, combine them, and publish all of the data online in a downloadable form. No other state official has moved to make GASB 77 data so unified, comprehensive and accessible.

Keller's office is also ensuring that governments faithfully report the inter-governmental revenue harms caused by abatements. For example, a \$1,000 property tax abatement by Bernalillo County (which includes and surrounds Albuquerque) will trigger GASB 77 reporting obligations by six governments (see chart).



GASB Seeks to Clarify Tax Increment Financing Coverage

Close observers of the Statement 77 process have long predicted that one very large kind of tax abatement—tax increment financing, or "TIF"—would become embroiled in controversy. That prediction proved accurate and GASB finally moved to rectify the matter in late April.

The nub problem is that TIF—and some other kinds of abatements—involve tax *diversions* or tax *rebates* rather than tax *exemptions* or tax *reductions*. By every other measure, they meet GASB’s definition of an abatement: they occur pursuant to an agreement between a government and a taxpayer; government agrees to receive less revenue; and the taxpayer agrees to perform a quid pro quo (e.g., hiring or capital investment).

TIF effectively works three ways when a new development results in higher property values and therefore higher property-value assessments and taxes owed. Either the increase—the so-called “tax increment”—is applied to debt service on bonds that directly benefit the development; or the increment is simply rebated; or it is refunded to the company on a “pay as you go” reimbursement basis as the company builds public or private structures as agreed per the terms of the deal.

Some states and localities use variations of this scheme to divert, rebate or refund various incremental sales, admissions or even personal income taxes. Many commenters on GASB’s original Exposure Draft explained such programs, arguing that they belonged “inside the fence.”

But some public officials disagreed, and even the American Institute of Certified Public Accountants challenged TIF’s inclusion in a formal comment to GASB. Essentially, it argued that since taxpayers remit the increment, the tax isn’t abated (even if it is soon returned). In the same vein, when Ohio State Auditor Yost advised Columbus and other Ohio localities, his initial written advice indicated TIF likely wouldn’t be covered.

However, GASB in late April resolved the matter, issuing its [2017 Implementation Guide](#) (its annual Q & A document to answer unresolved interpretation questions about its Statements). In lucid, decisive language, it ruled (answering a hypothetical example):

The developer is promising to take the specific action of constructing a building for purposes of economic development, and the government is forgoing tax revenues to which it is otherwise entitled by providing some or all of the additional property tax revenues above the baseline to the developer. **Although many tax abatements directly reduce the amount of taxes paid and do not involve the actual collection and return of taxes, the mechanism used to conduct the transaction is not relevant to determining whether a transaction meets the definition of an abatement.** Therefore, the fact that the developer pays property taxes and subsequently receives amounts from the government related to the additional property tax revenues means that the government did, in substance, forgo tax revenues. [Emphasis added]

In other words, if incremental tax revenues are repaid or rebated, and not used for debt service, they are covered by Statement 77. (TIF debt service payments, GASB has always held, are already discernible in CAFRs, and therefore don’t need further disclosure.)

Unfortunately, the Implementation Guide only applies to CAFRs whose budget years start July 1, 2017 and beyond. So it does not apply to any of the first year’s records. Hence it will sometimes be difficult or even impossible to compare the first and second year of data in some jurisdictions.

Denver’s Incomplete Disclosure Suggests TIF Issue May Be Unresolved

As noted above, GASB has maintained that debt-based TIFs are not subject to Statement 77 because the debt service paid for by these tax diversions can be found in existing CAFR passages covering municipal debts. But one early disclosure suggests that this may result in undisclosed revenue losses. Denver lost \$96 million in revenue to TIF in 2015, but this information was not found in its

recently-issued CAFR. Instead, that figure appears in the CAFR of the Denver Urban Renewal Authority (DURA), a separate governmental body jointly controlled by the City and County of Denver.

If under Statement 77, DURA is to be treated as the actively abating government (because it technically creates and manages the TIF districts), then the revenue loss suffered passively by the City of Denver should have appeared in its Statement 77 Note (as in the New Mexico examples cited above). However, it does not, so taxpayers seeking to determine the impact of TIF on Denver's tax base would have to read the DURA CAFR and then impute the city's loss, as we do here.

The use of redevelopment agencies or other special authorities to administer TIF is not unusual, so this Denver-DURA disclosure problem may foreshadow more Statement 77 compliance problems.

Compliance Snags Not Surprising; Resistance Would Be Disappointing

Based on our experience with past Statements, we expect that the first year of Statement 77 data will be uneven. GASB's Implementation Guide clarification should improve TIF and other disclosures. Private accounting firms will hopefully propagate best practices among their clients; indeed, by mid-2018, we expect to be able to discern which accounting firms are taking Statement 77 seriously and which are not. They and governments will likely copy each other and develop more standardized reporting formats. Hopefully, some state officials will follow New Mexico's lead to make the data downloadable. And to promote the use and analysis of the new data, Good Jobs First will soon unveil Subsidy Tracker 2, designed to compile Statement 77 data nationally.

However, to the extent any public officials intentionally resist Statement 77, we are reminded of some localities' condescending and exclusionary histories against public participation. Gone are the days of economic development dockets "announced" only in six-point type in the Legal Notices of the Saturday newspaper. Gone are "public hearings" held with no public in attendance, no advance release of the hearings' content, and active government resistance to the disclosure of project details.

Gone now too, thanks to Statement 77, are financial reports that fail to clearly report the costs: how much revenue is lost to tax-break programs. Politicians have and always will tout their benefits; now the debate is gaining sorely-needed balance.

Bloomberg BNA

By Greg LeRoy

June 14, 2017

Greg LeRoy is executive director for Good Jobs First, a national policy resource center in Washington, D.C.

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[Treasury Recommends Treating High-Grade Munis as HQLA.](#)

WASHINGTON - The Treasury Department is recommending that high-grade municipal securities be included as high quality liquid assets under federal banking rules, a stance that state and local

groups as well as some legislators have taken since the rules were first passed.

The Treasury made its recommendation to include munis as Level 2B liquid assets, the lowest level categorization of high quality, in a report compiled in response to President Trump's Feb. 3 executive order on core principles for regulating the U.S. financial system. The order laid out seven "core principles" that the Trump administration would like the financial system to adhere to, such as making regulations as efficient as possible. It directed Treasury to compile a report on how the current rules and regulations governing the financial system are operating with respect to those principles.

Treasury compiled its report after meeting with numerous regulators, including the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp., and the Federal Reserve Board.

Department officials also met with a range of stakeholders. The recent report on the depository system is one of four that Treasury plans to release to comply with Trump's order. The others will focus on capital markets, the asset management and insurance industries, and non-bank financial institutions.

Treasury does not specify what types of munis it believes should qualify as "high-grade," meaning it would likely be up to the regulators to determine which munis they consider to be worthy of a Level 2B classification. Federal banking rules say HQLA should, among other things, be easily and immediately convertible into cash with little or no expected loss of value during a period of liquidity stress. HQLA should also have lower risk, and demonstrate minimal volatility.

Emily Brock, director of the Government Financial Officers Association's federal liaison center, said the report's recommendation of classifying some munis as HQLA "shows the administration's commitment to what we know to be the case, that muni bonds are not only high quality but also a liquid investment."

"I think that is a great testament to the progress of [munis as] HQLA," she added.

The Fed, OCC, and FDIC adopted rules in 2014 that require banks with at least \$250 billion of total assets or consolidated on-balance sheet foreign exposures of at least \$10 billion to have a high enough liquidity coverage ratio - the amount of HQLA to total net cash outflows - to deal with periods of financial stress.

State and local groups as well as other municipal market participants were troubled after the regulators did not include munis as HQLA under the new rules because of concerns that they were not liquid enough. Dealers and issuers said the choice to exclude munis would increase borrowing costs for state and local governments and lead to higher volatility in the municipal market.

The concerns spurred the Fed to act in April 2016 by revising its rule to count munis as level 2B HQLA assets if they meet the same liquidity criteria that applies to corporate debt. Market participants said they were grateful for the recognition but were still concerned that the proposal was too restrictive because the amended rule said munis could only account for 5% of total HQLA. There was also concern that the rule would be too limited because the Fed lacks jurisdiction over many of the larger banks that invest in munis. The FDIC and OCC did not change their rules to be in line with the Fed's.

Muni market concerns also led to proposed, bipartisan bills in both the House and Senate during the last legislative session. Neither bill became law during the session but both have been reintroduced this session and have received support from state and local groups.

Sens. Mike Rounds, R-S.D., and Mark Warner, D-Va., have sponsored a bill that would require bank regulators to treat munis that are investment grade, liquid, and readily marketable as Level 2B liquid assets. Level 2B also includes corporate debt and publicly traded common stock. Reps. Luke Messer, R-Ind., and Carolyn Maloney, D-N.Y., go even farther with their bill, which would treat munis that are investment grade, liquid, and readily marketable as Level 2A liquid assets. Level 2A also includes debt from U.S. government-sponsored enterprises like Fannie Mae and Freddie Mac as well as foreign sovereign debt. While Level 2B assets can only make up 15% of a bank's HQLA, Level 2A assets can make up 40% under the current banking rules.

Brock said that having a recognition of munis as HQLA from the administration as well as from Congress is "a huge step in the right direction." She said GFOA is pushing for a Level 2A classification and that designation as Level 2B "is pretty much as drastic a concession as we're willing to make."

GFOA, along with 14 other state and local groups, wrote a letter to the Senate Banking Committee and each member of the House in April urging the committee and members to support the currently pending legislation. Brock said the request has been well-received in the committee.

Adding the administration's push for including munis under the regulators' rules gives a second way, aside from Congress, of reaching the groups' goal if the OCC, FDIC, and Fed all follow the administration's recommendation. Brock said that GFOA is supportive of all the efforts to achieve the goal and is of the perspective that whatever way gets munis included fastest is worth pursuing.

The Bond Buyer

By Jack Casey

Published June 13 2017, 3:45pm EDT

[Construction Team to Deliver AZ's First P3 Highway 3 Years Early.](#)

Dive Brief:

- The Arizona Department of Transportation has reported that the public-private partnership (P3) constructing the \$1.9 billion Phoenix-area Loop 202 South Mountain Freeway will deliver the project in late 2019, three years ahead of schedule, according to Equipment World.
- The P3's private component, Connect 202 Partners — which is made up of Fluor Enterprises, Granite Construction, Ames Construction and WSP — restructured the 22-mile project so that the last section could be built all at once instead of as nine separate projects as the state originally planned.
- This is the first time a P3 has been used for a highway project in Arizona. Connect 202 Partners will also maintain the Loop 202 addition for 30 years.

Dive Insight:

ADOT awarded the project to Connect 202 Partners in December 2015, but it was an unsolicited proposal in 2013 that pushed the agency to consider entering into a P3 for Loop 202. ADOT previously projected that, upon completion, the new highway would provide a \$200 million economic benefit to the area by saving commuters 15 million hours of drive time every year.

This isn't the only P3 to be inspired by unexpected pitches from the private sector. In May, Kansas City, MO, construction firm Burns & McDonnell sent city officials a \$1 billion proposal in which they offered to finance a new Kansas City International Airport terminal. Two weeks later, international engineering and construction giant AECOM sent the city a letter suggesting integrated project delivery was the way to build a new terminal and asked to be part of the process.

Soon after, Kansas City officials decided to move forward with a P3 for delivery of a new terminal and issued a request for proposals for a 750,000-square-foot, \$1 billion terminal and parking garage. Bids for the project are due next week.

In February, Los Angeles County Metrorail officials also reported that they had received several unsolicited P3 proposals from teams — including Skanska USA-Kiewit Infrastructure and Parsons Transportation Group-Cintra US Services — that wanted to deliver two major transportation projects, the Sepulveda Pass Transit Corridor and the West Santa Ana Branch Transit Corridor.. The agency said using a P3 could help bring the projects on line 14 to 15 years earlier than planned.

Government agencies are increasingly using P3s to take on large transportation projects, typically those with lengthy operations and maintenance components. Organizations like the American Road & Transportation Builders Association say P3s will continue to play a role in future projects, and they will also be a key component of President Donald Trump's \$1 trillion infrastructure plan.

However, not all P3 projects see such positive results. Earlier this month, Indiana Finance Authority officials said they want to take over a delayed and reportedly financially troubled highway project that is currently being constructed under a P3 structure. Completion of the Interstate 69 Section 5 project, which has been pushed back four times, is now set for August 2018.

Construction Dive

by Kim Slowey

June 13, 2017

[SRF For SRFs: A Solid Rating Foundation For State Revolving Funds Is Likely To Continue.](#)

S&P Global Ratings rates 26 leveraged state revolving fund programs (SRFs). States administer the SRFs to provide low-cost financing for eligible water and wastewater infrastructure projects.

[Continue reading.](#)

[Solving Infrastructure Problems From the Bottom Up.](#)

More and more, local governments are coming to understand that they can't count on Washington.

Walking down the streets of San Diego, it's not immediately apparent that the city is at the center of a technological revolution in infrastructure. That's because the technology, 3,200 sensors, is hidden

inside the city's new street lights. The sensors collect data that will help the city save \$2.5 million on electricity each year, track air quality, and improve traffic flow and parking. They can even be of use to public-safety first responders.

San Diego's smart lights are just part of the city's push to rebuild its infrastructure. Last June, voters approved the Rebuild San Diego ballot initiative, which will provide up to \$4 billion for infrastructure projects over the next 25 years.

Expect to see more local and state governments taking infrastructure problems into their own hands. Given the realities of politics in Washington, they know the folly of waiting for the federal government to step in and save the day. And it's highly unlikely that any new infrastructure plan that did emerge from Washington would cover more than a fraction of the \$4.6 trillion that the American Society of Civil Engineers (ASCE) estimates it would cost to fix everything — more than the federal government spends in a year.

ASCE's latest report card gives America's infrastructure an overall grade of D-plus. And no one knows better than those at the local level how our deteriorating infrastructure makes us less competitive globally, not to mention the safety concerns it raises for the people who use crumbling bridges, overpasses and tunnels every day or who drink water that might be contaminated by sewage overflows, just to name a few issues. They need to take a page from San Diego's playbook and find creative ways to start solving infrastructure problems from the bottom up.

It's already beginning to happen. South Bend, Ind., for example, is a sewer overflow city. Hundreds of billions of gallons of raw sewage overflow into local rivers and lakes every year. Aiming to improve the situation, the city, under Mayor Pete Buttigieg, has begun using a system called CSOnet, developed by a local company, that collects data from sensors inside the sewers so the city can redirect water to empty pipes and reduce the overflows.

In Multnomah County, Ore., more than a third of the commercial buildings use more energy than they should. But the Building Ready Multnomah initiative, started by former County Commissioner Jules Bailey, helps finance capital improvements that reduce energy consumption or generate energy. The organization leverages public and private resources for the loans and encourages participants to use the savings generated from becoming more energy efficient toward seismic upgrades to prepare for natural disasters.

And as some Western states struggle to build up their renewable-energy infrastructure, other states, including California, have excess renewable energy capacity. California state Sen. Bob Hertzberg has proposed the creation of a regional grid operator and energy exchange to make it easier for states to buy and sell energy to each other, which could reducing overall carbon dioxide emissions.

These efforts might seem small, but they can add up to a serious impact. With the continuing dysfunction in Washington, it may be years before we see a comprehensive federal infrastructure effort. But as these local leaders have shown, that doesn't mean we can't begin to improve our grade.

GOVERNING.COM

BY KISH RAJAN | JUNE 14, 2017

The Week in Public Finance: A Rate Hike, Unpredictable Taxpayers and Stress-Testing Budgets.

[A roundup of money \(and other\) news governments can use.](#)

GOVERNING.COM

BY LIZ FARMER | JUNE 16, 2017

Puerto Rico Finds Going Bust Isn't Cheap as Consultant Fees Rise.

- **Island spent as much as \$154 million in run up to bankruptcy**
- **Court proceedings will boost tab as it seeks to cut debts**

For Puerto Rico, it's been expensive to go broke.

Even before the U.S. territory filed for a tailor-made form of bankruptcy, the government spent as much as \$154 million on financial consultants and lawyers as it negotiated with bondholders to cut its \$74 billion debt, according to the terms in contracts provided by the island's Office of the Comptroller. With creditors and Puerto Rico now squaring off in court, the fees will only grow.

"This can become very expensive in relationship to the benefits you receive if you don't get to a recovery and bring people along quickly," said James Spiotto, managing director at Chicago-based Chapman Strategic Advisors LLC, whose firm advises on municipal restructurings. "Dealing with financial distress is expensive."

Puerto Rico's May 3 bankruptcy, allowed under a unique process created by a federal rescue law enacted last year, is the largest ever for a U.S. government, promising significant paydays for lawyers and advisers clashing over who has a higher claim on the island's diminished cash. The amount the government spent during its slow-motion collapse approached the \$180 million shelled out in Detroit's record bankruptcy — roughly equivalent to what it costs to cover the annual pensions of 11,000 Puerto Rico retirees.

Some of the spending on consultants has borne fruit: the Puerto Rico Electric Power Authority, known as Prepa, and the Government Development Bank have both reached out-of-court settlements with bondholders to reduce what's owed. The power company's deal struck this year, which amended an earlier one, promises to cut its debt-service costs by about \$2.2 billion from 2018 to 2022 if it's executed. Puerto Rico was less successful with owners of other bonds, ultimately wagering on a better outcome from bankruptcy.

The amount Puerto Rico has spent on outside consultants is based on the maximums specified in the contracts. The actual amounts may differ, depending on the work performed. Following are the sums included in the agreements and the firms involved:

- \$52.7 million: Cleary Gottlieb Steen & Hamilton LLP, which advised the commonwealth and the electric company on restructuring from February 2014 until January 2017 and negotiated with creditors
- \$45.6 million: AlixPartners LLP, whose managing director, Lisa Donahue, served as chief restructuring officer of the power company from September 2014 until February 2017
- \$26.5 million: Millco Advisors LP, an affiliate of Washington-based Millstein & Co., had advised

former Puerto Rico Governor Alejandro Garcia Padilla since 2014 on Prepa's restructuring and the ultimately unsuccessful efforts to reduce the government's general debt

- \$7.5 million: Kirkland & Ellis LLP, which represented the commonwealth in legal disputes including challenges to the island's debt-moratorium law
- \$6.6 million: Proskauer Rose LLP, adviser to the Government Development Bank
- \$6.4 million: Rothschild & Co., which Governor Ricardo Rossello hired to replace Millco, based on the contract running through this month. Puerto Rico's Fiscal Agency and Financing Advisory Authority has paid Rothschild \$3.6 million, as of June 10, according to the agency.
- \$6 million: Dentons LLP, which Rossello hired to replace Cleary Gottlieb, with a contract that runs through June 2017. Dentons has subcontracted legal work from O'Melveny & Myers LLP, according to Puerto Rico's fiscal agency.
- \$2.2 million: O'Neill & Borges LLC, adviser to the development bank

The conflict over Puerto Rico's series of defaults is now playing out in U.S. court in San Juan, where the island is seeking to have billions of dollars of debt written off. Its fiscal turnaround plan, approved by federal overseers in March, would cover less than a quarter of the \$33.4 billion the commonwealth and its agencies owe in debt payments through fiscal 2026. Creditors have questioned the magnitude of the cuts they're facing.

It's unclear how long the workout will linger in court. Detroit, with \$8 billion of bond debt, took 17 months to emerge from bankruptcy. Jefferson County, Alabama's, the second-biggest bankruptcy case, took about two years.

While the process will ultimately steady the government's finances and likely save it billions of dollars, it won't be cheap. Puerto Rico will also need to cover the legal fees for some creditors, which will add to the commonwealth's bankruptcy costs.

McKinsey & Co. was hired as a strategic consultant to the federal oversight board, whose bills are covered by Puerto Rico, under a \$3.75 million contract. Proskauer, the lead legal counsel in the island's bankruptcy, was also hired by the board, as was O'Neill & Borges. Edward Zayas, spokesman for the panel, said it would disclose "soon" how much the board is paying the firms.

Spokespeople for Cleary Gottlieb, AlixPartners, McKinsey and Kirkland & Ellis declined to comment. Representatives of Rothschild, Dentons, O'Neill & Borges, Millstein, Proskauer, O'Melveny. Puerto Rico's fiscal agency said in a statement that it isn't responsible for contracts entered into before April 2016, when it was created.

Bloomberg

by Michelle Kaske and Jodi Xu Klein

June 12, 2017, 2:00 AM PDT June 12, 2017, 7:00 AM PDT

[Opioid Costs Push Struggling States to Dust Off Tobacco Strategy.](#)

- **Governments weigh legal approach as drug-abuse costs mount**
- **Cigarette-case lawyers circle, but strategy faces challenges**

State and local leaders fighting a worsening opioid-abuse epidemic are studying tactics used in the tobacco lawsuits of the 1990s, as they try to claw back billions from the companies who make and

sell the powerful painkillers.

More than 20 U.S. states, counties and cities have sued firms including Johnson & Johnson, Purdue Pharma Inc., and McKesson Corp. in the past year, claiming they fueled a public-health crisis with misleading marketing and aggressive distribution of opioids. Attorneys general in Alaska and Tennessee are also considering lawsuits as their health and legal budgets are stretched to a breaking point by the surge in addictions, overdoses and crime.

It's a strategy cigarette manufacturers will recognize: Two decades ago, they faced similar allegations as states and local governments sued, saying they'd shouldered huge costs for treating diseases blamed on tobacco.

Last month, Ohio sued five drugmakers, alleging they made false and deceptive statements about the risks and benefits of prescription opioids. And Nassau County, New York, this week sued drugmakers, distributors and doctors, saying it has had to increase spending on health care and law enforcement as a result of the epidemic.

