[Bond Case Briefs](#)

Municipal Finance Law Since 1971

Articles posted by

Jamie Stewart

ZONING & PLANNING - PENNSYLVANIA

EDF Renewable Energy v. Foster Township Zoning Hearing Board

Commonwealth Court of Pennsylvania - November 22, 2016 - A.3d - 2016 WL 6873015

Renewable energy company sought review of decision by township zoning hearing board to deny company's application for special exception to construct three wind farms in three different zoning districts in township.

The Court of Common Pleas affirmed. Company appealed and board cross-appealed.

The Commonwealth Court held that company failed to satisfy objective requirements of special exception in ordinance.

Renewable energy company, which applied for special exception to construct three wind farms in three different zoning districts in township, failed to satisfy objective requirements of special exception in ordinance. Company failed to submit site plan as required by ordinance, and evidence offered at zoning board hearing did not provide all of information required by ordinance, as company's regional development manager testified that number of wind turbines and precise location of turbines and other details could not be determined until soil was tested.

PENSIONS & BENEFITS - PENNSYLVANIA

Zampogna v. Law Enforcement Health Benefits, Inc.

Supreme Court of Pennsylvania - November 22, 2016 - A.3d - 2016 WL 6873038

Candidate for union president brought against administrator of union's health and welfare benefit plan for declaratory judgment barring administrator from expending its funds to engage in partisan activities and endorse incumbent president.

Following a bench trial, the Court of Common Pleas dismissed candidate's action, and he appealed. The Commonwealth Court vacated and remanded. Administrator's petition for allowance of appeal was granted.

The Supreme Court of Pennsylvania held that:

- Administrator's act of endorsing incumbent was sufficiently related to administering benefits to union members and, therefore, was sufficiently related to corporate purpose, and
- City's payments to administrator lost public character and were no longer public funds.

Health and welfare plan administrator's act of endorsing police union's incumbent president in election was sufficiently related to administering benefits to union members and, therefore, was sufficiently related to corporate purpose set forth in articles of incorporation and was authorized under Nonprofit Corporation Law (NCL). Because president had direct impact on administrator's ability to function effectively due to president's effect on city funding source, endorsing candidate that administrator believed would better serve its members was not unrelated to corporate purpose.

City's payments to administrator of police union's health and welfare benefit plan lost public character and were no longer public funds, but were in sole control of administrator that spent money to endorse incumbent for union president. City agreed to pay a specific amount of money per police officer to joint trust, not only to pay for the ultimate healthcare benefit that each police officer received, but also to pay for administration of those benefits.

IMMUNITY - TENNESSEE

Moore v. City of Clarksville

Court of Appeals of Tennessee, at Nashville - October 31, 2016 - Slip Copy - 2016 WL 6462193

Homeowners brought action against city alleging breach of implied contract after suffering damages from a sewage backup.

City moved for summary judgment. The Chancery Court granted the motion. Homeowners appealed.

The Court of Appeals held that:

- Gravamen of homeowners' action sounded in tort and was thus subject to Tennessee Governmental Tort Liability Act's one-year statute of limitations, and
- Homeowners' service of complaint on city administrative assistance was ineffective and did not toll the statute of limitations.

Gravamen of homeowners' action against city for breach of implied contract sounded in tort and was thus subject to Tennessee Governmental Tort Liability Act's one-year statute of limitations. Homeowners alleged that they were intended beneficiaries to implied-in-fact contact demonstrated by sewer service access to the house, yet their complaint had, as a factual basis, raw sewage backing up into the house, and they sought compensatory damages.

Homeowners' service of tort complaint on city administrative assistance was ineffective and did not toll the one-year statute of limitations under the Tennessee Governmental Tort Liability Act. Homeowners were required to serve major or city attorney.

EMPLOYMENT - WYOMING

Vance v. City of Laramie

Supreme Court of Wyoming - November 7, 2016 - 382 P.3d - 1104 - 41 IER Cases 1367 - 2016 WY 106

City petitioned for judicial review of decision of the Civil Service Commission, which reduced discipline of employee, a firefighter, from discharge to a suspension after random breath test machine tests, performed while employee was on duty, detected alcohol in his system.