"The costs of this opioid crisis are more severe for governmental entities than those posed by tobacco," said Steve Berman, a plaintiffs' lawyer aiding the states, who helped negotiate the \$246 billion tobacco settlement in 1998. "States and cities are getting slammed with opioid-dependence costs that are a much more immediate threat than long-term illnesses tied to tobacco."

It's difficult to say how successful such legal action will be. The companies who make and distribute opioids defend the drugs' safety and say they work actively to keep them from being abused.

Janssen, the J&J unit that sells opioids, has acted "appropriately, responsibly and in the best interests of patients," said Jessica Castles Smith, a spokeswoman. Purdue Pharma said it's concerned about the crisis and is working toward solutions. McKesson said that it doesn't comment on pending litigation. The Healthcare Distribution Alliance — a trade group that includes McKesson — called attempts to target the industry "misguided and unsupported by the facts."

Unexpected Burden

There were 33,000 overdose deaths in the U.S. in 2015, up from 19,000 in 2014, according to the Centers for Disease Control and Prevention. Costs related to opioid abuse, including spending on treatment and policing as well as lost economic output, amount to tens of billions of dollars per year, according to a study by Wolters Kluwer Health in the journal *Medical Care* last year.

In Lorain, Ohio, about 30 miles (50 kilometers) west of Cleveland, Mayor Chase Ritenauer says that the epidemic is wearing out his fleet of police cars. A 25 percent jump in overdose-response calls is putting so much strain on the department's Ford Explorers and Tauruses that some are breaking down.

"We had to have one towed after it just shut down during a call," he said.

Ritenauer says he may have to put off replacing the roof on the police headquarters or fixing the jail's elevator to come up with enough money to buy new cruisers.

"All these unexpected costs are crashing down on cities and leaving them scrambling to shift money around to keep things going," said Hunter Shkolnik, a plaintiff's lawyer who sued pharma makers and sellers on the city of Lorain's behalf.

Critical Mass

Alaska Attorney General Jahna Lindemuth has asked law firms involved in the tobacco battle to pitch a possible opioid suit after Governor Bill Walker declared a state of disaster in February and ordered statewide distribution of naloxone, a drug that can reverse overdoses. There were at least 95 opioid-overdoses deaths in Alaska last year, up from 86 in 2015, and a cluster of nine deaths linked to fentanyl in Anchorage this year, said Jay Butler, the state's chief medical officer.

"We saw that other states were gaining some traction with these suits and thought we should look at whether we have a shot at offsetting some of these opioid costs," said Clyde "Ed" Sniffen, Lindemuth's deputy. He said the state wants to hire an outside lawyer by August.

Tennessee lawmakers have encouraged Herbert Slattery, the state's attorney general, to consider suing drugmakers to recoup opioid costs.

"We're moving toward a critical mass" of states and municipalities suing pharma makers over their handling of opioids, "but we aren't there yet," said Joe Rice, a plaintiffs' lawyer who helped New York and other states in the tobacco fight and who has sued drugmakers on behalf of cities such as Chicago and Los Angeles.

Best Defense

The opioid lawsuits will be different in substance from the tobacco cases, said University of Kentucky law professor Richard Ausness. States went after tobacco giants over costs tied to an unregulated product being used as intended, he said. The drug lawsuits center on the misuse of regulated products, which may make it harder for juries to blame drugmakers and distributors, Ausness said.

"The companies' best defense is going to be that the FDA approved the manufacture and sale of these painkillers along with the addiction warnings," the professor said. "They can maintain they had no duty to investigate further into the misuse of their products."

The ultimate cost for the companies involved would depend on how many states and private plaintiffs' law firms join in and how aggressively they pursue the lawsuits, said law professor David Logan of Roger Williams University law school in Bristol, Rhode Island. States can pursue consumer protection, fraud or other claims, many with statutory fines for each inappropriate prescription, Logan said.

The U.S. Food and Drug Administration has taken a tougher stance on opioids, asking Endo International Plc last week to pull its Opana ER abuse-resistant opioid from shelves. The drug has been linked to an outbreak of HIV and hepatitis C infections among addicts injecting it with shared needles, the agency said. The cost of treating such outbreaks can fall to state or local governments.

The FDA has approved 10 opioids designed to thwart addicts who crush or liquefy medications to snort or inject. Endo said last week that it is confident in the benefits of Opana ER when it is used as intended.

Immeasurable Cost

In West Virginia, lawyers for Cabell County and other local governments have sued drug sellers including McKesson, Cardinal Health Inc. and AmerisourceBergen Corp., alleging they reaped \$17 billion while creating a public-health hazard by flooding the state with drugs. In Cabell County, the companies sold 40 million doses of prescription opioids from 2007 to 2012 in a county with a population of 96,000, according to their lawsuit.

AmerisourceBergen and Cardinal Health said that they play no role in prescribing opioids and work diligently to stop diversion of drugs for inappropriate uses. AmerisourceBergen said it intends to defend itself vigorously and Cardinal called the suits “misguided.”

As the numbers of emergency overdose calls mount, Huntington, a city of about 49,000 people in the southwest corner of West Virginia, laid off 18 firefighters and police officers amid an opioid-related budget squeeze, city officials say.

“It’s going to bankrupt the country,” said Jan Rader, Huntington’s fire chief and a member of a local opioid task force.

Bloomberg

by Jef Feeley and John Lauerman

June 14, 2017, 2:00 AM PDT

[American Dream Deferred: Goldman Delays Pricing of Mall Bonds](#)

- **Offering statement for mall project has 36 pages of risks**
- **Pricing of sale, initially set for Wednesday, is postponed**

Goldman Sachs Group Inc. delayed its sale of the American Dream.

The investment bank pushed off the planned pricing of \$1.1 billion of unrated municipal bonds to finance the long-stalled shopping and entertainment center in New Jersey’s Meadowlands, about 10 miles (16 kilometers) west of Manhattan, according to three people familiar with the matter.

The deal for the project, named for the national belief that anyone can succeed, was supposed to price today. Speculative debt offerings sometimes take longer than initially planned because bankers need to drum up buyers and address the questions of would-be investors. Goldman Sachs spokesman Michael DuVally declined to comment. It may still come as soon as Thursday, according to Bloomberg data.

The Las Vegas-inspired mega complex will pair an indoor amusement park and water park, skating rink, ski slope, Ferris wheel, aquarium, and performing-arts theater with 500 stores, anchored by Saks Fifth Avenue and Lord & Taylor.

“This thing is going to be all things to all people,” said Robert Amodeo, head of municipals in New York for Western Asset Management. “I can’t recall another credit that looks like this.”

The debt offering — the largest of unrated municipal bonds this year — comes amid a steady drumbeat of headlines about the death of the American shopping mall. Credit Suisse Group AG predicts that one-quarter of them will close over the next five years as Internet shopping grows and wages stagnate. In addition, flows into high-yield municipal funds have been a modest \$4.4 billion since the start of the year, according to Lipper US Fund Flows data, suggesting that the securities are being issued at a time when investors are becoming more risk averse.

The bonds will be sold through a Wisconsin agency, the Public Finance Authority, that specializes in acting as a conduit for risky debt. Borrowers for speculative projects sometimes forgo credit ratings rather than risk the taint of being labeled junk.

The 2.9 million square-foot complex is targeted to open in 2019, 15 years after prior developers broke ground. More than 20 million people live within 50 miles of the Meadowlands and the developers Triple Five Group are also “salivating” over the 62 million tourists who come to New York City, said Don Ghermezian, whose family controls the Triple Five Group. The billionaire family owns the Mall of America and the West Edmonton Mall.

“When we took the project over the last thing we wanted was to build another shopping center,” said Ghermezian at an investor presentation. “New Jersey doesn’t need another shopping center.”

Triple Five Group is issuing \$800 million of bonds backed by payments in lieu of property taxes and \$300 million that are secured by New Jersey grants it will receive if the project meets sales-tax revenue targets.

Investors purchasing the American Dream bonds will need to weather the potential pitfalls: The 1,136-page offering statement includes 36 pages of risks, ranging from whether the project will be completed on time to the “difficulty, expense, unfamiliarity and time-consuming nature” of getting to the center.

American Dream is across the highway from MetLife Stadium, the home of the National Football League’s New York Giants and New York Jets. Events at the stadium could adversely affect attendance.

Lisa Washburn, a managing director at Municipal Market Analytics, was skeptical that tourists coming to New York, with all of its culture, entertainment and shopping, would get on a train or bus to the Meadowlands, “a difficult to-get to destination in a relatively unattractive part of New Jersey.”

“Parking and transportation is really substandard in this area,” said Washburn.

If American Dream doesn’t make the full payment in lieu of taxes, bondholders can take over the property, according to Western Asset. Bondholders can also come out ahead if it’s a success: the securities also have a “turbo” feature, which means that they will be paid off faster if revenue comes in better than projected.

“The good part is you get prepaid so there’s less risk in your portfolio, this being a non-rated security and there’s some hair on it,” said Amodeo, the investor with Western Asset. “But if they’re cash-flowing more than their debt service requirement that’s an improving credit situation and you’d like that to stay outstanding for longer. It’s a Catch-22.”

The projected payments in lieu of taxes of \$16.43 per square foot is comparable to the Mall of America’s taxes at \$15.83, according to the official statement.

The total cost of the project is estimated at \$2.8 billion, which will be covered by the tax-exempt bonds, \$500 million from the developer, payments from tenants and nearly \$1.7 billion in loans from JPMorgan Chase & Co.

Bloomberg

by Martin Z Braun

June 14, 2017

[Bloomberg Brief Weekly Video - 06/15](#)

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

[Watch video.](#)

Bloomberg

June 15, 2017

[Fitch: I-69 Issues Do Not Present Credit Risk for Indiana.](#)

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

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

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

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

At the end of fiscal year 2016 the state maintained available balances of over \$2 billion. Fitch anticipates those levels, while down modestly for planned one-time uses this fiscal year, are still substantial and in excess of \$1.5 billion. Fitch's calculation of the state's long-term liability burden includes \$2.5 billion in debt (including \$900 million for two availability-payment based PPPs).

Indiana could absorb additional issuance of \$165 million to fully fund the estimated additional costs of the I-69 project without changing Fitch's 'aaa' assessment of its long-term liability burden.

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

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[Fitch: Slow US State Tax Revenue Growth Pressuring Budgets.](#)

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

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

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

Median sales tax collections grew at just 1.8%. The shift to online sales could be one cause as sales taxes are not always collected on those transactions. State and local governments may have missed out on as much as \$26 billion in sales tax revenue from e-commerce and other remote sales in 2015

alone, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

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

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

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

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

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

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

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[The Federal Budget: How City Leaders Can Fight the Cuts.](#)

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

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

[Register.](#)

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[Pennsylvania Lawmakers Compromise on Pension-Overhaul Bill.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 years to vest in the state pension system.

The Wall Street Journal

By Scott Calvert

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

[A Town's 'Creative Accounting' Leads to a Fraud Conviction.](#)

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

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

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

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

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

Mr. St. Lawrence's lawyers argued that he did not profit from the transactions. They portrayed him as a well-meaning official guilty only of creative financing. But several witnesses painted a picture of Mr. St. Lawrence as a man who lied to raise money for a pet project and then tried to cover up the result.

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

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

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

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

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

The Wall Street Journal

By Steven Malanga

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

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

[Christie Betting That Lottery Can Bail Out Troubled Pensions.](#)

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

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

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

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

Since Christie took office in 2010, the state has contributed more than \$6 billion to retirement funds

to which past governors have often skimmed on payments — or skipped them entirely. Still, the gap between the money expected to be in the funds and that which is owed to retirees has only grown. By any measure, it's among the biggest unfunded pension liabilities in the country.

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

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

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

THE CLEAR BENEFIT — AND COST

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

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

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

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

ADDRESSING THE UNFUNDED LIABILITY

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

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

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

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

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

Tom Byrne is a former chairman of the state Democratic State Committee who currently heads the

Council on Investment, which oversees investment of pension funds. He says that the move could be helpful, despite the doubts of union leaders.

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

By THE ASSOCIATED PRESS

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

[Connecticut Bill Would Force Fee Disclosures for Teacher Retirement Plans.](#)

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

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

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

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

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

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

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

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

another type of retirement plan offered to state and local government workers — to school districts and other municipal employees.

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

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

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

THE NEW YORK TIMES

By TARA SIEGEL BERNARD

JUNE 15, 2017

[In Atlanta, Murals as Art, and as Zoning Law Test Cases.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE NEW YORK TIMES

By ALAN BLINDER

JUNE 15, 2017

World Offers Cautionary Tale for Trump's Infrastructure Plan.

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

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

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

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

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

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

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

the global reserve currency.

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

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

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

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

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

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

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

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

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

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

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

The government can seize land, moving less-than-enthusiastic residents to new homes. China has not

been constrained by owls or fish or other environmental considerations.

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

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

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

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

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

THE NEW YORK TIMES

By PETER S. GOODMAN

JUNE 16, 2017

[SIFMA U.S. Economic Outlook: Mid-Year 2017.](#)

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

Summary

The Economy:

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

Monetary Policy:

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

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

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

[Download the Report.](#)

[GFOA Alert: Public-Private Partnerships \(P3\).](#)

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

Background:

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

Recommendation:

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

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

1. Legal Authority of P3. Does the public entity have the legal and regulatory capacity, including approval from any applicable oversight body, to enter into processes that result in a P3 agreement? Also, does the public entity's contracting/procurement policies or requirements provide for how to handle the proposed P3?
2. Justification for the Project. Does the project address a public priority and is the P3 project consistent with the overall strategic, master plans and financial policies of the organization?
3. Competition. Will the potential P3 opportunity be open to competition? What is the expectation for competition in determining the best private partner? Otherwise, is there justification to support a non-competitive process? Also, has the financial, risk and legal analysis of the project been compared to a public-sector alternative?
4. Expected Project Revenue. If the P3 opportunity involves an upfront payment by the private partner in exchange for operation of a public asset, has the public entity evaluated and

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

Committee:

Economic Development and Capital Planning

Notes:

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

[BE AWARE: Governments Being Hit by Sophisticated Electronic Fraud Scams.](#)

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

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

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

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

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

[Download the slides from the GFOA conference.](#)

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- [As the Countdown to the New Issue Price Regulations Continues, Let the Document Negotiations Begin!](#)
 - [Outline For Discussion Of New Issue Price Rules.](#)
 - [Black & Veatch: 2017 Water Industry Report.](#)
 - [CDEFA Water Finance Resource Center.](#)
 - [A Comprehensive Look At S&P Global Ratings' U.S. Public Finance Water And Wastewater Ratings.](#)
 - [KBRA Rating Letters for Insured Bonds.](#)
 - [S&P Request for Comment: Limited-Tax General Operating Debt.](#)
 - [S&P Request for Comment: Issue Credit Ratings Linked To U.S. Public Finance Obligors' Creditworthiness.](#)
 - Couple of interesting tax cases: [DirectTV, Inc. v. Town of New Hampton](#) and [Upper Moreland Township v. 7 Eleven, Inc.](#)
 - [Vermillion State Bank v. State by Department of Transportation](#) - Court of Appeal holds - as a matter of first impression - that a landowner is the only person that may petition for attorney fees and costs under statute providing for such awards to landowners in inverse condemnation actions, and an attorney has no right to seek fees and costs under the statute independently of the landowner.

- And finally, The Grinch that Stole Grinchiness is brought to us this week by [Carr v. Town of New London](#), in which the Town went to the mats to contest homeowners' request for a tax abatement. The petty reason for the homeowners' whining about their tax bill, against which the Town made such a valiant stand? The home in question HAD BURNED TO THE GROUND. Which, come to think of it, is probably some kind of code violation. Look into that, Town of New London.
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ZONING & PLANNING - CONNECTICUT

[Mayer v. Historic District Commission of Town of Groton](#)

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

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

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

The Supreme Court of Connecticut held that:

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

LIABILITY - GEORGIA

[City of Richmond Hill v. Maia](#)

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

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

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

The Supreme Court of Georgia held that:

- There is a special relationship exception to the general rule that suicide breaks the causal

connection between an alleged negligent act and the resulting death, disapproving *Harvey v. Nichols*, 260 Ga.App. 187, 581 S.E.2d 272, *Tucker v. Pearce*, 332 Ga.App. 187, 771 S.E.2d 495, *Pearce v. Tucker*, 299 Ga. 224, 787 S.E.2d 749, *Dry Storage Corp. v. Piscopo*, 249 Ga.App. 900, 550 S.E.2d 419;

- Daughter's suicide acted as intervening cause that extinguished any causal connection between officer's wrongful conduct and daughter's death;
- Special relationship exception to general rule that suicide breaks the causal connection between an alleged negligent act and the resulting death did not apply; and
- Rage or frenzy exception to general rule that suicide breaks the causal connection between an alleged negligent act and the resulting death did not apply.

EMINENT DOMAIN - MINNESOTA

[Vermillion State Bank v. State by Department of Transportation](#)

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

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

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

The Court of Appeals held that:

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

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

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

INSURANCE - NEW YORK

[Town of Amherst v. Granite State Ins. Co., Inc.](#)

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

Town brought action against special excess liability insurer, arising from dispute over whether

insurer was entitled to recover any of the postjudgment interest on payment by third party pursuant to settlement of town's indemnification claims arising out of underlying personal injury action.

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

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

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

SPECIAL ASSESSMENTS - TEXAS

[MHI Partnership, Ltd. v. City of League City](#)

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

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

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

The Court of Appeals held that:

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

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

LICENSING - TEXAS

Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Commission

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

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

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

The Supreme Court of Texas held that:

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

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

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

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

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

EMPLOYMENT - WEST VIRGINIA

Cales v. Town of Meadow Bridge

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

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

The Supreme Court of Appeals held that a member of a municipal sanitary board is a municipal

employee rather than a municipal officer and thus is not entitled to procedural protections set forth in statute governing involuntary removal of a municipal officer.

ZONING & PLANNING - WISCONSIN

[AllEnergy Corporation v. Trempealeau County Environment & Land Use Committee](#)

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

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

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

The Supreme Court of Wisconsin held that:

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

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

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

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

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

[Deloitte: Cybersecurity for Critical Infrastructure.](#)

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

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

[Black & Veatch: 2017 Water Industry Report.](#)

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

[CUSIP Requests Surge in May Signaling Growth in Corporate and Muni Bond Issuance.](#)

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

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

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

“A combination of macroeconomic and technical variables have driven a fair amount of volatility in month-to-month CUSIP request volume so far this year,” said Gerard Faulkner, Director of

Operations for CUSIP Global Services. “Overall uncertainty about where the markets and interest rates are going, and preparations for pending regulatory reforms such as the Fiduciary Rule have all conspired to create a choppy trend in pre-trade activity.”

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

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

To view a copy of the full CUSIP Issuance Trends report, please click [here](#).

[Asian Insurers Developing Appetite for Taxable Munis.](#)

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

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

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

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

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

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

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

Growth predictions

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

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

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

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

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

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

Long duration

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

Data from Barclays Capital show the average maturity of the bonds in the Barclays Taxable Municipal index is 17.7 years, while the corresponding figure for the tax-exempt index is 12.8 years.

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

Stella Ng, a Hong Kong-based analyst with Moody's Investors Service, said amended risk-based capital requirements for Korean insurers announced May 31 by the country's regulators will raise the maturity cap on insurance liabilities to 30 years from 20 by the end of 2018. That will leave insurers under pressure to better match their assets and liabilities or risk weakening their risk-

based capital ratios. “We expect the trend of increasing overseas investments” — including investments in U.S. municipal bonds — “will continue because insurers are seeking more long-dated securities to match their insurance liabilities,” said Ms. Ng, in an email.

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

PENSIONS & INVESTMENTS

BY DOUGLAS APPELL · JUNE 12, 2017

[The P3 Wars Continue - Trump vs. Texas vs. Tolls \(the T3s\)](#)

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

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

[Continue reading.](#)

By Cynthia Mog on June 8, 2017

The Public Finance Tax Blog

Squire Patton Boggs

[As the Countdown to the New Issue Price Regulations Continues, Let the](#)

Document Negotiations Begin!

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

[Continue reading.](#)

The Public Finance Tax Blog

By Bob Eidnier on June 5, 2017

Squire Patton Boggs

Trump Plans to Shift Infrastructure Funding to Cities, States and Business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"It's undetermined yet," Mr. Cohn said. "It may come before. It may come during. It may come after."

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

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

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

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

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

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

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

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

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

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

In a statement, Thom Metzger, a spokesman for the National Air Traffic Controllers Association, expressed cautious optimism about the air-traffic control reforms, which have been widely telegraphed in Mr. Trump's public comments and at White House gatherings. "Natca considers the status quo to be unacceptable," Mr. Metzger stated, adding that the group shares "the

administration's commitments to infrastructure modernization." It supports the notion of privatizing air-traffic control, he said, but only in a nonprofit entity.

THE NEW YORK TIMES

By JULIE HIRSCHFELD DAVIS and KATE KELLY

JUNE 3, 2017

Outline For Discussion Of New Issue Price Rules.

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

Basic Principles

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

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

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

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

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

Hold-The-Price Rule: One safe harbor that can apply in all public offerings is the hold-the-price rule. The issue price of a CUSIP is the initial offering price for that CUSIP (as evidenced by the pricing wire), so long as the underwriters have agreed in writing not to sell or offer any bonds of that CUSIP at a price higher than the initial offering price for a period of five business days after the

sale date. The five-day requirement ends early if at some point 10% of the principal amount of that CUSIP has actually been sold to the public at any combination of prices that are not higher than the initial offering price.

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

[Continue reading.](#)

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

Last Updated: June 6 2017

Orrick

[KBRA Rating Letters for Insured Bonds.](#)

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

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

[Sample Rating Letter](#)

[Public Finance/Financial Guaranty Overview](#)

KBRA rates the following bond insurers:

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

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

National Financial Guarantee Corporation (National)
(Rated AA+, Stable Outlook)

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

TAX - NEW HAMPSHIRE

[DirecTV, Inc. v. Town of New Hampton](#)

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

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

The Superior Court denied the petition.

The Supreme Court of New Hampshire held that:

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

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

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

TAX - NEW HAMPSHIRE

[Carr v. Town of New London](#)

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

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

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

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

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

TAX - PENNSYLVANIA

[Upper Moreland Township v. 7 Eleven, Inc.](#)

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

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

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

The Commonwealth Court held that:

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

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

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

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

[Muni Bond Expert On Puerto Rico: 'It's Going To Be More Than A Haircut'](#)

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

history.

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

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

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

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

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

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

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

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

Lessons From Detroit

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

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

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

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

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

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

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

'There Was No Other Option'

When Schimmel served as emergency manager in Pontiac, a city of 60,000 located 30 miles north of

Detroit, he paid off \$87 million in debt.

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

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

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

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

“You honor it until it’s [not possible]. You’re going to have to break a promise.”

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

“You’ve got to provide basic services above all else,” Schimmel said.

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

Benzinga

by Dustin Blitchok

June 07, 2017

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

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

[Continue reading.](#)

Jun. 9, 2017

[S&P Medians And Credit Factors: Kansas Local Governments](#)

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

[Continue reading.](#)

Jun. 9, 2017

[S&P Request for Comment: Limited-Tax General Operating Debt.](#)

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

[Continue reading.](#)

Jun. 8, 2017

[S&P Request for Comment: Issue Credit Ratings Linked To U.S. Public Finance Obligors' Creditworthiness.](#)

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

[Continue reading.](#)

Jun. 8, 2017

[Why Big Bondholders are Sticking with Illinois.](#)

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

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

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

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

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

and Wells Fargo Asset Management—hold more than \$500 million each.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

June 07, 2017

[Analysts: Muni Disclosure Varies by Sector.](#)

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

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

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

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

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

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

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

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

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

"Healthcare and senior housing have the most standardized presentation formats and are the most

user-friendly for bondholders," he said.

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

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

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

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

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

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

"It's not as if we want insider information," said Rosenblum.

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

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

"I've always said I can't help you if I don't know what's going on," Schloss said.

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

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

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

Charter schools were another sector that multiple analysts highlighted as sometimes being problematic for analysts. Lewallen said that while the standard quarterly conference calls common

in healthcare and senior living would probably be too often for charter schools, there is school specific information such as test results pertinent to investors that could be disclosed in a more timely manner.

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

“Charter schools are sometimes difficult,” said Rosenblum.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bond Buyer

By Kyle Glazier, Jack Casey

Published June 05 2017, 2:17pm EDT

[CDFA Water Finance Resource Center.](#)

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

[Visit the Resource Center.](#)

[A Comprehensive Look At S&P Global Ratings' U.S. Public Finance Water And Wastewater Ratings.](#)

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

[Continue reading.](#)

Jun. 7, 2017

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

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

[Can a Cyberattack Cause a Credit Rating Downgrade?](#)

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

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

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

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

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

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

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

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

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

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

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

GOVERNING.COM

BY LIZ FARMER | JUNE 7, 2017

[Legal Judgments Put Financial Pressure on Local Governments.](#)

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

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

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

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

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

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

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

The legal judgments underscore the importance of local governments maintaining a healthy reserve fund balance to absorb unforeseen expenses. They also reinforce the need for states to be aware of the fiscal health of their local governments, so officials can prepare for situations when the state may need to step in to help. Washington state, for example, asks local governments about “litigation

costs or pending legal judgments that risk depleting available fund reserves,” to try to anticipate and to plan for potential fiscal shocks.

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

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

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

GOVERNING.COM | JUNE 9, 2017

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

[Puerto Rico Bond Traders Still Find Buyers Despite Epic Collapse.](#)

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

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

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

A daily average of \$267.4 million of commonwealth debt changed hands in the past 50 days, higher than the \$195.9 million average seen over the past 200 days, according to data compiled by Bloomberg. That 50-day average reached \$291 million on May 24, the highest since September 2015.

Puerto Rico’s bonds were for years among the most actively traded in the U.S. municipal-debt market because they were tax-exempt everywhere in the U.S., giving them a national base of buyers. While mutual funds spurned the debt once Puerto Rico’s credit rating was cut to junk more than

three years ago, it still found buyers among hedge funds who wagered it wouldn't go broke.

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

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

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

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

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

Bloomberg Markets

by Michelle Kaske

June 7, 2017, 2:00 AM PDT

[Contrarian Barclays Says Munis Are Not Headed for a Strong Summer.](#)

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

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

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

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

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

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

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

Bloomberg

by Rebecca Spalding

June 6, 2017, 9:51 AM PDT

[Bloomberg Brief Weekly Video - 06/08](#)

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

[Watch video.](#)

Bloomberg

June 8, 2017

[Autonomous Vehicles: A Policy Preparation Guide.](#)

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

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

[NACo Releases Analysis of Potential County Impacts of the President's FY 2018 Budget Request.](#)

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

impact on programs important to America's counties.

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

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

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

For the full NACo analysis of the President's FY 2018 Budget Request, please [click here](#).

NATIONAL ASSOCIATION OF COUNTIES

By DEBORAH COX

Jun. 6, 2017

[President Trump to Launch Push for Infrastructure Investment.](#)

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

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

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

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

The White House still hasn't said how it plans to pay for the federal government's share of the

projects, and officials said a more detailed proposal will come at an unspecified later date. But Mr. Trump's top economic adviser said the administration aims to encourage states and cities to bear much of the burden.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Ted Mann and Michael C. Bender

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

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

[Uber, Lyft Asked by San Francisco to Turn Over Driving Records.](#)

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

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

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

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

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

An Uber spokeswoman responded, "We're more than happy to work with the city to address congestion, but it should be a comprehensive solution including construction, the city's population

increase, and the rise of online delivery services.”

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

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

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

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

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

The Wall Street Journal

By Bowdeya Tweh

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

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

[Hartford’s Finances Spotlight Property-Tax Quandary.](#)

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

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

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

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

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

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

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

property-tax increases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Joseph De Avila

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

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

[Private Funding Is Key Challenge of Trump Infrastructure Plan.](#)

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

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

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

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

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

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

some lawmakers said were unorthodox.

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

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

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

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

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

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

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

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

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

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

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

Officials at several major transportation agencies have expressed concern about the administration’s

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

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

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

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

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

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

The Wall Street Journal

By Ted Mann and Ryan Dezember

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

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

[San Francisco Investigating Whether Uber, Lyft Are Public Nuisances.](#)

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

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

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

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

neighborhood where you live," Herrera said.

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

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

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

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

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

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

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

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

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

By REUTERS

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

(Editing by Jeffrey Benkoe)

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

Faster, better, cheaper.

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

Public-private partnerships, as they are known, have many potential benefits. Companies can

complete projects quicker and more cheaply than governments can, proponents say. Letting private industry take the lead can also limit the amount of debt that cities and states need to take on.

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

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

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

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

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

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

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

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

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

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

Over the long-term, serious drawbacks surfaced.

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

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

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

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

The companies have a narrower concern — maximizing financial returns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE NEW YORK TIMES

By MATTHEW GOLDSTEIN and PATRICIA COHEN

JUNE 6, 2017

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

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

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

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

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

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

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

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

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

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

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

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

By REUTERS

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

(Editing by Chizu Nomiya and Matthew Lewis)

Public Works, Private Benefit.

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

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

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

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

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

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

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

THE NEW YORK TIMES

By THE EDITORIAL BOARD

JUNE 9, 2017

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

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

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

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

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

By THE ASSOCIATED PRESS

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

[SIFMA Statement on 'Move America Act of 2017'](#)

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

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

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

Municipal Advisor Representative Qualification Examination (Series 50 Exam)

Thursday, June 15, 2017

3:00 p.m. - 4:00 p.m. EDT

During this free webinar, staff of the Municipal Securities Rulemaking Board (MSRB) and U.S. Securities and Exchange Commission (SEC) will review the standards of professional qualification

for municipal advisors and discuss the enrollment process for taking the MSRB's Municipal Advisor Representative Qualification Examination (Series 50). For municipal advisor firms that have yet to enroll an associated person to take the Series 50 exam, the MSRB is providing a reminder that, after September 12, 2017, only associated persons who have passed the Series 50 exam can engage in municipal advisory activity on behalf of the firm.

[Register.](#)

Recognize the Magnitude of Municipal Securities in the Infrastructure Debate.

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

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

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

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

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

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

affordably access capital markets to maintain infrastructure, from roadways to alleyways, and from universities to elementary schools.

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

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

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

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

THE HILL

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

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

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- [Fitch: Pension Impact Adjusted in U.S. Public Finance Criteria.](#)
 - [Special Assessment Techniques for Transformative Community Improvements.](#)
 - [MSRB Seeks Additional Comment on Requirements for Obtaining CUSIP Numbers.](#)
 - [MSRB Adds Exception in Revised Proposal Requiring CUSIPs for Private Placements.](#)
 - [BDA Submits Comments to Department of the Treasury and the Internal Revenue Service on Recommendations for the 2017-2018 Priority Guidance Plan.](#)
 - [Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.](#)

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

IMMUNITY - ALABAMA

[Ex parte City of Guntersville](#)

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

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

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

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

BALLOT INITIATIVES - COLORADO

[Matter of Title, Ballot Title and Submission Clause for 2017-2018 #4](#)

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

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

The Supreme Court of Colorado held that:

- Proposed ballot initiative contained a single subject as constitutionally required, and
- As matter of first impression, the statute on procedure for reviewing Title Board's abstracts for

proposed ballot initiatives authorizes the Supreme Court to review the Board's final decision on an abstract.

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

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

IMMUNITY - COLORADO

[St. Vrain Valley School District RE-1J v. Loveland by and through Loveland](#)

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

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

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

The Supreme Court of Colorado held that:

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

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

Student, who was injured in fall from zip line apparatus on public school playground, and her

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

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

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

STORMWATER UTILITY FEES - FLORIDA

[City of Key West v. Key West Golf Club Homeowners'](#)

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

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

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

On rehearing, the District Court of Appeal held that:

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

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

Stormwater utility fee that city charged landowners on an island that was within city’s boundaries but not the main island bore a reasonable relationship to the benefits conferred, and therefore landowners were not entitled to a lower rate than the ratepayers on the main island, even if the stormwater discharge from landowners’ properties did not travel through the stormwater

infrastructure located on the main island; the stormwater utility funded more than infrastructure, and substantial, city-wide stormwater anti-pollution measures benefited landowners' properties.

ZONING & PLANNING - FLORIDA

[Hardee County v. FINR II, Inc.](#)

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

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

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

The Supreme Court of Florida held that:

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

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

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

EMINENT DOMAIN - IDAHO

[Ada County Highway District v. Brooke View, Inc.](#)

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

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

The Supreme Court of Idaho held that:

- Just compensation for property condemned by county did not include compensation for damage to a wall caused by the construction of improvements on the taken parcel, and
- Jury instructions that misstated the law were reversible error.

Damages accruing during construction of project for which property is condemned under the State's

eminent domain powers are not properly part of just compensation and must be pursued separately in tort.

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

PUBLIC RECORDS - ILLINOIS

[Better Government Association v. Illinois High School Association](#)

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

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

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

The Supreme Court of Illinois held that:

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

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

REVENUE - MISSOURI

[City of Normandy v. Greitens](#)

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

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

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

The Supreme Court of Missouri held that:

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

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

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

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

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

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

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

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

UTILITIES - WYOMING

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

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

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

Environmental Quality, alleging abuse of process, civil extortion, and civil conspiracy against firm and town.

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

The Supreme Court of Wyoming held that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The MSRB said it expects both dealers and MAs to have policies and procedures in place that are reasonably designed to help them come to conclusions about whether to get a CUSIP number and to

apply those policies and procedures during any CUSIP number-related evaluations. Dealers and MAs would also be expected to document their findings that play into any ultimate determinations about whether to get CUSIPs.

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

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

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

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

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

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

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

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

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

Susan Gaffney, executive director of the National Association of Municipal Advisors, said that while the group appreciates the MSRB's work to re-propose the rulemaking, "we remain concerned with

the proposal, including having MAs obtain CUSIPs for competitive sales.”

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

The Bond Buyer

By Jack Casey

06/02/17 07:07 PM EDT

[Social Finance Announces Awardees to Develop Nation’s First Outcomes Rate Cards.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

About Social Finance

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

the first social impact bond in the world in 2010.

About the Social Innovation Fund

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

Contact: Alex Zaroulis, Director of Communications, Social Finance
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[Deloitte Power & Utilities Quarterly Accounting Update Webinar - Q2 2017](#)

Tuesday, July 11
12:00 - 1:30 p.m. ET

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

This event may qualify you for 1.5 CPE credits.

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

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[GASB On The Horizon: Debt Disclosures, Including Direct Borrowing.](#)

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

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

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

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

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

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

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

[More information about the debt disclosures project.](#)

Coming Soon: New GASB Leasing Guidance.

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

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

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

WHY NEW GUIDANCE WAS NEEDED

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

LEASE DEFINITION

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

LEASE TERM

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

SHORT-TERM LEASES EXCEPTION

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

LESSEE ACCOUNTING

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

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

LESSOR ACCOUNTING

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

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

EFFECTIVE DATE AND TRANSITION

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

[More information about the leases project.](#)

IMMUNITY - TEXAS

[Jamro Ltd. v. City of San Antonio](#)

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

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

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

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

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

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

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

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

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

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

[KBRA Releases Surveillance Report: Chicago Midway Airport](#)

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

Please click on the link below to access the report:

[City of Chicago, IL Chicago Midway Airport Second Lien Revenue Bonds](#)

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

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

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

Please click on the link below to access the report:

[State of Connecticut General Obligation Bonds](#)

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

[Fewer Muni Bonds have Investors Snapping up Riskier Hospital Deals.](#)

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

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

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

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

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

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

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

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

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

HEALTHY DEMAND

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

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

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

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

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

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

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

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

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

Reuters

By Robin Respaut

June 05, 2017

(Reporting by Robin Respaut; Editing by Daniel Bases and Diane Craft)

TAX - MISSOURI

[Armstrong-Trotwood, LLC v. State Tax Commission](#)

Supreme Court of Missouri, en banc. - May 16, 2017 - S.W.3d - 2017 WL 2118656

Taxpayers sought review of State Tax Commission's dismissal of their challenge to the property tax assessments on their residential properties, which were part of multi-county taxing districts, and sought a declaratory judgment that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties.

The Circuit Court dismissed. Taxpayers appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Taxpayers failed to state a claim that their tax assessments violated the uniformity clause of the state constitution, and
- State Tax Commission lacked jurisdiction to hear taxpayers' appeal.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties did not concern the "construction of the revenue laws of this state," and thus the Supreme Court did not have exclusive appellate jurisdiction; the constitutional and statutory provisions at issue did not impose, amend, or abolish a tax or fee, and the taxes at issue were paid to a multi-county taxing district rather than the state treasury.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties presented important questions regarding the application of sections on state constitution concerning the levying of taxes, and thus the Supreme Court could transfer the case on its own motion, even though the Court did not have exclusive appellate jurisdiction; the Court could take transfer of a case before its disposition by the Court of Appeals if it presented a question of general interest or importance.

Taxpayers who alleged that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts failed to state a claim that their tax assessments violated the uniformity clause of the state constitution; the uniformity clause did not pertain to the valuation of property, and each multi-county taxing district at issue levied a tax rate that was uniformly applied to the same class or subclass of property within the territorial limits of the taxing authority.

State Tax Commission lacked jurisdiction to hear taxpayers' appeal of county board of equalization's denial of their claim that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts in violation of the uniformity clause of the state constitution; county board did not have the power to conduct intercounty equalization, and the Commission's jurisdiction was derivative of the county board when it reviewed appeals from the county board.

State Tax Commission's intercounty equalization orders affect counties and classes of taxpayers, not the individual rights and interests of specific parties, and, consequently, are not subject to review in either a contested or non-contested case before the Commission on appeal from a county board's

decision.

TAX - MONTANA

[Mountain Water Company v. State , Department of Revenue](#)

Supreme Court of Montana - May 16, 2017 - P.3d - 2017 WL 2123151 - 2017 MT 117

Property owner brought declaratory judgment action seeking determination that city was responsible for property taxes accruing on property during pendency of city's condemnation action.

The District Court granted summary judgment in favor of property owner. Department of Revenue appealed.

The Supreme Court of Montana held that city was not statutorily responsible for property taxes accruing on property during pendency of city's condemnation action. Statute at issue provided that property taxes were prorated once condemnor actually took possession of property, and property owner continued to possess property during pendency of condemnation action.

[S&P: Jacksonville Adopts Pension Reform, But The Ultimate Impact On Credit Quality Remains Uncertain.](#)

Jacksonville, Fla.'s city council unanimously approved legislation finalizing its pension reform package late last month. In our view, the overall reform package represents an improvement to the previous pension framework, but we believe there are still some inherent risks with this strategy that largely cancel out its immediate benefits to Jacksonville's credit quality.

[Continue reading.](#)

May 24, 2017

[S&P: Dallas' Adopted Pension Reforms Look To Stabilize The System, But More Work Remains To Ensure Long-Term Sustainability.](#)

During its latest session, the Texas legislature formally adopted pension reforms for the City of Dallas (AA-/Negative), which is a first step in stabilizing the city's police and fire pension plan and addressing some of the structural issues that led to rapid declines in the pension's funded ratio over the past year.

[Continue reading.](#)

Jun. 1, 2017

Mnuchin: Administration Wants to Preserve Muni Bond Tax Exemption.

WASHINGTON - The administration "strongly" supports the preservation of the tax exemption for municipal bonds, Treasury Secretary Steven Mnuchin said during a Senate Finance Committee hearing on Thursday.

At a hearing on the fiscal 2018 budget and tax reform, committee member Sen. Sherrod Brown, D-Ohio, on tax reform, asked Mnuchin a series of questions on tax reform, including whether the administration supports the tax exemption for municipal bonds.

"Our preference is strongly to keep the interest deductibility of state and local bonds," Mnuchin said.

The administration wants to maintain the mortgage interest deduction, he also said in response to Brown's rapid fire questions. But he declined to answer several other specific questions about what the tax reform plan would or would not include, saying negotiations are still ongoing.

During the hearing, committee Democrats accused the administration of "double counting ... Bernie Madoff math ... anomalies ... and fuzzy math" in its budget, which shows \$2 trillion of revenues from 3% economic growth being used to pay down the deficit when administration officials have said those revenues are going to help pay for tax cuts in the forthcoming tax reform plan.

"Your budget assumes 3% growth, which you claim adds \$2 trillion to revenues. That's kind of a dubious proposition to me," said Sen. Ron Wyden from Oregon, the top committee Democrat. "You told us last week that this economic growth is what pays for tax reform, but the Trump budget doesn't include tax reform. So, unless you make this clear to us, aren't you double counting the same \$2 trillion to pay down deficits that you claim will pay for tax reform? I mean this is kind of Bernie Madoff math, but maybe I'm missing something. Tell me how it works."

Mnuchin said, "We're absolutely not double-counting. When the president's budget was done, we were not ready to have a full-blown tax reform plan that we could model into the budget."

Later Sen. Claire McCaskill, D-Mo., made the same point. "You can't have tax reform paid for by growth and then count that growth against the deficit," she said. "You can't have both. That's beyond fuzzy math, that's double counting," she said.

Mnuchin said economic growth comes from lots of things besides just tax cuts, such as regulatory reforms.

"It just defies understanding that you're going to project what the growth is going to be based on a tax cut but you can't put anything in the budget about what the lack of revenues are going to be because of the tax cut," she said. "That doesn't even make sense. How can this document even be taken seriously?"

Sen Mark Warner, D-Va., said the proposed fiscal 2018 budget would take discretionary funding down to 3% of gross domestic product -- the lowest it has ever been.

He also noted that the bipartisan Committee for a Responsible Federal Budget has projected the tax plan will result in a revenue loss of \$5.5 trillion over a decade. If that's the case, the administration will have to go after most of the big tax preferences, including the deductibility of employer health care plans.

Mnuchin said it is absurd for groups to score the revenue impacts of the tax reform plan since they

have no details about it yet.

The Bond Buyer

By Lynn Hume

Published May 25 2017, 12:32pm EDT

[Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.](#)

Sens. John Hoeven, R-N.D., and Ron Wyden, D-Ore., [reintroduced bipartisan legislation](#) May 25 to establish a program to spur infrastructure investment through the creation of Move America Bonds and Move America Credits. The major benefit of the Move America Act of 2017 is that it includes the use of public-private partnerships, or P3s, to assist in financing infrastructure. The primary benefits of using P3s include:

- Private equity providers will generally be sophisticated institutional investors exercising a high level of asset management.
- In-depth financial underwriting of projects before development.
- Construction and/or reconstruction risk borne by private equity investors.
- The performance risk transfers to private parties.

The two concepts behind the bill include expanding the available tax-exempt financing for infrastructure and creating credits to harness additional private sector investment. In this bill (revised from a 2015 version), the Move America Bond volume cap will be 50 percent of the state ceiling under cap for tax-exempt private activity bonds. In order to receive Move America Credits, states may elect to trade in all or a portion of their Move America Bonds for Move America Credits at a 25 percent rate. In other words, the credit limitation for each state for each calendar year is a dollar amount equal to 25 percent of the Move America Bond volume cap. For example, if a state has \$100 in Move America Bonds, it may trade that \$100 for \$25 in Move America Credits. According to Sen. Hoeven, about \$226 billion would be the annual volume cap for Move America Bonds over the next 10 years. That means that up to \$56 billion, or 25 percent of the Move America bond cap, would be available annually for Move America Credits over the next 10 years.