The District Court reversed and remanded. On remand, the Commission refused to consent to a discharge. City petitioned for judicial review. The District Court reversed and remanded, and on remand, the Commission found that employee was properly discharged. Employee sought judicial review. The District Court affirmed. Employee appealed.

The Supreme Court of Wyoming held that city was not permitted to seek judicial review of Commission decision refusing to consent to employee's discharge.

Curb to Compost Toolkit.

Americans want to live more sustainable lives. Can governments keep up?

Adam Ortiz gets asked a lot about composting. As director of the Department of the Environment for Prince George's County, Md., he says residents ask him all the time if the county can provide curbside pickup. "When I tell them we're working on it but aren't quite there yet, they respond, 'OK, we'll do it ourselves,'" Ortiz says. "People are paying an extra $20 to $30 a month to have a private contractor come and pick up their little bucket of food scraps."

Prince George's County, just outside Washington, D.C., is no stranger to composting. It runs one of the biggest food scrap operations in the country. For 25 years now, the county has been collecting leaves and grass clippings that it then processes into a trademarked mulch product called Leafgro. In just the last three years, the county has expanded the program to include food scraps. But the public clamor for composting has grown so rapidly that Ortiz says he can't set up a curbside program fast enough. "We cannot meet the demand," he says. Referring to the county's current composting program, Ortiz adds, "We already have a waitlist of 30 communities and institutions."

Ortiz's story is familiar to many city and county officials across the country. Curbside composting programs have doubled in the last five years, from around 100 communities in 2011 to at least 198 across 19 states today. Indeed, according to the U.S. Composting Council, those numbers don't even tell the whole story. In lieu of curbside composting, dozens of municipalities have formalized drop-off programs for residential food scraps, and entrepreneurs offer curbside subscription services that, in some cases, have grown as large as 4,000 households.

Responding to that existing public demand is important, says Ortiz. People clearly "want to live a 'closed loop' or more sustainable way of life," he says. But government is driving demand, too. Last year, the U.S. Department of Agriculture and the Environmental Protection Agency set a national goal of reducing food waste by 50 percent by 2030. (Right now, 95 percent of the food disposed of in the U.S. ends up in a landfill, where it emits methane and contributes to global warming.) Many cities have also set waste diversion goals. Austin, for example, wants to reduce the material sent to landfills by 90 percent by 2040, and Milwaukee has a goal of diverting 40 percent of its waste from landfills by 2020. What's more, several states and cities either ban food scraps and yard waste from landfills or mandate that they be recycled.

With so many policies in effect calling for composting, curbside programs and drop-off centers are expected to continue growing steadily. The structure of these programs will undoubtedly vary from city to city. Challenges such as upfront costs, siting and permitting new facilities, and resident resistance can shape what a composting program looks like.

Frank Franciosi, executive director of the U.S. Composting Council, says all these barriers can be eliminated by developing a detailed and concise plan with “a good public relations program showing the benefits of using compost from both a horticultural view as well as an environmental view,” he wrote in an email.

To that end, the council has developed a toolkit with guidelines for local governments on how to set up a program, from building awareness to managing program logistics. The council also offers model legislation to help states upgrade their current rules regarding siting and permitting. “Zoning is one of the biggest obstacles when private commercial compost manufacturers want to site and build a facility,” says Franciosi.

As for the added costs for outreach, source separation, signage and additional containers, Franciosi says, “Cities should look at this as an investment for future growth and sustainability. One must calculate the cost of doing nothing against the cost savings of valuable landfill space. What are the costs for increasing methane in our atmosphere?”

GOVERNING.COM

BY ELIZABETH DAIGNEAU | NOVEMBER 2016

Republican Groups, FSI Urge Federal Court to Vacate Rule G-37 Changes.

WASHINGTON – The Financial Services Institute has joined three state Republican groups in urging federal appeals court judges to vacate the Securities and Exchange Commission’s approval of Municipal Securities Rulemaking Board rule changes that they say restrict political contributions for municipal advisors.