This bill was first introduced by Sen. Wyden in 2015 as the [Move America Act of 2015](#). With the reintroduction, there are a number of changes to the bill, discussed below.

The overall structure borrows heavily from both the Low-Income Housing Tax Credit (LIHTC) program and the New Markets Tax Credits (NMTC) program. Permitting these alternative structures provides greater flexibility in matching the right financing mechanism with the needs of individual infrastructure project.

Summary of Revisions

Expanding a List of Qualifying Infrastructure Projects

The previous version of the bill included airports, mass transit, freight and passenger rail, roads, bridges, flood projects, and inland and costal waterway improvements. The new version includes everything that was previously included, as well as water and sewage projects and rural broadband.

Traditional Investment Credit Structure

The revised provision dealing with Move America Credits would follow a structure similar to the LIHTC for equity investments in infrastructure projects. Investors would be able to directly invest in a qualified project, meaning that the investor's credit would equal the percentage of the direct investment in a qualified project, subject to limitation discussed below. The investors would receive tax credits equal to 10 percent of their equity investment each year over a 10-year tax credit period.

Credit Levels

The credits available for equity investments in an infrastructure project cannot exceed 20 percent of the qualified project's total costs, which is retained from the previous version. However, the cap related to private investment would be eliminated. In the revised draft, designated state agencies are also required to set the credits allocated to each project at the minimum amount for the project to achieve financial viability.

Capitalizing Infrastructure Funds

The 2017 Move America Act also provides that if states wanted to set up a structure that mirrors the NMTC, states would be permitted to use the credits to capitalize a state infrastructure bank or other infrastructure loan funds. States would be permitted to allocate credits to entities (e.g., state infrastructure banks, which are typically difficult to capitalize) and the entities could offer the credits to investors in order raise capital necessary to fund qualified projects. This is similar to the structure of community development entities (CDEs) in the NMTC program, and indeed, if designated by the state, CDEs could receive Move America credits to establish infrastructure funds. Under this option, the investors would be eligible to claim a tax credit equal to 5 percent of their equity investment in the Infrastructure Fund. There would be compliance requirements that share similarities to the NMTC compliance requirements.

Conclusion

This bill provides a mechanism to encourage more P3s to be used for infrastructure investment. President Donald Trump campaigned on using a federal infrastructure tax credit and this bill may also gain additional traction with White House support.

Novogradac & Company LLP is working on a white paper exploring the various design specifics of a federal infrastructure tax program. We have also authored posts related to the reasons to hope for a federal infrastructure tax credit and the benefits of a federal infrastructure tax credit. Additionally, please be sure to keep an eye on our infrastructure credit page.

Novogradac & Company LLP

Published by Owen P. Gray on Thursday, May 25, 2017 - 12:00am

[MBA to House Tax Panel Members: Support Tax-Exempt Bonds.](#)

WASHINGTON - The Municipal Bonds for America coalition is urging members of the House Ways and Means Committee to support tax-exempt bonds, including private activity bonds.

"The investments financed with these bonds have a proven track record to help our economy grow

and create jobs," 12 state, local, investor and other MBA groups told committee members in a letter sent to them on Monday after the start of their tax reform hearings.

The groups said that while some have suggested that a surtax or cap on bond interest could raise revenue for the federal government without increasing the interest rates demanded by investors, such a tax or cap, would actually reduce the value of all bonds in the secondary market by as much as \$200 billion.

"It would also disproportionately hurt seniors," they wrote. "About three-fifths of bond interest paid to individuals is paid to those aged 65 years and older and 84 percent is paid to those aged 55 and older."

In addition, they wrote, investors would demand higher rates of return to: accommodate the surtax; reflect the bond's loss of value in the secondary market; and compensate for the risk that Congress will expand the tax to hit more bondholders, increase the tax rate imposed, or both.

One need look no further than qualified private activity bonds, most of which are subject to the alternative minimum tax, to see an example of this. The AMT "is effectively a surtax beyond the regular income tax that is paid by taxpayers above a certain minimum income level," the coalition said, and it costs issuers as much as 50 basis points more in interest rates than another non-AMT similarly rated tax-exempt bond.

The groups pointed to the Dallas/Fort Worth International Airport, which used tax-exempt PABs subject to the AMT to help finance \$3.1 billion of its massive terminal improvement project. The airport paid \$268 million more than if it had used fully tax-exempt bonds, they said.

During the last decade state and local governments made about \$2 trillion in bond-financed infrastructure investments and they are expected to invest \$2 trillion to \$3 trillion in infrastructure over the next decade, the groups wrote. States and localities build nearly three-quarters of the nation's core infrastructure, using tax-exempt bonds for most of the financing, they added.

"It is vital that [tax reform] not impose an unprecedented federal tax - in any form - on these investments," the groups told the lawmakers.

State and local governments issued about \$400 billion of muni bonds in 2015. Of those, about \$85 billion were used for primary and secondary schools, \$39 billion financed investments in colleges and universities, \$50 billion were used for roads, bridges, ports, airports, mass transit and other transportation facilities, \$38 billion financed water and sewer projects, \$27 were used for hospitals and clinics and \$18 billion financed electric utility projects, the groups said.

"These are investments that make commerce possible and our communities strong and livable," they added.

The groups said that private activity bonds were also used to finance public-private projects. In 2015, they said, about \$8 billion were used to finance transportation-related projects such as airport terminals and port facilities. Another \$6.7 billion was used for rental housing and \$4.6 billion for affordable mortgages. In addition \$700 million of PABs helped finance state and local student loan programs, and \$250 million was used for industrial development projects and farm facilities.

The groups told the lawmakers that while alternatives to tax exempt bonds exist, each has substantial shortcomings — primarily increased borrowing costs, added complexity, and a lack of access for smaller issuers. Public-private partnerships may supplement tax-exempt bonds, but these and other alternatives can't replace them, they said.

The Bond Buyer

By Lynn Hume

Published May 24 2017, 4:00pm EDT

[In Scranton, Pa., Fiscal Progress Comes With Political Costs.](#)

The city is on the brink of making a speedy turnaround. Many worry that the tough financial decisions it took to get there could reverse some of its political progress.

After a quarter-century of being branded by the state as “fiscally distressed,” Scranton, Pa., is the closest it’s ever been to shedding that label. If its finances remain stable, the city is expected to exit the state’s Act 47 distressed cities program — which it entered in 1992 — in the next three years.

What makes the news remarkable is the tailspin that Scranton was in just a few short years ago. When Mayor Bill Courtright took office in 2014, he inherited a city that had balanced its budget for five straight years using onetime revenues and deficit financings. “In early 2014, everyone wrote us off,” says Courtright. “It was like we had a disease.”

But thanks to what observers are calling a new era of political cooperation between the mayor and council, Scranton has made considerable progress. City officials have approved several tax increases aimed at balancing the budget, including a hike in property taxes and garbage fees. Those, combined with a new commuter tax, have injected \$16.2 million in new annual revenue into the \$90 million general fund.

Courtright credits a team that stubbornly adhered to a financial recovery plan devised with the help of a financial consultant. The mayor, also a former councilmember, says he and the current council have communicated better and worked to move beyond the infighting that dominated public meetings in previous years. “We knew we had to change the image between past mayor and past council,” he says. “We knew we wouldn’t get the financial community to go along with us if we couldn’t cooperate amongst ourselves.”

But this kind of swift financial progress usually comes with a political cost. To understand the political implications, one must first understand how Scranton came to its current state.

Making Tough Choices

Facing a new state law in 2014 that would have placed the city in receivership if it didn’t make progress, Scranton conquered several key financial demons in recent years.

For starters, the city reached a settlement with police and fire unions over a multimillion-dollar back pay lawsuit first filed more than a decade ago. The Pennsylvania Supreme Court sided with the unions in 2011, but the city couldn’t afford to pay the initial \$24 million settlement and instead let the award collect interest.

Last year, Courtright announced the city had agreed to pay the unions most of what it owed — now \$30 million — in exchange for reforms to the city’s troubled public safety pension. The biggest concessions were that workers would increase their pension contributions over time and that the pension funds would be managed by a third-party professional administrator. The administrative

transfer also included more stringent guidelines for determining whether an employee is eligible for a disability pension.

In the name of budgetary stability, the city has unloaded a couple of albatross assets as well.

Officials negotiated a long-term lease of its parking authority, which had gone into receivership after the default in 2012 because of political infighting between the council and previous mayoral administration. Last year, the city entered into a lease concession agreement that turns over the system's day-to-day operations and long-term maintenance to the nonprofit National Development Council and ABM, a parking operator. After they pay off the parking authority's outstanding debt, ownership of the system will be returned to the city.

The final deal has perhaps been the most controversial and may even be responsible for upending the political harmony the city has achieved. Late last year, elected officials approved the sale of the city's sewer authority to the private company Pennsylvania American Water for \$195 million. The city expected to net \$95 million from the sale, but various costs, such as easement acquisition, reduced the net to \$83 million.

To Courtright, the sale is something of a crowning achievement. Selling the system gave Scranton cash to help pay off some of its pension and high-interest debt. It also unloaded an EPA-required \$140 million upgrade to the system to protect the Chesapeake Bay onto Pennsylvania American Water. The requirements would have meant a 5 percent rate hike each year for 25 years. Instead, the sale stipulated the private company could raise rates no more than 1.9 percent on average for the first 10 years.

A Political Cost?

That deal, however, has not been cheered by everyone. Councilmember Bill Gaughan says it was ill-advised and lacked transparency. He points to a closed-door meeting in February with Council President Joe Wechsler, Councilmember Wayne Evans and Jason Shrive, the new sewer authority director, that discussed the sewer's lower price tag.

Adding fuel to the fire was a report in early May by local ABC television affiliate, Newswatch 16. The station reported that the sale's fees were a whopping \$3.1 million charged by 50 different attorneys.

The controversy has taken its toll: In Scranton's Democratic primary election, Wechsler failed to win nomination while Gaughan sailed ahead easily.

Jean Wahl Harris, a professor of political science at the University of Scranton, said that while the council president voiced concerns about the sale, he wasn't as adamant as others. "I'm not sure why Wechsler was picked out," she says, "except that the other two [incumbents] spoke up a little more against the mayor and called for accountability in the sewer sale."

Many worry that the fallout could affect the political cooperation the city has achieved. Still, most agree that Scranton — politically and financially — is in a much better place than it was just a few years ago. "The times following the political meltdown [in 2012] called for someone willing to look at a different direction and someone with a different style," says Gerald Cross, executive director of the Pennsylvania Economy League, Scranton's recovery coordinator. "I think we have the right people in the right place."

"They used to be insane," Cross adds of those council meetings in which tensions between elected officials and the public got so high that metal detectors were installed at one council meeting in 2007. "But it's hard to argue now with balanced budgets and progress downtown. The budget is

stable, now we have to strive for sustainability — and that’s all very boring.”

GOVERNING.COM

BY LIZ FARMER | MAY 30, 2017

[Is It Time for an Infrastructure Garage Sale?](#)

Australia has had success with ‘asset recycling.’ Maybe turning old into new could work here too.

The Trump administration’s proposed federal budget calls for spending \$200 billion over 10 years to “incentivize” infrastructure investment by state and local governments. One key to the strategy is reportedly “asset recycling” — selling or leasing infrastructure assets to the private sector and using the proceeds to pay for upgrades, maintenance and new infrastructure. If the administration is indeed embracing this reinvestment mechanism, it deserves our serious consideration.

Asset recycling was developed by the Australian government in 2014. It may have hit the Trump administration’s radar screen because Australia’s 2016 budget demonstrated that \$5 billion in federal funding incentives had stimulated more than \$20 billion in infrastructure investments through asset recycling. It also attracted institutional investors by creating project pipelines, the lack of which has long impeded the development of a U.S. infrastructure market. Top Trump administration officials and advisers — including Vice President Mike Pence, Transportation Secretary Elaine Chao, National Economic Council Director Gary Cohn, and Steven Roth and Richard LeFrak, co-chairs of the President’s Infrastructure Advisory Committee — have been championing the concept.

Asset recycling also involves another key to the Trump administration’s trillion-dollar infrastructure strategy: the engagement of the private sector through public-private partnerships. P3s have received mixed reviews worldwide, and P3 activity in the United States has consistently trailed most countries. To move the debate on P3s forward in Australia, the government of Prime Minister Tony Abbott introduced the concept of asset recycling. Officials reasoned that tapping into a source of funding for needed infrastructure that would not cost taxpayers or add public debt might have the potential to overcome reservations about P3s.

To encourage Australian states and territories to mine their balance sheets for assets that could be divested, the Abbott government offered to contribute 15 percent of the value from the proceeds of divested assets to new infrastructure projects being financed with the proceeds from divested assets. The states and territories had a two-year window to identify the assets to be sold or leased and reach an agreement with the federal government.

Some jurisdictions jumped at the opportunity. New South Wales, for example, netted \$3 billion from port leases to a consortium of Australian pension funds and a government-owned investment fund, then used the proceeds to improve roads and transit facilities. Tasmania sold an airport to fund transportation, agricultural water storage and irrigation projects.

Could what worked in Australia — essentially a garage sale of government-owned infrastructure — work in the United States? Maybe, but we’ve got some big challenges. In addition to the reluctance of local officials to give up control of infrastructure, current tax law provides powerful disincentives to the selling or leasing of assets. Assets that are sold or leased must not only repay associated tax-

exempt debt, but state and local governments would also have to finance any new debt that is incurred on a more expensive, taxable basis.

Those challenges aren't insurmountable, as Indiana has shown. In 2006, the state leased the Indiana Toll Road, netting \$3.5 billion after repaying \$300 million of tax-exempt debt. The state put the proceeds into its infrastructure fund, which has since financed other transportation assets without taking on any additional debt or imposing tax increases.

Estimates of the potential value to be realized in the U.S. through recycling of existing revenue-generating assets — including not only toll roads but also ports, airports, bridges, water systems and parking facilities — exceed \$1 trillion. And these estimates do not include the value of providing a reliable source of funding for infrastructure projects requiring “availability payments,” the disbursements to concession-holders based on project or performance milestones.

As with other approaches to selling or leasing public assets to the private sector, any plan involving asset recycling will need much discussion to address risks. How do we guard against assets being sold on the cheap? How can we protect the public from potential misuse of market power by new private owners tempted to boost profits by increasing user charges? Other issues span the need to ensure that adequate regulatory frameworks govern divested assets to the task of assessing the impact of political pressure on market competitiveness. Not trivial issues.

Just as traditional public-private partnerships are not a silver-bullet solution to infrastructure financing, nor is asset recycling. Distinguishing assets most suited for recycling from those that are not will be tough. Resource-strapped governments will be hard-pressed to develop comprehensive asset inventories and master lifecycle management practices. And public pensions could be put under additional pressure to buy assets that don't fit into their investment strategies.

But it may be worth the work required. A federally driven asset-recycling program could help state and local governments access capital — without incurring debt or raising taxes — to build a new generation of infrastructure assets. More importantly, it would signal that the U.S. infrastructure market is open for business.

GOVERNING.COM

BY JILL EICHER | JUNE 1, 2017

[The Week in Public Finance: Pension Reform in Texas, Fitch Lowers Expectations and Illinois Downgraded Again.](#)

[A roundup of money \(and other\) news governments can use.](#)

GOVERNING.COM

BY LIZ FARMER | JUNE 2, 2017

[Illinois Budget Crisis Is About to Get Even Harder to Solve.](#)

- **Starting Thursday, three-fifths majority needed to pass budget**

- **State at risk of being first cut to junk since at least 1970**

Illinois leaders will blow past a deadline that will leave the state careening toward the third straight year without a budget.

The Illinois House isn't voting on a budget on Wednesday, which means the gridlock-prone government won't pass a spending plan by midnight. That means approving a budget — a usually routine task that has eluded the state for 700 days — will become even more difficult because a three-fifths majority will be required. Democratic lawmakers, who control both chambers, and Republican Governor Bruce Rauner have repeatedly failed to agree on how to solve chronic budget deficits worsened by the expiration of tax hikes in January 2015.

"We are probably approaching that point of impaired ability to function at basic level," said John Humphrey, the Chicago-based head of credit research for Gurtin Municipal Bond Management, which oversees about \$10.1 billion of state and local debt and has steered clear of Illinois. "We've already probably passed that point. We haven't seen this in a modern state before."

The self-inflicted crisis has left the fifth most-populous state with a record \$14.5 billion of unpaid bills, ravaged entities like universities and social service providers that rely on state aid and undermined Illinois's standing in the bond market. Unless a surprise deal emerged before midnight, it's increasingly likely that Illinois enters its third fiscal year on July 1 without a budget.

Democratic House Speaker Michael Madigan, who controls much of the legislative agenda, blamed Rauner for "holding the budget hostage" to his agenda, and said in an emailed statement Wednesday that Democrats will keep working on a budget and hold public hearings, starting in Chicago on June 8.

In turn, Rauner criticized the Democrats, calling the failure a "complete dereliction of duty by the majority in the General Assembly" and said there should be no tax hikes without a property tax freeze and local control of those levies.

Bond-rating companies have warned of further ratings cuts, signaling that Illinois could be the first state since at least 1970 to lose investment-grade status.

Investors have long punished the state for its financial woes, and the penalty has only gotten worse amid the impasse. Its 10-year bonds yield 4.4 percent, 2.5 percentage points more than those on top-rated debt. That gap — a measure of the perceived risk — is the most since at least January 2013 and more than any of the other 19 states tracked by Bloomberg.

Rauner, who in 2015 became the first Republican to lead the state since 2003, wants any spending plan to be tied to his key priorities, such as property tax-freeze. The Senate on Tuesday approved measures that would lock most local real estate levies in place for two years, but Republicans said they didn't go far enough.

In the meantime, Illinois is spending more than it's taking in because of consent decrees, court orders and other appropriations that have kept the government from shutting down despite the lack of a budget. Its current-year operating deficit is about \$6 billion, Moody's Investors Service said in a March report.

Moody's and S&P Global Ratings have warned that Illinois could be downgraded deeper if no budget is enacted. The companies rank the state at Baa2 and BBB, respectively. That's two levels above junk.

The unpaid bills are also adding to the fiscal squeeze. The comptroller has estimated that the state will owe at least \$800 million in interest and fees on overdue bills by the end of June.

That backlog is “headed in the direction of being a factor that just by itself really threatens the sort of financial foundations of the state,” Ted Hampton, Moody’s lead analyst on Illinois, said in an interview, citing litigation from those demanding payment. “There is kind of an uncertain but very real legal and political limit to the state’s ability to keep deferring payments.”

A group of school superintendents from districts statewide held a press conference in the Illinois State Capitol on Wednesday, calling for the passage of a full-year budget, instead of just a temporary stopgap, and changes to the school funding formula. Illinois owes districts \$1.1 billion, which is “unconscionable,” said Tony Sanders, chief executive officer of the state’s second-largest school system, in Elgin.

Despite the gridlock, Illinois hasn’t missed any bond payments and state law requires it to continue making monthly deposits to its debt-service funds. Still, the fighting has impeded any progress on bolstering a state retirement system that has more than \$129 billion of unfunded liabilities — a source of stress that has helped drive its rating down.

The Clock Is Ticking

State leaders still have the month of June to find an agreement before the start of fiscal year 2018 on July 1. Last year, lawmakers approved a six-month, stopgap budget to keep schools open and operations going.

So far, consensus has proven elusive. The Illinois Senate approved a spending plan on May 23, with only Democratic votes, that raised income taxes and expanded the sales tax levy. It still needed House approval as of Tuesday afternoon.

Rauner has called for freezing property taxes before raising any income tax increase is considered, but he rejected the two-year property tax freeze that the Senate approved Tuesday. Eleni Demertzis, a spokeswoman for Rauner, called the move “a phony two-year freeze riddled with holes.” It exempted Chicago, and Rauner had pushed for a lengthier time frame.

The impasse is decimating social services agencies that help the most vulnerable citizens, including school children, the elderly and the mentally ill, according to a coalition of groups including the Civic Federation, which tracks the state’s finances.

“Forty-nine other states would never try this experiment,” Laurence Msall, president of the Civic Federation, said in a press conference last week. “Only Illinois, which has seen its credit rating crumble, which has seen its social service infrastructure weaken, which has seen its higher education punched into the stomach in terms of what its future looks like, would try this experiment. It’s not working. We have to have a state budget to move forward.”

Bloomberg

by Elizabeth Campbell

May 31, 2017, 5:23 AM PDT May 31, 2017, 3:13 PM PDT

California's Brown Steers \$9 Billion School Bond Into Slow Lane.

- **Voters approved debt issue for school construction in November**
- **It may be more than a decade before some districts get funds**

A potential deluge of bond sales for California schools may be more like a trickle.

Although state voters in November approved borrowing \$9 billion for school construction, the sales may span more than a decade, according to the nonpartisan Legislative Analyst's Office. Democratic Governor Jerry Brown, who opposed the debt measure, wants to tighten requirements on eligibility and oversight that kindergartens through high schools must adhere to before bonds are sold for their projects.

To prevent delays, advocates are lobbying legislators to limit the changes to be included in the budget due June 15, said Dennis Meyers, assistant executive director of governmental relations for California School Boards Association. About \$600 million of general obligations authorized by the voters would be sold in the fiscal year starting in July, according to Brown's finance department. Supporters of the debt issue want the funds raised at a faster pace.

"The worst-case scenario is that the bond funds would be stalled indefinitely," said Meyers, who argues that it would hurt the creation of construction jobs. "Our goal is to let legislators know the importance of getting these funds out the door under current law and to act quickly."

A subdued approach to the debt sales may help support prices of bonds issued by California, the biggest issuer in the \$3.8 trillion municipal market. The state's securities have gained as the booming economy erased once massive budget shortfalls, allowing Brown to pay down debt built up during previous downturns. California's 10-year securities yield about 2.16 percent, or just 0.2 percentage point over benchmark debt, a third of the premium investors demanded four years ago.

The state has seen its credit rating rise to the highest in more than a decade, in part because of the decision to pay down debt and sock away more into its reserves. California's outstanding general-obligation and lease-revenue debt has declined to \$84 billion in May from about \$86 billion in June 2016, according to the treasurer's office.

Even with rates low, investors have clamored for bonds from issuers in California as the amount of maturing securities outstrips new debt. About \$1.3 billion in California bonds are expected to be sold within 30 days, down from about \$4.5 billion in the middle of last month, according to data compiled by Bloomberg.

The governor's approach to the school bond sale would prevent a surge in the supply of debt. The regulations would ensure proceeds are being spent appropriately, considering a state audit last year that showed that previous bond funds were used on ineligible items such as golf carts, said H.D. Palmer, a spokesman for Brown's finance department.

"We will be able to put in place a process that provides further guarantees to the taxpayers who approved this multi-billion dollar bond authorization that these dollars are in fact being spent in the manner in which they were told would be spent," Palmer said.

Californians embraced the first statewide education bond in a decade despite Brown's objection that it will benefit richer school districts with stronger tax bases. Under the program, school districts raise local dollars and apply for matching state dollars for projects. Low-income communities can also request grants.

Of the \$9 billion, \$2 billion is dedicated to community colleges and the rest for K-to-12 schools. A delay in bond funds could see a court challenge from those who seek expeditious action since the voters indicated they want the bonds sold, according to the Legislative Analyst's Office. It encouraged lawmakers to adopt a plan with a quicker pace.

Some of the provisions the administration is proposing are "changing the rules mid-stream" and could set precedent by allowing any funds that the state may seek to claw back from school districts to come from aid for operating costs, said Meyers, the school board association lobbyist.

The measures are clarifications of existing regulations, Palmer said. The passage of the bond didn't "reverse the administration's concerns and focus on adopting additional reforms."

Bloomberg

by Romy Varghese

May 31, 2017, 2:00 AM PDT

[Hartford's Credit Rating May Be Cut Deeper Into Junk by Moody's.](#)

Hartford, the beleaguered Connecticut capital, may have its credit rating cut deeper into junk by Moody's Investors Service amid uncertainty over whether the state will extend a lifeline to help the city close a \$50 million budget shortfall.

Moody's rates Hartford's \$550 million of general-obligation bonds Ba2, two steps below investment grade. The company said Tuesday that it's conducting a 90-day review of the city that will take into account how much Connecticut, which is facing a two-year deficit of about \$5 billion, can give Hartford in the budget to be adopted over the next several weeks. Connecticut was downgraded by all three major bond rating companies earlier this month, after plummeting income-tax collections widened the government's deficit.

"Unable to generate significant incremental revenues internally or to cut expenses further, the city is primarily relying on increased state aid to close its budget gap," Moody's wrote in a report. "At the same time, the state of Connecticut's fiscal position has become weaker over the last year."

Hartford's ability to increase property-tax collections, a key source of revenue, is constrained by its already high levies and sluggish real estate market, Moody's said. About half of the property in Hartford is tax-exempt. A proposal by Governor Dannel P. Malloy to allow municipalities to levy a property tax on hospitals hasn't gained traction in the legislature.

Cost-cutting opportunities in the city are limited because the city has already gone through previous rounds and labor negotiations haven't led to concessions, Moody's said.

The city's large deficits are driven by escalating costs for debt service, pensions and health care, without sufficient revenue growth to offset them. The city has considered soliciting proposals from law firms that specialize in municipal bankruptcy, according to the Hartford Courant newspaper.

"While reflecting prudent contingency planning for a shortfall in state funding without a viable alternative solution, we believe it also indicates increased willingness by the city to entertain bankruptcy as a tool to address its growing fiscal pressures," Moody's wrote.

Bloomberg

by Martin Z Braun

May 30, 2017, 4:00 PM PDT

[Bloomberg Markets: Manges Sees 'Smooth Sailing' for Muni Market.](#)

Bloomberg Markets with Carol Massar and Cory Johnson.

GUEST: Hardy Manges Head of Municipal Dealer Sales MarketAxess Discussing the outlook for muni bond investing. Oliver Renick, Bloomberg News Stocks Reporter, also participates in the discussion.

Running time 08:00

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Bloomberg

May 30, 2017 — 12:33 PM PDT

producer: Paul Brennan +1-212-617-8292 or pbrennan25@bloomberg.net

[Muni-Bond Vultures Rethink Risks Lurking in Market's Junk Yard.](#)

- **Puerto Rico bankruptcy rule changes surprised traders**
- **Distressed funds say they'll demand discounts in the future**

Puerto Rico's bankruptcy has left distressed municipal-debt traders like Hector Negroni wondering if the old rules still apply — not just in San Juan, but across the U.S.

The island's effort to shred protections written into its constitution to determine which creditors get paid first has made Negroni reconsider the high-yield, high-risk corner of the \$3.8 trillion muni-bond market. "They're attempting to suspend the constitution," said Negroni, a principal at New York-based hedge fund Fundamental Credit Opportunities and a member of the general-obligation ad hoc group pushing for full payback.

It's true that no state has defaulted since Arkansas in 1933 — Puerto Rico is a U.S. territory — and that so far the island's actions have had no evident effect on the broader muni bond market. But the reverberations could, eventually, reach highly indebted states like Illinois, New Jersey and Connecticut. Puerto Rico's decision to renege on its constitutional commitment, the argument goes, may trigger a quicker deterioration in investor confidence in the next borrower that gets itself into real trouble.

As part of Puerto Rico's bankruptcy, made possible by an act of the U.S. Congress last year, a judge will now decide how investors will split repayments of \$74 billion in bond debt, and Negroni and others will likely have to take less money than they were promised.

“People are going to start pricing in an increased probability of laws changing” by demanding discounts when they buy distressed debt, Negroni said.

Raise Taxes

Distressed muni-debt traders usually buy when the credit rating of a bond is downgraded to junk status. That’s when institutions, such as mutual funds, are forced to sell or otherwise long-term retail investors get spooked.

“Next time around, you bet that they’re going to be asking for lower prices when mutual funds want to unload something like Illinois,” said Matt Fabian, a partner with Municipal Market Analytics Inc. in Concord, Massachusetts.

When faced with a swelling budget shortfall or a looming default, states are expected to do anything from raising taxes, cutting services or selling off assets to pay creditors. They don’t have access to bankruptcy protection. Neither did Puerto Rico until last year, when Congress voted to help the commonwealth restructure its unsustainable debt. Puerto Rico has said it can only cover about \$8 billion of \$33.4 billion in bond payments due through 2026.

Doubly Protected

The law change came as a shock to some general-obligation bondholders, such as Negroni, who believed they were doubly protected. Not only would there be no bankruptcy, but the commonwealth’s constitution said that repaying bondholders was a priority, even ahead of providing citizens with essential services. (That approach may not have thrilled those outside observers worried about worsening living conditions on the island, but it was the law.)

Although there’s been no decision yet on how bondholders will divvy up the money, hedge funds holding \$1.4 billion of the general-obligation bonds, including Aurelius Capital Management and Monarch Alternative Capital, have already sued to receive overdue principal and interest payments.

Puerto Rico’s bankruptcy is the biggest in muni land. About half the states prohibit towns and cities from filing. Michigan isn’t one of them. In Detroit, which was the second-largest muni bankruptcy, bondholders didn’t do as well as they could have. Pensioners, despite not having first-paid status, were one of the least-impaired creditors, walking away with 82 cents on the dollar. General-obligation bondholders got 73 cents, and some water-and-sewer bondholders received as little as 1 cent on the dollar.

Bailout Packages

“You should know on the front end that laws can change, and that includes bailout packages as well,” said Jon Schotz, co-managing partner at Saybrook Fund Advisors, a \$250 million private equity firm that invests in distressed and defaulted municipal securities, including Prepa, Puerto Rico’s public power utility.

Puerto Rico probably won’t be the last U.S. entity to change the rules to cut down on its debt, said Kjerstin Hatch, managing principal of Lapis Advisers, which has about \$380 million in assets under management but no Puerto Rico.

“How the country will deal with municipal default is likely in its infancy,” Hatch said. “Ideas are forming, from a legislative and judicial standpoint, as to how we’ll handle large insolvent municipal entities.”

The flouting of constitutional rules may cause distressed muni-bond investors to insist on discounts, but it won't scare them away from the market, Fabian said.

"The ending of this movie might disappoint them, but they'd buy the ticket to watch it again."

Bloomberg Markets

by Kate Smith and Amanda Albright

May 30, 2017, 3:00 AM PDT

[Meadowlands Mall Builder Sets the Year's Top Unrated Muni Sale.](#)

- **Goldman Sachs Group Inc. will manage \$800 million bond issue**
- **American Dream features indoor water and amusement parks**

The Canadian developer building the long-stalled mega-mall in New Jersey's Meadowlands plans to sell \$800 million of tax-exempt municipal bonds next week to help complete the construction of the complex begun more than a decade ago.

Goldman Sachs Group Inc. is managing the deal, the largest sale of unrated municipal bonds this year, for mall owner Triple Five Group, run by the billionaire Ghermezian family. The bonds are backed by payments in lieu of property taxes and will be issued through a Wisconsin agency, the Public Finance Authority, that specializes in acting as a conduit for risky debt. Borrowers for speculative projects sometimes forgo credit ratings rather than risk the taint of being labeled junk.

The sale may benefit from a rally in the tax-exempt securities market as investors steer money into municipal-bond mutual funds, pushing yields to the lowest since early November. As investors seek bigger returns, high-yield state and local bonds have delivered gains of 6.1 percent this year, compared with 3.6 percent for the overall market, according to Bloomberg Barclays indexes.

Initial construction on the project in East Rutherford, about 10 miles (16 kilometers) west of Manhattan, began in 2004, only to be halted after the initial developers ran short of funds. Triple Five took over the project in 2011 and will receive \$350 million in grants from New Jersey if the project meets sales-tax revenue targets.

The 2.9 million square-foot (270,000 square-meter) American Dream, originally called Xanadu, will feature an indoor amusement park and water park, an 800-foot (245-meter) ski slope, a 300-foot Ferris wheel, aquarium, 1,500-seat performing-arts theater, skating rink and a 1,400-seat movie theater with "wind, rain, snow, fog and scents all synchronized to the on-screen action," the company says. It will also have 500 stores, restaurants and food shops.

The total cost of the project is estimated at \$2.8 billion, which will be covered by the tax-exempt bonds, \$500 million from the developer, payments from tenants and nearly \$1.7 billion in loans from JPMorgan Chase & Co.

Last year, a New Jersey appeals court rejected a non-profit group's challenge to the bond sale.

Bloomberg Markets

by Martin Z Braun

[Bloomberg Brief Weekly Video - 06/01](#)

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

[Watch the video.](#)

Bloomberg

June 1, 2017

[Fitch: Pension Impact Adjusted in U.S. Public Finance Criteria.](#)

Fitch Ratings-New York-31 May 2017: Under Fitch Ratings' updated U.S. public finance tax-supported rating criteria, released today, pension liabilities will be discounted at a fixed 6% investment-return assumption, with the upward liability adjustment determined by newly-reported sensitivity data. The accompanying report discusses the criteria changes related to pension analysis, and the rationale behind them in more detail.

The investment-return assumption had previously been set at 7%.

Pension liabilities and the cost of supporting them remain a source of uncertainty for governments given the generally irrevocable nature of vested benefits, the variable nature of liabilities, and the rising burden of contributions relative to resources.

"U.S. growth has been slower and more incremental over the current economic expansion than over longer time horizons. There is little evidence to suggest the economy will accelerate to previous levels of growth in the near term. Fitch believes that pensions will be hard-pressed to achieve their long-term growth expectations in the current economic context," said Douglas Offerman, Senior Director.

"The 6% return assumption, and increased total pension liability, better reflect the magnitude of the burden posed by pensions."

In another change announced in the new criteria, Fitch will compare its existing metric for the carrying cost of long-term liabilities, which relies on the reported actuarially determined contribution for pensions, to a new, supplemental metric that combines a hypothetical annual pension cost using a level repayment of the Fitch-adjusted net pension liability in a manner similar to bonded debt and an estimate of the cost of newly-accrued benefits.

The supplemental metric highlights outliers where expenditure flexibility can be expected to decrease substantially and unavoidably over time as a result of pensions.

The criteria adjustments will have only limited impact on current ratings because existing through-the-cycle assessments already capture Fitch's expectation for rising pension burdens.

The criteria report released today updates and replaces the tax-supported rating criteria dated April 18, 2016. The only material changes to those criteria relate to the analysis of defined benefit pension liabilities. Other revisions to the report are designed to improve clarity but are not substantive changes to the rating approach for U.S. state and local government credits.

For more information, a special report titled "Revised Pension Risk Measurements" is available on the Fitch Ratings web site at www.fitchratings.com or by clicking on the link.

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Additional information is available on www.fitchratings.com

[Fitch Teleconference Replay - North American Airports.](#)

Fitch Ratings held a teleconference discussion on developments in the airport sector over the last decade and future transportation trends.

Key discussion points included:

10-Years in Infrastructure

- Ratings Averages
- 2007-2016 World Airport Traffic Volumes
- Large International Airports vs. O&D
- Airport Resiliency to Airline Volatility
- Airport Sector: Next 10 Years

Transportation Trends

- Solid, but Softening Enplanement Growth
- Fitch-Rated Airports
- Large Hubs

· U.S. Carriers

Canadian Airport Privatization

Speakers:

Seth Lehman, Senior Director, Global Infrastructure & Project Finance

Jeffrey Lack, Director, Global Infrastructure & Project Finance

[Listen to the Replay.](#)

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[BDA Submits Comments to Department of the Treasury and the Internal Revenue Service on Recommendations for the 2017-2018 Priority Guidance Plan.](#)

The BDA submitted comments to the Department of the Treasury and the Internal Revenue Service on recommendations for items that we believe should be included in their 2017-2018 Priority Guidance Plan. You can view our final comments [here](#).

The Treasury Department's Office of Tax Policy and the IRS use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2017-2018 Priority Guidance Plan will identify guidance projects that the Treasury Department and the Service intend to work on as priorities during the period from July 1, 2017, through June 30, 2018.

BDA's letter focuses on the following topics:

- **Political Subdivision:** BDA continues to urge the IRS and Treasury to withdraw the proposed rules and release a new set of proposed regulations that reflect the concerns expressed by BDA and other participants in the municipal bond market.
- **Tax Exempt Bonds & Infrastructure:** The BDA believes tax-exempt bonds can and should continue to play a leading role in infrastructure investment.
- **Issue Price:** We suggest that the IRS and Treasury should monitor the impact of the new rules on the market.

The regulatory notice can be found [here](#).

Bond Dealers of America

June 1, 2017

[Empowering the Public and Nonprofit Sectors with Data and Technology.](#)

Abstract

Local government and nonprofit staff need data and technology skills to regularly monitor local conditions and design programs that achieve more effective outcomes. Tailored training is essential to help them gain the knowledge and confidence to leverage these indispensable tools. A recent survey of organizations that provide data and technology training documented current practices and how such training should be expanded. Four recommendations are provided to assist government agencies, elected leaders, nonprofit executives, and local funders in empowering workers with the necessary training to use data and technology to benefit their communities. Specifically, community stakeholders should collectively work to

- expand the training available to government and nonprofit staff;
- foster opportunities for sharing training materials and lessons;
- identify allies who can enhance and support local training efforts; and
- assess the local landscape of data and technology training.

This brief is part of the [Expanding Training on Data and Technology to Improve Communities](#) project, launched by the National Neighborhood Indicators Partnership and Microsoft's Civic Technology Engagement Group to explore community training on data and technology. Other products include a guide for organizations interested in providing community training, a catalog of trainings from across the country, and a summary of current training content and practices from our survey.

[View the Brief.](#)

The Urban Institute

by Kathryn L.S. Pettit and Maia Woluchem

June 1, 2017

[Municipalities Grapple With Whether Nursing Homes Should Be Taxpayer-Funded.](#)

NANTUCKET, Mass.—The 11,000 year-round residents of this summer colony off Cape Cod are confronting an emotional question: whether the island is a place where they can grow old.

Nantucket, a ritzy vacation destination whose permanent community is of more modest means, has one nursing home: Our Island Home, a 45-bed facility that is owned and run by the town and with a history that goes back to 1822. It sits on prime town-owned real-estate where its residents can watch boats on Nantucket Harbor. But it runs an annual deficit of about \$3 million, needs major repairs and is pressuring the town's coffers at a time when Nantucket needs other infrastructure to accommodate growth.

"The town is getting to the point where it's just taking on way too much," said Donna Hamel, chairwoman of the Nantucket Republican Town Committee. "Should the town be in the nursing-

home business? No. They don't know anything about it."

Our Island Home is one of roughly 1,100 of the U.S.'s 15,600 nursing homes that are government-owned, a vestige of an era when municipalities ran sanitariums and homes for the indigent. Nantucket now joins cities and towns from New Jersey to Tennessee in wondering whether nursing homes are an essential municipal service like fire, sewers and schools.

As baby boomers turn 65 at an estimated pace of 10,000 people a day, communities are increasingly confronting the questions of how and where to care for the elderly. Some are deciding they don't expect nursing homes to be financially independent.

Over the past five years, most New Hampshire counties have rolled their publicly owned nursing homes from the "enterprise" budget column, where services are supported by user fees, to the general fund, said Nicholas Lehman, an analyst with Moody's Investors Service. In these places, "residents want a nursing-home option for themselves in the future, and they're willing to pay taxes to support that," he said.

In these places, "residents want a nursing-home option for themselves in the future, and they're willing to pay taxes to support that," he said.

But government-owned and -run facilities often have deficits and have outdated institutional styles that don't attract the wealthier private-pay customers that offset Medicaid patients, said Jeff Binder, managing director of Senior Living Investment Brokerage Inc. Medicaid payments also face uncertainty, with the new White House budget proposing heavy cuts to the federal-state health program for the poor.

Financial pressures led New Jersey counties to sell their nursing homes to private companies, a move that saved some facilities, according to John Donnadio, executive director of the New Jersey Association of Counties. Only seven New Jersey counties still run nursing homes, down from 14 about five years ago, and "that number is going to drop more," he said.

But privatizing doesn't always go smoothly. Three years ago, Nashville began to shift two city-owned long-term-care facilities to private operators after deciding it couldn't continue chipping in \$10.5 million annually for their operation.

The plan hit snags. Local elected officials heard complaints about the conditions and food, and the city cut ties with the for-profit operator that ran one complex. In January, the city brought in an emergency operator to run the assisted-living center. Officials say that despite challenges, conditions have improved and the shift to private operators ultimately saved millions.

For Nantucket, the debate has extra resonance because without a nursing home on the island, residents might have to move.

While the island has swanky shops lining cobblestone streets and multimillion-dollar vacation homes that sit empty for many months of the year, Nantucket Town Manager Elizabeth Gibson says there are year-round residents who are "really struggling," in part because of the high cost of living.

Elderly year-rounders tend to live at home for as long as possible, but they complain that home-health workers are costly and in short supply. There are fewer options for assisted living or services like memory care. Some seniors move to the mainland, but most don't want to leave their spouses or community. That leads the elderly who need skilled nursing care to seek out the island's only nursing home. Even some well-to-do year-round residents find that Our Island Home is their only option.

When Yvonne DuMont Stelle decided she could no longer care for her husband, Donald, who suffers from dementia, the painful decision was made easier knowing that he would be a five-minute drive away.

“It’s a horrible thought to think we wouldn’t have this here,” said Ms. Stelle, who regularly checks in on Donald, 90, and is part of a local group that bring extras, from art classes to live music, to the nursing home.

Ms. Gibson, the town manager, said she doubts many residents would say the nursing home doesn’t belong in the community, but the tension is taxpayers are being asked to support a service that is bleeding money while the community pays heavily for other services.

“It’s probably going to come down to, Can we keep affording it?” Ms. Gibson said.

A nearly completed school was a \$40 million-plus project, Ms. Gibson said, and the town has appropriated another \$40 million toward sewers and \$17 million for a fire station. Town officials also are discussing whether they may have to subsidize housing to recruit employees who can’t afford Nantucket’s high housing prices.

At the annual town meeting in April, taxpayers voted 264-253 against a \$30 million proposal to construct a new, modern campus for Our Island Home. Concerns ranged from the cost to the new location to suspicion about a march toward privatization.

But local residents cherish the care that the elderly get at Our Island Home—such as when two staff members drove 91-year-old resident Gladys Soverino and her husband, Malcolm, last October to renew their vows at the Nantucket church where the couple had married 70 years earlier.

“We’re an island,” said Allison Forsgren, a local real-estate broker whose late father lived in the town-owned nursing home. “You have to sort of watch out for people and not let them fall through the cracks.”

The Wall Street Journal

by Jennifer Levitz

May 28, 2017 7:00 a.m. ET

Write to Jennifer Levitz at jennifer.levitz@wsj.com

[S&P Downgrade Brings Illinois Debt One Step Closer to Junk.](#)

Illinois may become the first U.S. state to be given a junk rating

Illinois is on the verge of becoming the first U.S. state with a junk-bond rating following downgrades from two of the world’s largest ratings firms.

S&P Global Inc. warned that Illinois could be downgraded to junk status next month if it doesn’t solve its partisan gridlock. Illinois hasn’t had a budget for two years due to a standoff between the Republican governor and Democratic legislature.

Illinois is one of many cities and states that, despite a generally strong U.S. economy, are struggling

to close budget gaps because of pensions and other entitlements. State and local retirement liabilities have ballooned after the financial crisis, and most governments don't have enough assets to cover all future obligations.