The Republican groups, which are requesting an oral argument before the Sixth Circuit Court of Appeals in Cincinnati, are also asking the judges to then order the SEC to disapprove the rule. The Tennessee Republican Party, Georgia Republican Party, and New York Republican State Committee made their requests in a brief filed earlier this month. FSI recently filed a friend-of-the-court brief in support of the Republican groups’ arguments. The group represents independent financial advisors and financial services firms.

The Sixth Circuit Court had halted proceedings in the case pending an order on a motion to dismiss from the SEC. A panel of three judges from that court referred the case to a merits panel, which received the groups’ most recent motion and will handle upcoming filings expected from the SEC. The SEC will have until Dec. 19 to submit its response.

The state parties’ suit against the SEC and MSRB claims the revised MSRB Rule G-37 unconstitutionally forces municipal advisor and dealer employees to choose between doing their jobs and exercising their right to support political candidates. The rule took effect on Aug. 17.

Under the changes to Rule G-37, municipal advisors, similarly to dealers, are barred from engaging in municipal advisory business with an issuer for two years if the firm, one of its professionals, or a political action committee controlled by either the firm or an associated professional, makes significant contributions to an issuer official who can influence the award of municipal advisory business.

The revised rule contains a de minimis provision like the original rule. It would allow a municipal finance professional or a municipal advisor professional to give a contribution of up to $250 per election to any candidate for whom he or she can vote without triggering the two-year ban.

The Republican groups' lawyers, led by Christopher Bartolomucci, a partner with Kirkland & Ellis here, said that the process of getting the rule changes approved showed that the MSRB and SEC believe "the SEC may supplant Congress' limits with a broad, prophylactic rule of its own in an effort to deter so-called 'pay-to-play' activities in the provision of advisory services for public assets."

Bartolomucci added that, as the groups told the MSRB and SEC in comment letters during the rulemaking process, "that contention is flatly foreclosed by federal campaign finance law, the statute under which the SEC purports to be acting, the Administrative Procedures Act, and, ultimately, the First Amendment."

FSI's friend-of-the-court brief similarly argues that the rule, both in its original and amended forms, "has curtailed the constitutional rights of independent broker-dealers (IBDs) and registered representatives while failing to take into consideration IBD firms' unique structure, and in particular their remoteness from any articulated 'pay-to-play' threat."

The group said that, unlike non-IBD firms, IBD firms generally operate through a wide network of independent contractors that are not employees and are given almost complete freedom to act as solo practitioners. The rule, however, treats the independent contractors as employees, allowing for "the action of a single independent financial advisor or registered representative to pollute the whole IBD network." That limits "the First Amendment rights of individuals who neither control nor profit from the governmental business obtained by a financial advisor they may never have met, operating in another jurisdiction," FSI argued.

FSI also noted that some of the rule's phrasing is vague and runs the risk of further limiting political speech. It said the rule regulates financial support that may indirectly influence hiring while not giving useful guidance as to what indirect influence might be. It also refers to indirect communication with a municipal entity as a part of its solicitation definition without explaining what that could entail, according to the group. Both examples of vague language are likely to cause firms to be overly careful and restrict individuals' activities more than might be necessary, FSI argued.

The financial group said the MSRB and SEC could have considered alternatives like levying tougher penalties for pay-to-play corruption or providing additional whistleblower protections. Instead of doing that, the "MSRB leapt without looking, and the SEC unfortunately ratified that decision," FSI said.

The three Republican groups added their own complaints in their brief on top of the First Amendment concerns, arguing that Congress "never intended to grant an agency like the SEC – much less the MSRB – the authority to tinker with contributions to political parties and candidates for federal office." Congress determined the contribution limit should be $2,700 per federal candidate per election and $10,000 per year for political party federal accounts and left no room for the SEC to second-guess its judgment, Bartolomucci and the other lawyers wrote.

The lawyers also argued that the SEC violated congressional appropriations language for 2016 that prohibited the commission from finalizing, issuing, or implementing any rule, regulation, or order regarding the disclosure of political contributions. The SEC has said it did not violate the rule because it never acted. Instead, the rule was deemed approved at the end of a 45-day period as happens under federal law when the SEC does not act. The groups and SEC have been arguing whether the course of events meet the qualifications for a final order or agency action, either of which would help the Republican groups' case.