S&P on Thursday dropped its grade on the state's general-obligation bonds one level to BBB-minus, the lowest possible investment-grade rating, citing Illinois's inability to pass a budget. Moody's Corp. also dropped its Illinois rating to one notch above junk. Fitch Ratings has rated Illinois at two notches above junk.

A downgrade to a junk rating would worsen Illinois's financial straits by likely increasing interest rates on all future borrowings.

"By letting the state get downgraded, Illinois's government is only making its own budget problems worse," said Matt Fabian, a partner at Municipal Market Analytics

Gov. Bruce Rauner and the state's Democratic House speaker, Michael Madigan, have been deadlocked over taxes and spending since Mr. Rauner took office in 2015.

"Madigan's majority owns this downgrade because they didn't even attempt to pass a balanced budget, get our pension liability under control, and other changes that would put Illinois on better financial footing," a spokesman for Mr. Rauner said Thursday.

A spokesman for Mr. Madigan couldn't be reached for comment, but a spokesman for Illinois Senate President John J. Cullerton, a Democrat, said "our worst fears are being realized daily as this impasse lingers...I urge the governor to recognize the need for compromise...and end this chaos that has gone on far too long and hurt far too many."

State lawmakers can continue to work toward a budget in the coming weeks, but they will need more votes. After the regular session of the General Assembly ended Wednesday, three-fifths of both houses must support the budget, instead of a simple majority.

Investors didn't react severely to Thursday's actions from the Wall Street ratings firms. Prices on some Illinois general-obligation bonds fell to about 99 cents on the dollar Thursday after trading as high as 105 cents earlier in May.

Even in the face of high pension costs and stretched budgets, most U.S. states maintain high ratings in large part because they have the power to tax residents and lack the ability to declare bankruptcy.

New Jersey, the next lowest-rated state after Illinois, is pegged at four notches above junk by both S&P and Moody's despite burdensome pension liabilities and a persistently imbalanced budget. Moody's also rates Connecticut at that level.

Other states have had their ratings fall nearly as low and been able to engineer a turnaround. California has largely recovered from fiscal distress that drove its rating down to two notches above junk by S&P in 2003 and kept it low for much of the next 10 years.

The state regained the confidence of rating analysts in part by making regular deposits to a rainy-day fund, according to reports from S&P.

Puerto Rico last month was placed under court protection in what amounts to the largest-ever municipal bankruptcy, owing \$73 billion to creditors. That dwarfed the roughly \$9 billion in bond debt owned by the city of Detroit when it entered what was previously the largest municipal bankruptcy in 2013.

Puerto Rico created problems for itself by borrowing money to buy time while its economy deteriorated.

But no state had gone without a budget for over a year since the Great Depression until Illinois. The stalemate originated with ideological differences between two major political figures in the state. Gov. Rauner has called for broad changes, including curbs on unions he argues would save the state and businesses money. Democrats, who are led by Mr. Madigan, have said those issues are unrelated to the budget.

In the meantime the state's backlog of bills has swelled to roughly \$15 billion, or 40% of the state's operating budget, according to Moody's. The state's budget deficit is more than \$5 billion, according to S&P and Moody's.

The current problems are aggravated by burdensome debts that eat into the money available to run the state. Illinois's pension debt last year reached \$251 billion, according to Moody's calculations. Retirement and health benefits combined with debt payments now absorb 29% of the state's general fund expenditures, S&P said.

"Legislative gridlock has sidetracked efforts not only to address pension needs but also to achieve fiscal balance," said Ted Hampton, a Moody's analyst, in a release. "During the past year of fruitless negotiations and partisan wrangling, fundamental credit challenges have intensified enough to warrant a downgrade, regardless of whether a fiscal compromise is reached in an extended session."

The budgetary issues in Illinois have rippled well beyond the state capital of Springfield, denting everything from infrastructure spending to the amount of books in elementary schools.

Public universities have been among the hardest hit with many schools pausing on any new construction and forced to stop hiring for vacant positions. Some universities including Northeastern Illinois, Governors State and Southern Illinois are weighing fixes such as raising tuition, cutting academic programs or laying off student workers.

While the state is still funding certain core functions, many nonprofits have had to shut down or reduce operations and lay off staff after going without payments from the state.

If Illinois does get downgraded to junk it would have to make millions of dollars in termination payments on contracts designed to stabilize interest payments on some state debt, according to S&P.

Those penalties would be about \$10 million in the event of a downgrade to junk by one rating firm, would reach \$19 million if two firms gave the state a junk rating and could reach \$108 million in the event of further downgrades, according to estimates by S&P based on current market conditions.

"In our view, the unrelenting political brinkmanship now poses a threat to the timely payment of the state's core priority payments," S&P analyst Gabe Petek said in his ratings report Thursday.

The Wall Street Journal

By Heather Gillers

Updated June 2, 2017 2:54 p.m. ET

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

Connecticut's Tax Comeuppance.

With the rich tapped out, the state may resort to Puerto Rico bonds.

The Aetna insurance company has been based in Hartford, Conn., since 1853, but this week it said it is looking to move to another state. Governor Dannel Malloy has pledged to match other states' financial incentives, but taxpayer money can't buy fiscal certainty and a less destructive business climate. That's the real problem in Connecticut, which saw GE vamoose to Boston last year and which even Mr. Malloy now seems to recognize.

"As a huge Connecticut employer and a pillar of the insurance industry, it must be infuriating to feel like you must fight your home state policymakers who seem blind to the future," Mr. Malloy wrote in a May 15 letter to Aetna CEO Mark Bertolini. "The lack of respect afforded Aetna as an important and innovative economic engine of Connecticut bewilders me."

Now he tells us. Gov. Malloy has spent two terms treating business as a bottomless well of cash to redistribute to public unions. Now that his state is losing millionaires and businesses, he has seen the light. But the price of his dereliction will be steep.

Last month the state Office of Fiscal Analysis reduced its two-year revenue forecast by \$1.46 billion. Since January the agency has downgraded income-tax revenue for 2017 and 2018 by \$1.1 billion (6%). Sales- and corporate-tax revenue are projected to fall by \$385 million (9%) and \$67 million (7%), respectively, this year. Pension contributions, which have doubled since 2010, will increase by a third over the next two years. The result: a \$5.1 billion deficit and three recent credit downgrades.

According to the fiscal analyst, income-tax collections declined this year for the first time since the recession due to lower earnings at the top. Many wealthy residents decamped for lower-tax states after Mr. Malloy and his Republican predecessor Jodi Rell raised the top individual rate on more than \$500,000 of income to 6.99% from 5%. In the past five years 27,400 Connecticut residents, including Ms. Rell, have moved to no-income-tax Florida, and seven of the state's eight counties have lost population since 2010. Population flight has depressed economic growth—Connecticut's real GDP has shrunk by 0.1% since 2010—as well as home values and sales-tax revenues.

Corporate revenues also took a hit after General Electric relocated to Boston. Mr. Malloy then offered tax breaks to hedge funds and companies to stay in Connecticut, which has further eroded revenue.

The Governor—a slow learner—seems finally to have accepted that raising taxes on the wealthy is a dead fiscal end. Democrats are now proposing higher taxes on tobacco, expanding casinos and eliminating some tax breaks, though they don't want to touch an exemption for teacher pensions. The state teachers union warns that axing the exemption would impel retired teachers to relocate. A quarter of pension checks are currently sent out of state.

Mr. Malloy is also seeking \$1.6 billion in concessions from unions, which would be easier to achieve if collective bargaining weren't mandated by law. He's suggested increasing municipal pension contributions and cutting state-revenue sharing, both of which could drive up property taxes and imperil insolvent cities like Hartford. Mr. Malloy's budget includes a \$50 million bailout for Hartford to prevent bankruptcy, which might occur in any case if Aetna—its fourth largest taxpayer—leaves.

The state treasurer has advocated "credit bonds" securitized by income-tax revenues to reduce the state's borrowing costs. Investors beware: Puerto Rico tried something similar with its sales tax, and

bondholders might not get back a penny. Maybe Democrats should follow Jerry Seinfeld's advice to George Costanza and do the opposite of the instinct that has brought the state so low: Cut taxes.

THE WALL STREET JOURNAL

June 2, 2017 6:52 p.m. ET

U.S. Judge Freezes a Puerto Rico Debt Payment Subject to Competing Claims.

NEW YORK — A federal judge on Tuesday ordered the trustee for Puerto Rico's COFINA bonds not to make a \$16 million payment due on June 1, allowing creditors to litigate competing claims to the money that could be central to how the bankrupt U.S. territory restructures debt.

Judge Laura Taylor Swain made the ruling during a hearing in her Manhattan courtroom, putting a freeze on the payments while stakeholders hash out central disputes over who is to be paid first and from which revenue sources.

Puerto Rico, with \$70 billion in bond debt and another \$49 billion in pension liabilities, is embarking on the biggest financial restructuring in U.S. municipal history. Sorting out obligations of the COFINA sales tax authority, which owes some \$17 billion, is arguably the biggest task in the restructuring.

Swain's ruling granted a request by the COFINA trustee, Bank of New York Mellon, for "interpleader," a move authorizing the bank to hold onto the interest payment due on Thursday without fear of liability, while claims over the money are resolved.

Judge Swain did not rule on the underlying claims, a process that could take months, but said "their existence makes it clear that interpleader is warranted."

Senior creditors of COFINA argue the authority has already defaulted, through the Puerto Rican government's indications that it plans to cut debt repayments. They say junior COFINA creditors should therefore stop being paid, to ensure payment for seniors.

Meanwhile, holders of Puerto Rico's \$18 billion in general obligation (GO) debt argue that COFINA's assets belong to them, under a constitutional guarantee giving them first claim on all the island's resources.

By freezing Thursday's payment, Judge Swain is giving sides the green light to litigate at least parts of these issues, though the primary dispute is the one between senior and junior COFINA creditors. Judge Swain stressed she was not ruling immediately on whether GO holders would be allowed to intervene.

Separately on Tuesday, Puerto Rico's government said it would make a \$13.9 million payment on June 1 to bondholders of the Employees Retirement System, the island's largest pension, settling a lawsuit filed last week.

By REUTERS

MAY 30, 2017, 3:36 P.M. E.D.T.

(Reporting by Nick Brown; Editing by Meredith Mazzilli)

In Texas, Some Rare Good News About Cities With Pension Woes.

Detroit. Stockton. Puerto Rico. The list of places bankrupted by ballooning pension obligations and other debts is growing. But now comes some good news about two cities, Dallas and Houston, that have pulled back from the brink.

Just six months ago, the mayor of Dallas, Michael S. Rawlings, was warning that his city might need to declare bankruptcy after a panic led stampeding retirees to pull half a billion dollars out of its pension fund for police officers and firefighters.

But instead of going to bankruptcy court, Mr. Rawlings went to Austin, the state capital, to lobby for state pension laws that would stop the bleeding. So did the mayor of Houston, Sylvester Turner, who faced other pension problems and had persuaded the city's labor groups to agree to concessions worth \$1.3 billion over the next 30 years.

The resulting legislation — which essentially averts crises in Texas' biggest and third-biggest cities — was signed into law by Gov. Greg Abbott on Wednesday.

Each city had its own bill, because each had its own unique problems. But both bills involve measured reductions in pension accruals for workers and retirees — mainly in secondary benefit categories like inflation adjustments and lump-sum payouts. In exchange, the pension funds will receive more money from the cities to protect the core benefits.

Most important, both bills establish financial benchmarks for the coming years. If the pension funds do not meet them, there will be more benefit cuts, some of which could be steep. The point of this is to keep elected officials from giving the can one good kick down the road now, then declaring victory and turning their backs while the same intractable problems are festering under the surface.

“The key to all this is, not one retiree's pension check is going to be reduced one penny,” said Ray Hunt, the president of the Houston Police Officers Union. “It just means that future increases are slowed or stopped. I believe the majority of our members think this is the responsible way.”

As happy as the resolution may seem, the steps that Texas took are illegal in other places where public pensions are imperiling the finances of cities and states. Illinois, California, Oregon, Pennsylvania and Kansas are among the states where, by law, public pensions cannot be reduced — not even the pensions that current workers hope to earn in the future.

That doctrine, known as the California Rule, explains why California cities like Vallejo and Stockton reduced their payments to other creditors when they went into bankruptcy but did not touch their workers' costly pension plans.

Of all labor groups in the public sector, police and firefighters' unions tend to be the California Rule's most ardent champions. When Memphis recently tried to scale back pensions, for example, half the police force called in sick and hundreds of others resigned.

Police unions in California are now pushing a critical test of the California Rule through the courts, after a lower court ruled that they did not have “an immutable entitlement” to the best pension they could hope for, but “only to a ‘reasonable’ pension.” Final adjudication appears to be many months away.

Against that forbidding backdrop, Dallas and Houston show there is still room for compromise

(although Houston's firefighters did withdraw their support for the bill that was just signed into law).

Both cities were spurred to act by the risk of credit downgrades and by a recent accounting change that calls for cities to calculate the number of years before their pension funds will run out of money — a once-unthinkable catastrophe that has come to pass in Prichard, Ala.; Central Falls, R.I.; and now Puerto Rico.

Those developments — and Detroit's bankruptcy — have shown that Washington will not bail out government pension funds that go bust; officials had to patch together money from other sources, and even then, the retirees of Prichard, Central Falls and Detroit had their benefits cut. Cuts are expected soon in Puerto Rico, too.

Seeing that, and knowing that the doomsday clock was also ticking in Dallas and Houston, made labor leaders in those cities conclude that fighting concessions to the finish would not, in the end, protect their members. The Dallas pension fund was on track to run out of money in 10 years, and Houston's in less than 15.

And in both cities, the police and firefighters have opted out of Social Security, something state and local workers often do in hopes of avoiding the Social Security payroll tax. Federal law allows that, but if a government pension fund collapses, older adults are left without a backstop.

"We have to have a fair pension system, both for us and for taxpayers," said Mr. Hunt of the Houston police union. "It's either that or take a 100 percent pension cut in the future, when you have no pension fund."

Josh McGee, the chairman of the Texas Pension Review Board, a state oversight body, called Houston's overhaul "one of the most comprehensive I've seen in the country," and all the more notable because the mayor who pushed it through is a labor-friendly Democrat.

As for the Dallas pension measure, Mr. McGee called it a good first step.

"Dallas waited until they were in crisis before they did anything, so it's really, really painful, and it's going to take more actions in the future to solve the problem," he said.

Dallas's measure includes raising the retirement age, slowing benefit accruals, ending most cost-of-living increases and raising each worker's required pension contribution to 13.5 percent of pay, from 8.5 percent.

Importantly, the new law for Dallas also bans the kind of big, one-time withdrawals that caused last year's run, in which retirement-age police and firefighters stripped about \$500 million out of their pension fund, leaving it tattered almost beyond repair.

Such lump-sum withdrawals were allowed under a fairly common program known as a DROP, for deferred retirement option program, but they caused a stampede after workers learned that the pension fund had been overstating its assets.

The workers started to grab cash for fear that it would not be there later if they waited. Hundreds of people qualified for payments over \$1 million each, in addition to their regular pensions.

The changes approved Wednesday are not expected to turn the fund around, only to stabilize it. The law calls for Dallas to stress-test the fund in seven years and to make more cuts if it fails. City officials have warned that they may still claw back some of the money people took during last year's

run.

On Thursday, Fitch, the credit-rating agency, said it would review Dallas's rating. The city had been on a watch list for likely downgrades because of pension risks.

Houston had different pension troubles, dating to 2001, when officials decided that the bull market of the 1990s justified big benefit increases. The dot-com crash quickly showed that the decision was a mistake, but instead of revoking the increase, the city coped by not making its yearly contributions to the fund.

"The city was on a path to bankruptcy, and we just realized we were going to have to have some kind of reform," said Mark Watts, the head of the Greater Houston Partnership's municipal finance task force.

Under the new law, Houston reduces certain secondary pension benefits, like a DROP feature and cost-of-living increases, in exchange for better funding.

If costs still keep rising too sharply, the law calls for further reductions. And if that does not work, the system automatically shuts down the defined-benefit plan and switches to a hybrid, called a cash-balance plan.

"That caps the city's downside risk," said Mr. McGee, of the Texas Pension Review Board.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JUNE 1, 2017

[MSRB Seeks Additional Comment on Requirements for Obtaining CUSIP Numbers.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) is seeking additional public comment on draft amendments to [MSRB Rule G-34](#), on obtaining CUSIP numbers. Consistent with its previous proposal, the MSRB's revised draft amendments clarify the obligations of municipal securities dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, and require all municipal advisors to obtain CUSIP numbers in competitive offerings. However, the MSRB is now requesting input on possible exceptions from each of these requirements in certain limited circumstances.

"In light of feedback from municipal market participants, the MSRB has modified its draft amendments to include a principles-based exception from the proposed requirements," said MSRB Executive Director Lynnette Kelly. "The MSRB appreciates the thoughtful participation of commenters in the rulemaking process and invites further dialogue on how to ensure CUSIP number requirements appropriately reduce investor risk and regulatory uncertainty."

The draft amendments would provide an exception to the requirements of Rule G-34 for municipal securities purchased directly by a bank where the underwriter on the transaction or the municipal advisor advising an issuer in a competitive offering reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank.

Dealers and municipal advisors relying on the exception would be expected to have in place policies and procedures reasonably designed to assist in their determinations.

Comments on the revised draft amendments should be submitted no later than June 30, 2017. [Read the request for comment.](#)

Date: June 1, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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Illinois' Troubled, Tempting Muni Bonds.

Some of Illinois' debt is sliding toward junk status, and that's a wakeup call for muni investors, writes InvestmentNews.

The state's financial troubles are "a reminder that financial advisers should pay extra attention to underlying holdings in muni bond funds," the publication writes.

High-quality muni funds can contain junk, and vice-versa. A recent Citigroup report said Illinois' high-yielding debt could present a buying opportunity, because the state has room to "tax and grow" its way toward safe ground.

But Ronald Bernardi, president of Chicago-based Bernardi Securities, tells InvestmentNews he won't touch the state's 10-year bonds, which yield 4.45%. His reasoning: At twice the yield of the highest-quality muni bonds, they're too dangerous.

Those willing to bet on Illinois can do so through a number of mutual funds with meaningful exposure to the state's munis.

Gurtin National Municipal Opportunistic Value Fund, with \$117 million, is 23.7% allocated to Illinois' muni bonds. Hartford Municipal Income Fund and Wells Fargo CoreBuilder Share Series each have a little more than 20% weightings.

Barron's

May 31, 2017 4:30 p.m. ET

Muni Market to Benefit from 'Cash Blast' this Summer.

Demand for munis is rising while supply is set to shrink dramatically starting in June.

There are two big reasons why the muni market is likely to see a flood of new cash this summer, which should lift prices.

First, supply of new munis issued is expected to fall while munis mature at record levels. Peter Block of Ramirez & Co. wrote May 30:

There is an acute supply-demand imbalance in the Muni market in June, which should help the Muni market outperform over the next few months. We estimate that in June alone, about \$86 bil. will be available for reinvestment, including June 1 redemptions of \$32 bil. and coupon of \$54 bil. against the current 30 day visible supply of only \$11 bil. New York (-\$5.81 bil.), New Jersey (-\$2.41 bil.), and California (-\$2.37 bil.) will experience the greatest deficits, followed by Florida (-\$1.75 bil.), and Georgia (-\$1.24 bil.). We reaffirm our long-term new issue gross supply forecast for 2017 at \$368 bil., for a decline of about \$60 bil., or -14% YoY, which incorporates \$204 bil. of new money bonds and \$164 bil. of refundings.

Also, investors who fled munis, wary of the "Trump effect," are now coming back, writes Jim Colby, muni portfolio manager for municipal bond exchange-traded funds at VanEck in a Tuesday blog post. That means more demand.

He reports that as of May 23, the 37 municipal bond ETFs had, year-to-date, had collected \$1.6 billion in net new assets. They now have \$26.0 billion in assets, compared to \$21 billion a year ago.

As individual munis become harder to find, Colby believes ETFs make more sense. He writes:

On the one hand, for those for whom reinvesting (perhaps in individual bonds) in a potentially tighter muni market may pose unwanted challenges, a muni ETF can provide efficient and effective asset class exposure. They also offer the added advantages of both professional stewardship and, equally as important, diversification.

The biggest muni ETF is the iShares S&P National AMT-Free Municipal Bond Fund (MUB), which is approaching \$111, after a nice run-up since mid-March. VanEck has a suite of muni ETFs that allow investors to target specific maturity ranges.

Barron's

By Amey Stone

May 31, 2017 3:33 p.m. ET

Senior Municipal Finance Compliance Officer

Confidential Employer

Forget the title! This is an Executive level role that is part of an exciting and eagerly awaited industry relaunch of this Fortune 500's municipal finance business. This position is perfect for someone who is currently a number two in their department (or even a number one seeking a definitive move). You must know munis - inside and out as you will be working closely with bankers and sitting with the traders. We are looking for a confident, quick decision maker who can work with business leaders and who knows how to maintain independence and objectivity.

Compensation range is \$175K-\$240K with bonus.

Your day-to-day responsibilities include the following:

- provide advice to the municipal bankers and underwriters on topics such as the municipal advisor rules, due diligence requirements, RFPs, etc.
- participate on capital commitment and other committees
- educate the firm on regulatory developments and new rules relating to municipal securities
- review current business practices against regulatory and firm requirements to ensure that discrepancies are proactively identified and addressed
- draft and update policies and procedures relating to municipal underwriting business
- assist in responding to regulatory exams and inquiries

Your team:

You will be working with the Wealth Management Americas Products and Trading team in Compliance. They are responsible for advising on several products, including taxable and municipal securities, equities, options, futures and structured products. The role will be located near Jersey City with some travel to NYC.