The Bond Buyer

By Jack Casey

November 28, 2016

[Family Tie Clouds Nashville Bond Deals; Mayor Vows Changes.]

The financial firm employing the son of the top adviser to Nashville's last two mayors has earned almost all of the city's bond underwriting deals in recent years without having to competitively bid for the contracts.

Four of the last five bonds issued by Metro agencies have been underwritten by Piper Jaffray, which employs the son of Rich Riebeling, who is a top aide to Nashville Mayor Megan Barry and is the city's chief operating officer. Barry has continued her predecessor's practice of awarding bond underwriting contracts without a competitive bidding process.

In response to questions from The Tennessean after weeks of investigation, Barry's administration has committed to change the way underwriting contracts are awarded. Finance Director Talia Lomax-O'dneal will oversee bond issuances, instead of Riebeling, and a new solicitation process will be implemented.

Though there is debate in municipal finance circles, the Securities and Exchange Commission and multiple experts say competitive bond deals tend to yield better interest rates and lower underwriting fees. Metro's own debt management policy states that the city prefers competitive bond deals.

Under a competitive process, firms submit sealed proposals and the government picks the bid with the lowest interest rate.

After Karl Dean was elected mayor in 2007, under Riebeling's leadership of the city's finances, Metro switched to negotiated deals. For negotiated deals, Metro and its financial adviser can hold behind-closed-doors talks with financial firms and pick one without a public bid. Proponents of these deals say negotiated offerings allow flexibility to go to the bond markets at the optimal time.

In the past five years, Metro has used just one competitively bid bond deal.

On the other hand, the city has executed 17 negotiated bond deals in the past five years. Piper Jaffray has been the lead underwriter on nine of those deals and underwrote at least a portion of 16 issuances, according to records provided by Metro. Piper Jaffray, which is a preeminent financial firm headquartered in Minnesota, earned roughly $3.07 million in underwriting fees on those deals, according to an analysis by The Tennessean.

Metro does business with Piper Jaffray's Memphis office, where Riebeling's son Michael Riebeling works in the public finance division.

"Public confidence in transactions overseen by the Metropolitan government is important," said at-large Councilman John Cooper, who is chairman of the Council Budget and Finance Committee. "Good process protects us all. That's not to say anything has gone wrong here, but it merits asking the question for what our conflict of interest policy is."

City’s debt policy calls for competitive deals

On Dec. 6, 2011, the Metro Council approved the city’s new debt management policy, which states that Metro “prefers a competitive issuance process for debt issuances” but will “consider negotiated issuance … where it is clear that such process is in the best interests of the Metropolitan Government.”

The Government Finance Officers Association, a nonprofit trade group of state and municipal finance officials, laid out guidelines for when a city should utilize negotiated bond deals — instances when there is low credit, a traditional bond issuance is too expensive, the structure of the issuance is complicated or if the city requires use of a minority-owned underwriting firm.

However, Metro’s outside financial adviser Wayne Placide argued in a prepared statement that negotiated deals benefit the city. He said the city’s bond issuances have been complicated deals that warranted a negotiated sale.

“The negotiated sale method is used for the more complex or nontraditional bond issues to allow time to explain the financing to potential investors, thereby potentially reducing or removing market uncertainty,” Placide said. “Also, the negotiated sale method provides a more flexible timetable, which, during periods of high market volatility, may allow the bond issue to be sold at short notice when a favorable marketing window is perceived to exist.”

But Emily Evans, who was formerly the head of the underwriting division at JC Bradford and served on the Metro Council from 2006 until 2015, said the city’s bond deals are straightforward. Interest rate swaps, derivatives or forward-looking speculative deals are the kinds of issuances that may be more complicated and benefit from a negotiated sale. Evans said those kinds of deals don’t apply to Metro.

“There’s nothing complicated about those deals,” Evans said. “In fact, Tennessee bond laws are very conservative and by virtue of that we just don’t have very complicated financing in this state.”

Piper Jaffray’s hot streak

The Tennessean examined five years of Metro bond deals and found that until 2014, the city used a variety of underwriters selected through a negotiated process. Reputable financial firms Morgan Keegan, Morgan Stanley, Raymond James and Goldman Sachs each served as the lead underwriter on various bond issuances.

Metro issues bonds to pay for sidewalks, schools, police headquarters or other capital projects.

Since 2014, Piper Jaffray has been on a hot streak, serving as the lead underwriter on all but one bond issuance from a Metro agency. Michael Riebeling was hired by Piper Jaffray in 2012.

“Piper Jaffray takes conflicts of interest issues seriously and has robust procedures throughout our various businesses, including public finance, to avoid or mitigate perceived or actual conflicts of interest based on the facts and circumstances of each client relationship,” the company said through spokeswoman Pamela Steensland.

Rich Riebeling was Metro’s finance director and one of two top advisers to Dean between 2007 and 2015. Riebeling was picked by Barry to be her chief operating officer and still advisers her on financial matters. Before advising the mayors, Riebeling worked at Fifth Third Securities and at Morgan Keegan.

Metro changes bond underwriting after newspaper questions

The relationship between Riebeling and his son's firm does not constitute a conflict of interest, Barry's spokesman, Sean Braisted, said. Michael Riebeling works on a salary and has not benefited financially from the underwriting of Metro's bonds, Braisted said.

"Based on the facts presented to me, there does not seem to be any actual conflict of interest," said Barry, who worked as an ethicist advising health care companies before she was elected mayor last year. "However, out of an abundance of caution, steps will be taken to avoid even the appearance of a conflict going forward."

Rich Riebeling acknowledged that once his son was hired by Piper Jaffray in 2012 he was aware of the potential for conflicts.

"After Michael accepted an offer of employment, I made clear to the management team that he could not be involved in, or financially benefit from, any work related to Metro Nashville," he said. "To the best of my knowledge, they have never violated those conditions. Since my son has been employed with Piper Jaffray, many other firms have participated in and led underwriting transactions, and at no point was his employment ever a consideration when choosing an underwriter."

Rich Riebeling said that going forward he will not be involved with any negotiations for bond underwriting. When he was advising Dean, Riebeling failed to list some of his personal business dealings on annual public disclosures, including real estate deals with prominent attorney Charles Robert Bone, who was hired as legal counsel for the Music City Center project. Riebeling amended his disclosure forms to show those investments.

Lomax-O'dneal, the finance director, said she would instruct Hilltop Securities, Placide's firm that advises Metro on financial matters, to conduct an "annual, independent competitive solicitation" to compile a list of pre-approved underwriting vendors for the Treasury Office to negotiate with.

"This will ensure the continued objective selection of our underwriters, while avoiding even the appearance of impropriety," she said.

The solicitation process described by Lomax-O'dneal is still through a negotiated sale and Metro would not necessarily used competitive bids to choose the firm proposing the lowest interest rate.

The Tennesseean

by Nate Rau

November 21, 2016

Reach Nate Rau at 615-259-8094 and on Twitter @tnnaterau.

MSRB Instructs Dealers to Disclose Existence of Market Discount in Municipal Bond Transactions: Chapman and Cutler

Client Alert

The Municipal Securities Rulemaking Board ("MSRB") recently issued an interpretive notice announcing its interpretation that if a dealer engages in a transaction with a customer in a municipal security that bears market discount, the dealer must disclose the existence of market discount to its customer as part of the "time of trade disclosure" required under MSRB Rule G-47. Rule G-47 already includes original issue discount ("OID") in the rule's non-exhaustive list of information that may be material and require time of trade disclosures to a customer. Both market discount and OID impact the tax treatment of municipal bonds and can be particularly relevant for "tax-exempt" municipal bonds. The MSRB notice is available here.

MSRB Rule G-47

Rule G-47 requires brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose to their customers, at or prior to the time of a municipal bond trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market. Information is considered to be material under Rule G-47 if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor making an investment decision. The rule currently includes a non-exhaustive list of information that is generally considered material, including OID and other factors. While market discount is not listed in the rule, the MSRB interpretation now puts dealers on notice that the MSRB believes the existence of market discount to be an issue that is required to be disclosed to a customer under Rule G-47 at or prior to the time of trade.