Your experience and skills:

You have:

- at least 15 years of experience with municipal finance
- at least a bachelor's degree
- JD a plus
- working knowledge of Word and Excel
- Series 7, 63/66, 53 a plus

You are:

- able to make time sensitive decisions regarding municipal underwriting questions
- capable of completing tasks with very tight deadlines, while also delivering on long term projects
- willing to present regulatory developments to senior management and internal stakeholders
- extremely organized [Apply](#)

[Illinois GO and MetPier Bonds Fall After Downgrades.](#)

Nuveen's John Miller calls it "stunning" that MetPier's rating can fall so far due to politics when its economics remain healthy.

The muni market can be quite slow moving — for example, Puerto Rico's bonds have been falling pretty gradually for about two weeks since it declared a version of bankruptcy.

But muni investors are pretty swift to sell when there is a major downgrade — which happened with Illinois bonds Thursday.

The state's general obligation bonds and Metropolitan Pier & Exposition bonds were both wider by approximately 25 basis points Thursday afternoon, estimates John Miller, who heads municipal bond investing at Nuveen Asset Management.

MetPier bonds were rated triple-A not that long ago, notes Miller. Plus, revenues (sales and tourism taxes) have actually increased the great majority of years. "Debt coverage is excellent," he adds.

But since the MetPier revenues now essentially pass through the state budget, the bonds have to be downgraded when the state is.

Miller calls it “fairly stunning” to see what dysfunctional politics can do to a bond rating even when the finances of an issuer are healthy. “The economy is moving along and yet the politics are so bad that the bond went from triple-A to double-B-plus purely on politics,” he says.

Barron's

By Amey Stone

June 1, 2017 2:21 p.m. ET

[New York City Suspends Municipal Business with Wells Fargo.](#)

New York City voted on Wednesday to suspend Wells Fargo from its municipal debt issuance operations, citing a rating tied to doing business in low and moderate-income communities as having fallen below a “satisfactory” level.

The commission also cited last year's scandal, in which the bank was caught creating bogus customer accounts to boost performance measures.

The New York City Banking Commission, in a unanimous 3-0 vote, decided it will give no new bond underwriting mandates or renew existing contracts with Wells Fargo. The decision follows a Federal Community Reinvestment Act (CRA) rating of “needs improvement” for the San Francisco-based bank.

The decision adds New York City to other states and municipalities that have banned the bank from handling their funding operations.

The commission was composed of Mayor Bill de Blasio, Comptroller Scott Stringer and Commissioner of Finance Jacques Jiha.

“What happened at Wells Fargo was fraud – and there must be consequences for wrongful behavior,” Stringer said in a statement.

Wells Fargo, however, was given a conditional designation as a New York City bank. That means it can still hold funds under current contract because it would be too disruptive to immediately disentangle the city from the bank.

“The ban will be revisited only when the bank's rating is raised,” de Blasio and Stringer said in a joint statement prior to the vote.

The Wells Fargo scandal and the repercussions on its municipal banking operations contributed to a slump in its underwriting business, Reuters reported earlier this month.

Prior to the vote, the bank told Reuters it appreciated the continuing dialogue with the city.

“More than four years have passed since the end of our last CRA evaluation period and we are seeking an expedited review of the 2012-2015 exam,” Wells Fargo spokesman Gabriel Boehmer said in an email.

Wells Fargo holds \$227 million of collected city taxes and fees and acts as a trustee to the New York City Retiree Health Benefits Trust, currently holding its roughly \$2.6 billion in assets.

The ban will suspend the bank's role as a senior book-running manager for the city's General Obligation as well as Transactional Finance Authority bond sales.

"The only allowable exemption will be for affordable housing financing, which has a direct benefit to New York City residents," the joint statement said.

REUTERS

By Dan Freed | NEW YORK

Wed May 31, 2017 | 6:10pm EDT

(Reporting by Dan Freed; Additional reporting and writing by Daniel Bases, editing by G Crosse and Dan Grebler)

[The Effective Date of the New Issue Price Regulations is Near.](#)

On December 9, 2016, the United States Treasury Department published regulations (the "Issue Price Regulations") setting forth new rules for the determination of the issue price of a tax-exempt bond issue. The Issue Price Regulations changed a rule that had been in place for many decades. These new rules become effective for tax-exempt bonds **sold on or after June 7, 2017** and thus will affect bond issues now entering the pipeline.

What Is the Issue Price? The issue price is generally the reoffering price to the public of a tax-exempt bond at which a substantial amount of the bonds of the same maturity are sold. The issue price of the entire issue is the sum of the issue prices of the particular maturities of the bonds of the issue. There are special rules, described in "A Quick Recap of the New Issue Price Rules" below that apply in certain circumstances.

Why Is Issue Price Important? The yield on a tax-exempt bond issue is often relevant to many of the tax determinations made by an issuer with respect to that bond issue during the planning stages and could also affect post-issuance obligations of an issuer with respect to that bond issue. Calculating the yield on a bond issue essentially involves discounting the cash flow (principal and interest payments) on the bond issue back to a target amount, which is the issue price. The discount rate is the yield. Thus, a critical component in determining the yield on a bond issue is the issue price.

When Must the Yield Be Determined and Therefore When Must the Issue Price Be Known?

In some cases, the issue price must be known and the yield must be determined on the sale date of the bonds. It is especially important to know the issue price and yield on the sale date in the case of an advance refunding bond issue, where the yield on the reinvestment of the bond proceeds in an escrow fund is limited to the bond yield and the escrow investments must be purchased on the sale date. In other cases, such as a current refunding or a new money bond issue, determining the issue price and the yield is less critical from a timing perspective, but generally still needed for overall compliance.

When Does the Yield on the Tax-Exempt Bond Matter? The yield on a tax-exempt bond issue

will matter (i) in an advance refunding, because the escrow yield is restricted to the bond yield, (ii) where arbitrage rebate payments or yield reduction payments may be owed to the IRS, and (iii) where certain moneys derived from or related to the tax-exempt bond issue can only be invested in a fixed relationship to the bond yield (such as conduit bonds and single family mortgage revenue bonds).

What Will Happen Next. We have drafted language that will be included in (i) the Bond Purchase Agreements (for negotiated sales of tax-exempt bonds) and Notices of Sale (for competitively sold tax-exempt bonds) as well as (ii) new Issue Price Certificates that the underwriter or direct purchaser of tax-exempt bonds must sign at closing. The form of the required Issue Price Certificate is included as an exhibit to the Bond Purchase Agreement or the Notice of Sale, as applicable. By executing the Bond Purchase Agreement for a negotiated bond or submitting a bid for a competitively bid bond, the underwriter or direct purchaser is acknowledging the application of the new rules and its duties to sell the bonds, and in some instances hold the offering price of the bonds, in accordance with the new rules and to supply the necessary information to the issuer to properly document the issue price.

What Should an Issuer or Conduit Borrower of Tax-Exempt Bonds Do Now. As issuers and conduit borrowers plan their upcoming bond or bond anticipation note issues, they should consult with their Bond Counsel and, where applicable, their Municipal Advisors (sometimes referred to as Financial Advisors), to review the new language and the implications of the new Issue Price Regulations. For negotiated sales, the issuers and conduit borrowers should also consult with the underwriter and underwriter's counsel regarding the underwriter's responsibilities in establishing the issue price.

A Quick Recap of the New Issue Price Rules. Generally, the issue price is the first price at which a substantial amount (10%) of the bonds of each maturity are sold to the "public." The public is any "person" other than an "underwriter" or a related party to an underwriter. A person is any individual or entity for tax purposes and so would include corporations and partnerships. An underwriter is any person who agrees in writing with the issuer that it will participate in the initial sale of the bonds to the public or an entity who agrees with a lead underwriter to do so.

There are three special rules. First, if the bonds are sold in a private placement, the issue price is the purchase price paid for the bonds. **Second**, if the issuer chooses, the issue price will be the initial offering price to the public (typically the price shown in the Official Statement for the bonds) if the underwriter agrees to offer the bonds at a price no higher than that initial offering price for the first five business days after the sale date. **Third**, if the issuer conducts a competitive sale and receives at least three qualified bids, the issue price will be the reasonably expected initial offering price stated in the winning bid. A competitive sale is (i) a process in which the issuer offers the bond for sale to underwriters at specified written terms where those bid terms are disseminated in a manner reasonably designed to reach potential underwriters, (ii) all bidders have an equal opportunity to bid, (iii) the issuer receives bids from at least three underwriters who have established industry reputations for underwriting new issuances of municipal bonds, and (iv) the issuer awards the bonds to the bidder who submits a firm offer to purchase at the highest price or lowest interest cost.

An issuer can choose any of the permitted methods of establishing the issue price, but the issuer must identify the method chosen not later than the issue date of the bonds. This will typically be evidenced in the Tax Certificate for the bonds.

All of the rules described above apply to bonds sold for money. If bonds are sold for property, such

as in the case of certain lease transactions where the vendor performs certain services in exchange for rent payments under the lease, special rules apply that are beyond the scope of this QuickStudy.

Locke Lord QuickStudy

May 31, 2017

JDSUPRA

[Retirees, Minimize Your Costs When Buying Bonds.](#)

A new rule will require brokerage firms to disclose the markup or markdown on retail customers' trade confirmations for most corporate- and agency-bond trades.

For investors buying individual bonds, it's time to play "the price is right." Regulators are implementing new rules designed to help small investors get better prices on their bond trades.

Unlike stocks, whose prices are easily tracked on an exchange, bonds generally trade in an over-the-counter market where many small investors simply accept the price that their broker pins on a bond. But that price typically includes a "markup" from the prevailing market price (if you're buying the bond) and a "markdown" if you're selling it. These ups and downs are largely profits for broker-dealers—and they're usually not disclosed.

The new rules will change that. Late last year, the Financial Industry Regulatory Authority finalized a rule requiring brokerage firms to disclose the markup or markdown on retail customers' trade confirmations for most corporate- and agency-bond trades. The Municipal Securities Rulemaking Board also announced a similar rule for municipal-bond trades.

"Hallelujah, it's about time" that markups were disclosed, says Marilyn Cohen, chief executive officer of Envision Capital Management, in El Segundo, Calif. Just as competition has driven down mutual-fund fees and brokerage commissions, "there should be a price war in markups too," she says, and the disclosure rules could make that happen.

Although the rules don't take effect until May of next year, they put a spotlight on the importance of trading costs for bond investors—and recent research shows just how high those costs can be. A 2015 study from the University of Southern California Marshall School of Business found that individual investors pay an average of 0.772% in transaction costs when trading corporate bonds—or \$115.80 on a \$15,000 bond trade. Meanwhile, investors buying a stock through an online broker might pay a commission of \$4.95 plus a penny or two per share in "bid-ask spread"—the difference between buying and selling prices.

Currently, many small investors don't even realize they're paying a markup, much less focus on its size. Investors buying the same bond on the same day and in the same amounts often pay very different prices.

But there are ways to minimize your bond trading costs. Online tools can help you research recent trades in the bond you're considering (or trades in bonds with similar characteristics) and raise your odds of paying a reasonable price. Armed with recent trade information, you may be able to haggle with your broker for a better deal. And when you have a better sense of how much bond trading is costing you, you can weigh the costs and benefits against alternatives such as bond mutual funds

and exchange-traded funds.

To see recent trades, go to www.finra.org/marketdata for corporate bonds or www.emma.msrb.org for municipal bonds, and enter the CUSIP numbers of bonds that interest you. By looking at trades between dealers, you can get a sense of the prevailing market price. To figure out how much you should be paying, look for recent customer purchases of similar size to yours.

“If you’re buying small, weeny positions [say 10 or 15 bonds at a time], you’ll probably pay at least half a point,” or a markup of 0.5%, for an investment-grade bond, Cohen says. If you’re buying 50 to 100 bonds at a time, the markup may be closer to 0.25%, she says. Investors should expect to pay higher markups for lower-quality, “junk” bonds and bonds that are thinly traded.

But small investors can incur hefty trading costs even in higher-quality, less-obscure bonds. Research firm Municipal Market Analytics offers this example: Looking at a California general-obligation bond maturing in 2037, there were two inter-dealer trades on the morning of March 17 at nearly the same price: \$112.73 and \$112.67. Three minutes later, a customer bought \$50,000 worth of the bonds at \$115.10—2.2% more. Less than an hour after that, a large investor buying \$6.9 million worth of the bonds got something much closer to the inter-dealer price: \$112.99.

Such price discrepancies can make the muni market “very difficult for an individual investor,” says Thomas Doe, president of Municipal Market Analytics. The market actually resembles a “flea market,” he says, “because you have this eclectic product, very inconsistent supply and demand, and you’re just trying to match the product with a buyer.”

Prepare to Negotiate on Price

As in a flea market, you may have to haggle to get a good deal. Investors “don’t have to be price-takers,” says Lynnette Kelly, the Municipal Securities Rulemaking Board’s executive director. Prices can be negotiable. If you’re offered a bond at a price well above recent trade levels, you can say, “‘Why would I pay that? No one has paid that today on this transaction,’ ” says John Bagley, MSRB’s chief market structure officer. Then use comparable customer trades to name a price you think is fair.

In many cases, there may not be any recent trades in the specific bond that interests you. But recent trades in comparable bonds can give you a rough idea of how much you should pay for the bond you want. Use the advanced search on the Finra market data site or the price discovery tool on MSRB’s EMMA site to find bonds with similar credit quality, maturity and other characteristics.

Muni-bond investors may be able to get the best price by buying newly issued bonds during the “retail order period,” when orders are accepted only from small investors. That way, “on 10 or 15 bonds you’ll get the same price as Pimco buying 14 million bonds,” Cohen says.

Another simple way to limit your bond transaction costs: Trade them as little as possible. Hold individual bonds to maturity.

But some advisers question whether small investors buying individual bonds can ever get a fair shake. “I think it’s a sucker’s market,” says Frank Armstrong, chief executive officer of Investor Solutions, an advisory firm in Miami.

When clients come to him with individual bonds, Armstrong says, he generally sells them off and replaces them with bond mutual funds or exchange-traded funds. Some bond funds charge annual fees of just 0.04%, while it can cost 4% or 5% to do a “round trip,” meaning buying and selling

reasonably liquid individual bonds, Armstrong says. “That just eats into your total return. In an environment where there’s hardly any income in fixed income, why would you want to give that up?”

KIPLINGER’S

By ELEANOR LAISE, Senior Editor

From Kiplinger’s Retirement Report, June 2017

[Special Assessment Techniques for Transformative Community Improvements.](#)

Special Assessment Techniques for Transformative Community Improvements July 18, 2017 @ 1:00 PM Eastern

Special assessments are a valuable tool that can be used to finance a wide variety of different projects across myriad sectors. Special assessments raise capital by assessing a prescribed fee on property owners within a geographic district. Based on the state authorizing legislation, the capital can then be used for any number of special purposes depending on what improvements are needed in the district. Over the past decade, special assessment has become one of the driving capital access tools for transformative community improvements. During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will discuss new and innovative uses for special assessments and how this tool is poised for greater use nationwide.

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

[Register](#)

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- [When Should an Issuer of Tax-Advantaged Bonds Use the Hold-the-Offering-Price Method to Establish the Issue Price of the Bonds?](#)
 - [MSRB Webinar: Municipal Advisor Solicitor Guidance.](#)
 - [SEC and MSRB to Hold Webinar on Series 50 Exam for Municipal Advisors.](#)
 - [MSRB Files Amendments to Modernize Customer Account Transfers.](#)
 - [S&P Global Ratings Announces New Green Evaluation Service.](#)
 - [Local Governments’ Hidden Reason to Oppose Tax Cuts: Bank Loans.](#)
 - [Rising Seas May Wipe Out These Jersey Towns, but They’re Still Rated AAA.](#)
 - [S&P: The Top 10 Management Characteristics of Highly Rated State and Local Borrowers.](#)
 - [Successful Investing in Charter Schools Part III: Market Advancements](#)
 - And finally, the Supreme Court of Colorado this week took up the issue of whether “Blunt Wraps” qualify as “tobacco products” for tax purposes in [Colorado Department of Revenue v. Creager Mercantile Co., Inc.](#) The court helpfully informed us that, “Like traditional rolling papers, Blunt Wraps are designed to be filled with tobacco, marijuana, or other smoking material and smoked.” And then this bombshell: “See generally [Redman](#), [How to Roll A Blunt](#), on [Whut? Thee Album](#) (Columbia Records 1992).” Wait, the Blue Book now covers the proper citing of rap artists? Mad props to the clerks who snuck this into a Supreme Court opinion. But what on earth were the

Justices smoking? Oh. Never mind.

BALLOT INITIATIVES - ARKANSAS

[Keep Our Dollars in Independence County v. Mitchell](#)

Supreme Court of Arkansas - April 27, 2017 - S.W.3d - 2017 Ark. 154 - 2017 WL 1536480

Local-option ballot question committee sought judicial review of county clerk's determination that local-option petition to allow voters to decide whether to permit manufacture and sale of alcoholic beverages in county was insufficient to be placed on ballot.

The Circuit Court affirmed. Committee appealed and intervenor cross-appealed.

The Supreme Court of Arkansas held that:

- Ten-day appeal period applicable to clerk's certification that local-option petition was sufficient did not apply to clerk's certification that petition was insufficient;
- Fifteen-day appeal period applicable to clerk's certification of any initiative or referendum petition as sufficient or insufficient applied to insufficiency certification of local-option petition; and
- Constitutional challenge to provision of statute governing local-option petitions prohibiting signatures of residents from more than one county was rendered moot by occurrence of election.

Ten-day appeal period applicable to county clerk's certification that local-option petition was sufficient did not apply to clerk's certification that petition was insufficient to deprive circuit court of subject matter jurisdiction to consider appeal from insufficiency certification filed outside of ten-day period. Provision expressly applied only when county clerk had certified that the local-option petition was sufficient and indicated that it would be placed on the ballot, and there was no language in the statute referring to the procedures applicable to a county clerk's determination of insufficiency.

Fifteen-day appeal period applicable to county clerk's certification of any initiative or referendum petition as sufficient or insufficient applied to insufficiency certification of local-option petition. There were no specific statutory provisions providing for an appeal of a finding of insufficiency within the current statutory scheme for local-option petitions or the statutes referenced therein.

COUNTIES - FLORIDA

[Gretna Racing, LLC v. Florida Department of Business and Professional Regulation](#)

Supreme Court of Florida - May 18, 2017 - So.3d - 2017 WL 2210389

Applicant for permit to conduct slot machine gaming at its pari-mutuel facility appealed denial of its application by Department of Business and Professional Regulation.

On rehearing, the District Court of Appeal upheld denial of permit, and certified question of great public importance.

The Supreme Court of Florida held that general constitutional and statutory power of non-charter

counties to carry on county government does not constitute authorization to conduct referendum to approve slot machine gaming.

A referendum conducted by a non-charter county concerning approval of slot machine licenses at pari-mutuel facilities is not inherent in the power to conduct county government and, thus, is not "authorized," within the meaning of the statute governing issuance of licenses to conduct slot machine gaming, by the general powers conferred on non-charter counties under either the constitutional or statutory home rule powers provided to non-chartered counties.

EMINENT DOMAIN - GEORGIA

[Abramyan v. State](#)

Supreme Court of Georgia - May 15, 2017 - S.E.2d - 2017 WL 2106256

Owners of taxicab operating certificates commonly referred to as taxi medallions in city that required such medallions brought action against state alleging that an amendment to statute governing taxicabs and vehicles for hire that permitted the operation of ride sharing services constituted a taking or inverse condemnation under the state constitution.

The Superior Court granted state's motion to dismiss. Medallion owners appealed.

The Supreme Court of Georgia held that amendment did not constitute a taking or inverse condemnation of any property right possessed by medallion owners.

Amendment to statute governing taxicabs and vehicles for hire, which permitted operation of ride sharing services and barred municipalities from adopting new ordinances requiring taxicabs to procure the operating certificates commonly referred to as taxi medallions, did not constitute a taking or inverse condemnation, under the eminent domain provisions of state constitution, of any property right possessed by owners of taxi medallions in city that had an existing ordinance requiring such medallions, even if it reduced the value of the medallions. Any property interest did not include an exclusive right to operate vehicles for hire or a right to a limited number of medallions.

EMINENT DOMAIN - HAWAII

[County of Kaua'i v. Hanalei River Holdings Limited](#)

Supreme Court of Hawai'i - May 16, 2017 - P.3d - 2017 WL 2121115

County brought condemnation action against owners of three parcels of land.

The Circuit Court granted county's motion to withdraw part of its deposit of estimated just compensation, granted county's motion for partial summary judgment on issue of severance damages later entered judgment on jury's finding of fair market value, and granted county's motion regarding proper amount of blight of summons damages.

Owners appealed. The Intermediate Court of Appeals affirmed in part. Owners' application for writ of certiorari was accepted.

The Supreme Court of Hawaii held that:

- One owner was not entitled to severance damages;
- Three unities involved in determining entitlement to severance damages are factors, not essential elements;
- County's deposit of estimated just compensation became conditional, for purposes of blight of summons damages, when one alleged owner waived all interests in deposit; and
- County was able to withdraw portion of its deposit of estimated just compensation.

Owner of parcel being condemned by county and of easement over separate area of land to operate boatyard was not entitled to severance damages in condemnation action; owner lacked unity of use, as owner's permits to operate boatyard were revoked year before condemnation action was instituted, physical unity was lacking, as parcel and easement were separated by other lots, and unity of title was lacking, as different individual owned area of land containing easement.

When determining whether a claimant is entitled to severance damages in a condemnation action, the three unities, which are the unity of title, physical unity, and unity of use, should be evaluated and weighed against one another as factors, and should not be viewed as essential elements; a lack of physical unity will not be dispositive of a claim for severance damages.

County's deposit of estimated just compensation became conditional, for purposes of calculating blight of summons damages, when county did not immediately agree to release funds after possible owner of parcels waived all interests in deposit and consented to disbursement of deposit to other two owners involved in condemnation action, rather than when deposit was initially made or when county objected to disbursement to just two owners; county did not enumerate any restrictions when deposit was initially made, possible owner had previously asserted that she owned involved property, and other two owners were entitled to withdraw funds when possible owner had waived her interest.

A deposit of estimated just compensation does not become conditional, for purposes of calculating blight of summons damages, when a condemning authority objects to a condemnee's motion to withdraw funds based on the fact that the condemnee's entitlement to such funds is not clear.

County was able to withdraw \$1.03 million from its \$5.89 million deposit of estimated just compensation in condemnation action against landowners, where county moved to withdraw funds before funds had been disbursed to landowners, county's motion was made in good faith, as it was based on updated appraisal that one landowner had impliedly requested by challenging county's initial appraisal as being stale, and landowners' burden of having their properties condemned was alleviated because they were able to withdraw \$4.6 million prior to final determination of just compensation.

The court in an eminent domain proceeding has the discretion to permit a governmental entity to withdraw a portion of a deposit of estimated just compensation when the deposit has not been disbursed to the landowner, the government acted in good faith in seeking to adjust the estimate to accurately reflect the value of the property on the date of the summons, and the adjustment will not impair the substantial rights of any party in interest.

LIABILITY - MISSOURI

[Newsome v. Kansas City, Missouri School District](#)

Supreme Court of Missouri, en banc - May 16, 2017 - S.W.3d - 2017 WL 2119347

School district employee, a purchasing manager, brought action against school district for wrongful

discharge in violation of public policy regarding employee's objections to independent consultant's request for payment from school district and school district's purchase of three motor vehicles.

The Circuit Court entered judgment for employee for \$500,000. School district appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Endorsement to school district's liability insurance that precluded claims that were covered by sovereign immunity never became part of district's insurance policy;
- Sufficient evidence supported finding that independent consultant's payment request violated public policy;
- Sufficient evidence supported finding that purchase of three motor vehicles violated public policy;
- Instructions that erroneously asked jury if employee reasonably believed that transactions violated public policy did not prejudice school district;
- School district could only waive its sovereign immunity up to the statutory liability limit of \$403,139; and
- School district's insurance policy's retention amount of \$250,000 did not operate to reduce the \$403,139 statutory maximum for liability.

Endorsement to school district's liability insurance that precluded coverage for claims which, absent the insurance, would have been covered by sovereign immunity never became part of district's insurance policy, and thus endorsement did not preserve school district's sovereign immunity per statute on waiving sovereign immunity via liability insurance in employee's action against district for wrongful termination in violation of public policy; endorsement was negotiated several months after policy's issuance, and no authorized agent subscribed to the endorsement as required by statute governing contracts for school districts.

School district could only waive its sovereign immunity up to the statutory liability limit of \$403,139, and thus remittitur to that amount from the circuit court's judgment of \$500,000 was warranted on school district employee's successful claim against district for wrongful discharge in violation of public policy, despite argument that district waived its sovereign immunity up to its liability insurance policy limit of \$500,000; by the plain language of statute on waiving sovereign immunity via liability insurance, the district's liability coverage could not exceed \$403,139 for a single claim, and the fact that district purchased liability coverage in excess of \$403,139 was immaterial.

School district's insurance policy's retention amount of \$250,000 did not operate to reduce the \$403,139 statutory maximum for liability on school district employee's successful claim against district for wrongful discharge in violation of public policy; statute on waiving sovereign immunity via liability insurance provided that immunity was waived to the maximum amount of coverage purchased and allowed by law, nothing in statute indicated that retention amount did not count as coverage, and under either liability insurance policy at issue, the limit of liability reduced by the retention amount would have far exceeded \$403,139.

EMINENT DOMAIN - NORTH DAKOTA

[Cossette v. Cass County Joint Water Resource District](#)

Supreme Court of North Dakota - May 16, 2017 - N.W.2d - 2017 WL 2119428 - 2017 ND 120

Property owners brought action against county joint water resource district requesting declaratory

relief and challenging district's resolution of necessity relating to intent to acquire interest in property owners' property through eminent domain.

The District Court dismissed complaint. Property owners appealed.

The Supreme Court of North Dakota held that:

- Property owners were not permitted to assert equitable claim for declaratory relief in administrative appeal, but
- Property owners were statutorily entitled to appeal from resolution of necessity.

Property owners were not permitted to assert equitable claim for declaratory relief in administrative appeal from county joint water resource district's resolution of necessity related to district's intent to acquire interest in property owners' property through eminent domain.

Property owners were "aggrieved" by county joint water resource district's resolution of necessity related to district's intent to acquire interest in property owners' property through eminent domain, and therefore property owners were statutorily entitled to appeal from resolution. Although resolution was only one part of eminent domain process, applicable statute allowed appeal from any water resource board order or decision relating to eminent domain, and resolution described the property and stated that district would proceed with eminent domain to acquire interest in the property.

EMINENT DOMAIN - OKLAHOMA

[Stephens Production Company, a division of SF Holding Corp. v. Larsen](#)

Supreme Court of Oklahoma - May 9, 2017 - P.3d - 2017 WL 1900492 - 2017 OK 36

Natural-gas company brought action to exercise eminent domain power on landowner's 80-acre parcel to establish an underground natural gas storage easement and a surface easement to complete an underground natural gas storage facility on 900 acres of land, which included landowner's parcel.

After a bench trial, the District Court set an amount of just compensation. Landowner appealed. The Court of Civil Appeals affirmed. Landowner appealed.

The Supreme Court of Oklahoma held - as matter of apparent first impression - that natural resource, agricultural, and recreational use, rather than use as a natural-gas reservoir, constituted the highest and best use of landowner's parcel.

Natural resource, agricultural, and recreational use, rather than use as a natural-gas reservoir, constituted the highest and best use of landowner's 80-acre parcel at the time that natural-gas company established an easement on the parcel via eminent domain for underground natural gas storage and a surface easement to complete an underground natural gas storage facility on 900 acres of land, which included landowner's parcel, and thus \$9,000, rather than \$419,000, was just compensation to the landowner; for the reservoir to have been feasible, a combination of the interests of the landowners whose parcels composed the 900 acres was absolutely necessary, and there was no active market in the area for underground gas storage before natural-gas company began its project.

GOVERNMENTAL UNITS - TEXAS

[University of the Incarnate Word v. Redus](#)

Supreme Court of Texas - May 12, 2017 - S.W.3d - 2017 WL 1968030 - 60 Tex. Sup. Ct. J. 908

Parents of deceased student brought action against private university and university's peace officer arising out of the officer's use of deadly force following a traffic stop.

University filed a plea to the jurisdiction. The District Court denied the plea. University appealed. The San Antonio Court of Appeals dismissed the appeal. University filed a petition for review, which was granted.

The Supreme Court of Texas held that the private university qualified as a "government unit" as to its policing function for purposes of provision of Tort Claims Act permitting interlocutory appeals from the grant or denial of a governmental unit's plea to the jurisdiction.

University derived its status and authority to commission and employ peace officers and operate a police department from laws passed by the legislature, university's officers had the same power, privileges, and immunities as other peace officers, and law enforcement was uniquely governmental.

[Successful Investing in Charter Schools Part III: Market Advancements](#)

Jun. 07, 2017 | 12 PM ET/9 AM PT

Each year, Orrick and the Bond Buyer present an overview of the charter school facilities bond sector, highlighting transaction fundamentals, sector-level research data, and credit and structure trends. This year, in Part III of the series, the webinar examines the expanding array of financial tools used by charter schools to address facilities needs by assembling a roster of experienced market participants to present current trends and analysis on the sector.

The featured speakers, Paul Jasin of Specialized Public Finance, Paula Permenter of BB&T Capital Markets and Oscar Davis of Regions Bank, will provide insights regarding evolving credit structures for both public capital markets and commercial loan facilities financing for charter schools. Todd Brewer and Eugene Clark-Herrera of Orrick will review transaction fundamentals and discuss trends affecting the growth of the sector.

Who Should Attend?

- State and Local Education Finance Officers
- Charter School Leaders, CFOs and Finance Directors
- Institutional Investors and Commercial Lenders
- Investment Analysts
- Education-Focused Investment Bankers

[REGISTER](#)

[MSRB Files Amendments to Modernize Customer Account Transfers.](#)

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) proposed amendments to [MSRB Rule G-26](#), on customer account transfers. If approved by the SEC, the amendments to Rule G-26 would promote a uniform customer account transfer standard for all municipal securities dealers. The MSRB believes the amendments will make the transfer of customer securities account assets more flexible, less burdensome and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

[View the filing.](#)

TAX - COLORADO

[Colorado Department of Revenue v. Creager Mercantile Co., Inc.](#)

Supreme Court of Colorado - May 15, 2017 - P.3d - 2017 WL 2106241 - 2017 CO 41

Corporate taxpayer that distributed tobacco and other products to convenience stores sought judicial review of the decision of the Department of Revenue to impose a tobacco products tax on wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco.

The District Court affirmed. Taxpayer appealed. The Court of Appeals reversed and remanded. Department petitioned for a writ of certiorari, which was granted.

The Supreme Court of Colorado held that wrappers were a “kind” or “form” of tobacco and were “prepared in such manner as to be suitable ... for smoking,” and thus wrappers were a taxable “tobacco product.”

Wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco were a “kind” or “form” of tobacco and were “prepared in such manner as to be suitable ... for smoking,” and thus wrappers were “tobacco products” that were taxable under statute defining “tobacco products” as “other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise”; wrappers were designed and intended to be filled with tobacco, marijuana, or other smoking material and smoked, wrappers were consumed as they were smoked, and each inhalation from a wrapper burned and delivered additional tobacco in the wrap itself to the user.

[Municipal Finance Compliance Consultant](#)

Job Description:

Kforce has a client in Weehawken, NJ that is seeking a Municipal Finance Compliance Consultant to assist with Wealth Management Americas Compliance with drafting policies, procedures and

training to prepare for a new municipal underwriting business.

Summary:

Team:

The ideal candidate will be working with the Wealth Management Americas Products and Trading team in Compliance. They are responsible for advising on several products, including taxable and municipal securities, equities, options, futures and structured products. The role will be located in Weehawken and New York City.

Duties Include:

Draft and update policies and procedures for the municipal underwriting business relating to topics such as the municipal advisor rules, due diligence requirements, RFPs, and supervision

Create training for newly hired municipal bankers, underwriters and traders

Provide advice to the municipal bankers and underwriters on topics such as the municipal advisor rules, due diligence requirements, RFPs, and supervision

Educate the firm on regulatory developments and rules relating to municipal securities

Review current business practices against regulatory and firm requirements to ensure that discrepancies are proactively identified and addressed

Job Requirements

At least a Bachelor's degree

At least 10 years of experience with municipal finance

Experience drafting policies and procedures with municipal underwriting - at least 5 years

Legal or compliance experience with the municipal underwriting business

Enjoys working closely with the business

Knows how to maintain independence and objectivity

Excellent knowledge of Word and Excel

JD a plus

Series 7, 63/66, 53 a plus

Able to draft policies and procedures regarding municipal underwriting

Capable of completing tasks with very tight deadlines

Highly organized

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orientation, gender identity, national origin, age, protected veteran status, or disability status.

Rising Seas May Wipe Out These Jersey Towns, but They're Still Rated AAA.

- **Cities at most risk from extreme weather still get top ratings**
- **Storms, floods could diminish tax revenue and raise costs**

Few parts of the U.S. are as exposed to the threats from climate change as Ocean County, New Jersey. It was here in Seaside Heights that Hurricane Sandy flooded an oceanfront amusement park, leaving an inundated roller coaster as an iconic image of rising sea levels. Scientists say more floods and stronger hurricanes are likely as the planet warms.

Yet last summer, when Ocean County wanted to sell \$31 million in bonds maturing over 20 years, neither of its two rating companies, Moody's Investors Service or S&P Global Ratings, asked any questions about the expected effect of climate change on its finances.

"It didn't come up, which says to me they're not concerned about it," says John Bartlett, the Ocean County representative who negotiated with the rating companies. Both gave the bonds a perfect triple-A rating.

The same rating companies that were caught flat-footed by the downturn in the mortgage market during the global financial crisis that ended in 2009 may be underestimating the threat of climate change to coastal communities. If repeated storms and floods are likely to send property values — and tax revenue — sinking while spending on sea walls, storm drains or flood-resistant buildings goes up, investors say bond buyers should be warned.

"They are supposed to identify risk to investors," said Eric Glass, a fixed-income portfolio manager at Alliance Bernstein, a New York investment management firm that handles \$500 billion in assets. "This is a material risk."

Breckinridge Capital Advisors, a Boston-based firm specializing in fixed-income investments, is already accounting for those risks internally: Last year, it downgraded a borrower in Florida due to climate risk, citing the need for additional capital spending because of future flooding.

Rob Fernandez, its director of environmental, social and governance research, said rating companies should do the same. "Either incorporate these factors, or, if you say that you are, tell us how you're doing it," he said.

S&P and Moody's say they're working on how to incorporate the risk to bonds from severe or unpredictable weather. Moody's released a report about climate impacts on corporate bond ratings last November and is preparing a similar report on municipal bonds now.

Fitch Ratings Ltd. is more skeptical.

"Some of these disasters, it's going to sound callous and terrible, but they're not credit-negative," Amy Laskey, managing director for the local government group at Fitch, said in an interview. "They rebuild, and the new facilities are of higher quality and higher value than the old ones."

For more than a century, rating companies have published information helping investors gauge the likelihood that companies and governments will be able to pay back the money they borrow.

Investors use those ratings to decide which bonds to buy and gauge the risk of their portfolio. For most of that time, the determinants of creditworthiness were fairly constant, including revenue, debt levels and financial management. And municipal defaults are rare: Moody's reports fewer than 100 defaults by municipal borrowers it rated between 1970 and 2014.

Climate change introduces a new risk, especially for coastal cities, as storms and floods increase in frequency and intensity, threatening to destroy property and push out residents. That, in turn, can reduce economic activity and tax revenue. Rising seas exacerbate those threats and pose new ones, as expensive property along the water becomes more costly to protect — and, in some cases, may get swallowed up by the ocean and disappear from the property-tax rolls entirely.

Just as a shrinking auto industry slowly crippled Detroit, leading to an exodus of residents and, eventually, its bankruptcy in 2013, other cities could face the accumulating risks of storms or floods — and then suddenly encounter a crisis.

“One of the first questions that we're going to ask when confronted with an issuer along the coast of Texas, or on the coast of Florida, is: How are you going about addressing, mitigating the impacts of climate change?” Glass, Alliance Bernstein, said. And if local officials don't have a good answer to that question, he added, “We will not invest, period.”

When asked by Bloomberg, none of the big three bond raters could cite an example of climate risk affecting the rating of a city's bonds.

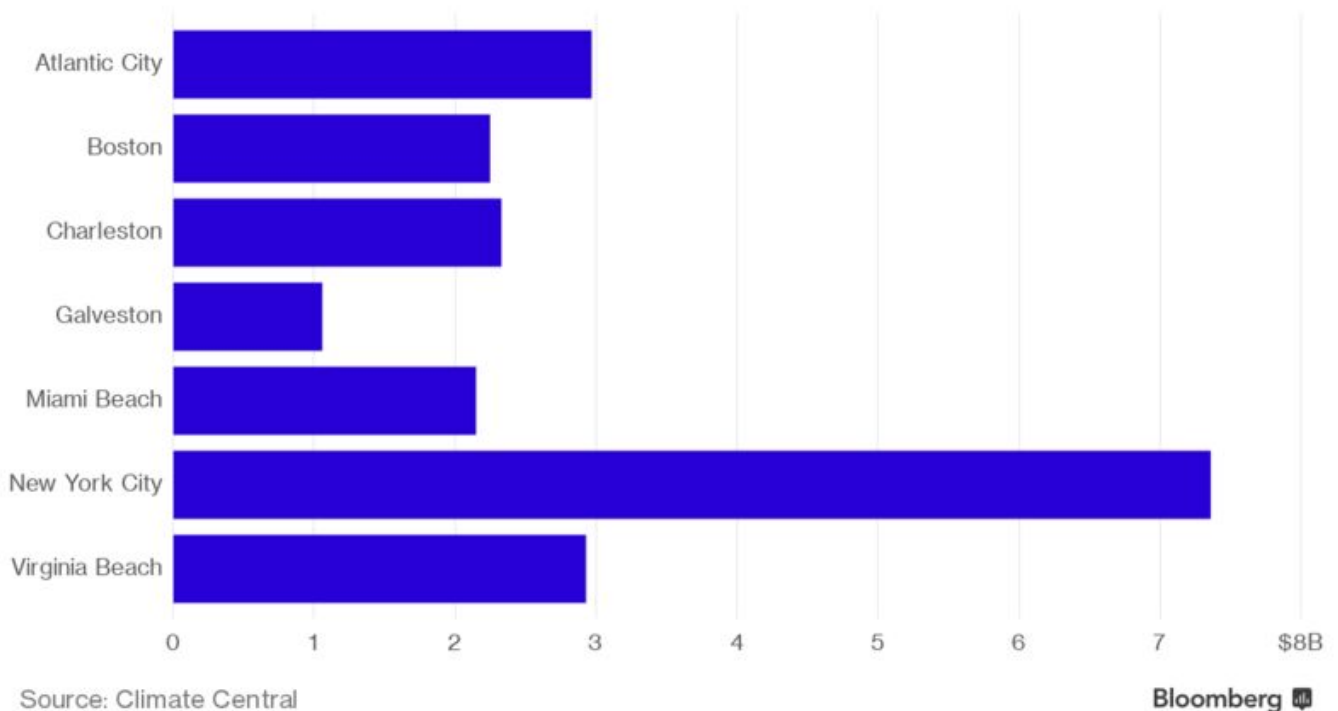
Kurt Forsgren, a managing director at S&P, said its municipal ratings remain “largely driven by financial performance.” He said the company was looking for ways to account for climate change in ratings, including through a city's ability to access insurance.

Henry Shilling, Moody's senior vice president for environment, social and governance risks, said the company is planning to issue a report this summer that explains how it will incorporate climate change into its municipal ratings. “It's a bit of a journey,” he said.

Last September, when Hilton Head Island in South Carolina issued bonds that mature over 20 years, Moody's gave the debt a triple-A rating. In January 2016, all three major bond companies gave triple-A ratings to long-term bonds issued by the city of Virginia Beach, which the U.S. Navy has said faces severe threats from climate change.

Washed Out

Property value (\$ billion) exposed to annual flooding by 2030 at current rates of emissions



The threat isn't limited to smaller cities. The World Bank called Boston one of the 10 cities globally that are most financially exposed to flooding. But in March, when Boston issued \$150 million in bonds maturing over 20 years, Moody's and S&P each gave those bonds top ratings.

Of course, predictions are hard, especially about the future. While scientists are generally united about the science of climate change, its pace remains uncertain. And what all of that will mean for communities and their likelihood of paying back bonds is not a simple calculation. Ocean County continued to pay back its current debt load after Sandy, and will still have a lot of oceanfront property if its current coast is swamped. The oceanfront just won't be in the same place.

The storms or floods "might be so severe that it's going to wipe out the taxation ability," said Bob Buhr, a former vice president at Moody's who retired last year as a director at Societe Generale SA. "I think this is a real risk."

In May 2016, 117 investors with \$19 trillion in assets signed a statement calling for credit ratings to include "systematic and transparent consideration" of environmental and other factors. Signatories also included rating companies from China, the U.S. and elsewhere, including Moody's and S&P.

Not Experts

Laskey, of Fitch, was skeptical that rating companies could or should account for climate risk in municipal ratings.

"We're not emergency-preparedness experts," she said in a phone interview. "Unless we see reason to think, 'Oh, they're not paying attention,' we assume that they're competent, and they're doing what they need to do in terms of preparedness."

That view is at odds with the picture painted by engineers, safety advocates and insurers. Timothy Reinhold, senior vice president for research at the Insurance Institute for Business & Home Safety, a group funded by insurers, said local officials aren't doing enough to prepare for the threats of climate change.

"While most coastal communities and cities have weather-related disaster response plans, many older, existing structures within these communities are not as durable, or as resilient as they could and should be," Reinhold wrote in an email.

Politically Fraught

The types of actions that cities could take to reduce their risk — including tougher building codes, fewer building permits near the coast and buying out the most vulnerable properties — are politically fraught. And the benefits of those policies are typically years away, long after today's current leaders will have retired.

The weakness of other incentives leaves the risk of a credit downgrade as one of the most effective prompts available to spur cities to deal with the threat, according to Craig Fugate, director of the Federal Emergency Management Agency under President Barack Obama.

"They need cheap money to finance government," Fugate said in a phone interview. If climate considerations meant higher interest rates, "not only will you have their attention. You'll actually see changes."

Fugate also said rating companies were wrong to assume that cities are well prepared for climate change, or that their revenue will necessarily recover after a natural disaster.

As an example, he cited the case of Homestead, a city south of Miami that bore the worst damage from Hurricane Andrew in 1992. The city's largest employer, Homestead Air Force Base, was destroyed in the storm; rather than rebuild it, the federal government decided to include the facility in its base closures.

Fugate said climate change increases the risk that something similar could happen to other places along the coast — and they won't ever be able to bounce back as Homestead eventually did.

"If that tax base does not come back," he warned, "they cannot service their debt." Asked about rating companies' insistence that such risks are remote, Fugate scoffed. "Weren't these the same people telling us that the subprime mortgage crisis would never happen?"

Bloomberg

by Christopher Flavelle

May 25, 2017, 1:00 AM PDT