Why is Market Discount and OID Disclosure Relevant?

Generally speaking, accretion of OID over the life of a tax-exempt municipal bond is treated as tax-exempt interest under federal tax law while market discount is taxable income at a taxpayer's ordinary income tax rate (i.e., not as tax-exempt interest or at the capital gain rate). On the other hand, both OID and market discount are generally treated similarly to taxable interest income for taxable municipal bonds and are taxed at a taxpayer's ordinary income tax rate. These factors can impact an investor's decision to buy or sell a bond and the assessment of the bond's price. Tax treatment and computation of OID and market discount is very complex. Investors and dealers should consult their tax advisors for complete information.

Why is the MSRB Concerned with Market Discount Now?

The recent steep rise in municipal bond yields appears to be behind the MSRB market discount disclosure guidance and also has initiated other recent MSRB action. The MSRB recently issued a statement cautioning investors about the potential risks to bond positions and bond portfolios related to rising interest rates. The MSRB also recently submitted a letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern. The MSRB letter is available here.

The MSRB is concerned that an investor might not be aware that all or a portion of his or her investment return represented by accretion of market discount is taxable as ordinary income. The MSRB is concerned that this might result in an investor purchasing securities at an inappropriately high price (i.e., a price not reflecting the potentially higher tax rate applicable to the discount). The existence of market discount might also impact an investor's decision to purchase or sell a bond or determination of what price to pay or accept for a bond. As a result, the MSRB is now notifying dealers that it believes the fact that a security has market discount is material information that is required to be disclosed to a customer under Rule G-47.

What Should Dealers Do Now?

Dealers should review their existing policies and procedures to ensure that financial advisors disclose the existence of market discount to applicable customers in connection with municipal security transactions. Note that firms do not have any time of trade disclosure obligation under Rule G-47 with respect to customers that are sophisticated municipal market professionals, or SMMPs, as defined in MSRB Rule D-15.

November 29, 2016

GASB Proposes Implementation Guidance Designed to Clarify Recent Pronouncements.

Norwalk, CT, November 30, 2016 — The Governmental Accounting Standards Board (GASB) today issued a proposed Implementation Guide containing questions and answers intended to clarify, explain, or elaborate on GASB Statements.

The proposed Implementation Guide addresses a wide array of practice issues, including questions related to the GASB's accounting and financial reporting standards on pensions, cash flow statements, the financial reporting entity, certain investments, external investment pools, fund balance, and tax abatements. The proposed Implementation Guide also includes amendments to previously issued implementation guidance.

The Exposure Draft of Implementation Guide No. 201X-Y, *Implementation Guidance Update—201X*, is available on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by January 31, 2017.

GFOA New Best Practices Address Cash Flow Analysis, Investment Policy.

The GFOA Executive Board approved two new best practices in addition to updates to four other existing best practices at the September 2016 meeting. These documents provide recommendations to government finance officers in the areas of treasury and investment management, and retirement administration and benefits administration.

Cash-Flow Analysis. This new best practice recommends six essential elements of a cash flow analysis, an important tool to inform management decision making. GFOA recommends that state and local governments perform ongoing cash-flow analysis to ensure sufficient cash liquidity to meet disbursement requirements while also limiting idle cash.

Investment Policy. This new best practice recommends reviewing and, if necessary, updating the investment policy annually. The document includes statements on eight key points, including the fact that an investment policy enhances the quality of decision making and demonstrates a commitment to the fiduciary care of public funds. As a result, a public fund's investment policy is the most important element in a public funds investment program. GFOA recommends that all public entities establish a comprehensive written investment policy, adopted by the governing body.

Hybrid Retirement Plan Design. This best practice was revised to reflect the continuing evolution of hybrid plan designs. GFOA recommends design elements for hybrid plans or plans that combine hybrid features with defined benefit or defined contribution plans.

Establishing and Administering an OPEB Trust. This best practice was revised to align with language related to the January 2016 best practice, Sustainable Funding Practices for Defined Benefit Pensions and Other Postemployment Benefits. It includes a new recommendation that governments commit to funding promised benefits based on regular actuarial valuations, with a target funded ratio of 100 percent or more. GFOA also recommends creating a qualified trust fund to prefund OPEB obligations.

OPEB Governance and Administration. This revision aligns the best practice with the Sustainable Funding Practices for Defined Benefit Pensions and Other Postemployment Benefits. That best practice, from January 2016, recommends conducting an audit of actuarial valuations to review the appropriateness of the actuarial methods, assumptions, and their application. The updated language addresses employers that issue periodic studies, experience studies, and periodic actuarial audits. GFOA recommends that sponsoring entities provide a clear, well-documented governance structure to guide governing bodies and plan administrators.

Educating Employees About the Adequacy of Retirement Benefits. As part of GFOA's effort to consolidate and develop more comprehensive best practices, this updated document addresses elements of a sound educational program as well as guidance for employers and retirement systems that procure external providers of financial education and advice. GFOA recommends that public-sector employers and plan administrators inform and educate employees about future retirement income and the variables that may affect future retirement income, depending on the income source.

Government Finance Officers of America

December 1, 2016

Trump Infrastructure Plan: Far Less Than the Claimed $1 Trillion in New Projects.

Huge tax breaks for private investors; Neglects vital public road, bridge, school, and water projects

President-elect Trump's infrastructure plan, which claims that it would deliver up to $1 trillion in new infrastructure investment, almost surely would deliver far less — and it would not deliver many of the most important needed projects for roads and bridges, public transit, schools and public housing, water facilities, and so on, nor deliver them in the struggling communities in which they're most needed.TRUMP'S PLAN WOULD MAINLY BE A TAX-CUT WINDFALL TO PRIVATE DEVELOPERS TO BANKROLL FOR-PROFIT PROJECTS THEY LIKELY WOULD HAVE UNDERTAKEN ANYWAY. That's because Trump's plan would mainly be a tax-cut windfall to private developers to bankroll for-profit projects they likely would have undertaken anyway.

Download the full brief.

CENTER ON BUDGET AND POLICY PROPOSALS

BY CHYE-CHING HUANG, PAUL N. VAN DE WATER, RICHARD KOGAN, AND DAVID KAMIN

DECEMBER 2, 2016

[Fitch: US Energy States' Fiscal Pressures Go On.]

Fitch Ratings-New York-01 December 2016: Low commodity prices will keep fiscal pressure on energy states in 2017, Fitch Ratings says. We expect severance taxes and related revenue sources to remain low, while personal income and sales tax collections will remain suppressed, prolonging fiscal pressure.

This year, price and production shifts among energy states contributed to some Issuer Default Rating (IDR) downgrades: Alaska to ‘AA+’ from ‘AAA’; Louisiana to ‘AA-‘ from ‘AA’; and West Virginia to ‘AA’ from ‘AA+’. Alaska and West Virginia carry Negative Rating Outlooks, in addition to Oklahoma (IDR of ‘AA+’).

The anticipated loosening of federal environmental oversight to promote increased energy development and the recently positive crude oil price trend will not overcome the global market forces that are restraining crude oil and natural gas prices. The glut of crude oil, an international commitment to reduce coal use to combat climate change and increasing use of renewables for energy needs will keep demand for coal weak.

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[The Week in Public Finance: A Run on Pensions in Dallas, Connecticut's Warning and a Threat to Muni Bonds.]

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

[Read the report.]

GOVERNING.COM

BY LIZ FARMER | DECEMBER 2, 2016

The 5 Metro Areas Where Personal Income Is Rising Fastest.

Incomes are rising nationwide — but at a slower rate in rural America.

Metropolitan areas continue to record notably larger gains in personal income compared to more rural regions. Last year, personal incomes grew 3.8 percent within metro areas but only 2.7 percent outside them, according to new federal data.

The U.S. Bureau of Economic Analysis (BEA) recently released updated personal income estimates covering all counties and metro areas. We've compiled data for each metro area and adjusted it for inflation, showing changes in personal incomes over time.

Nearly all metro areas registering the steepest increases over the past three years are in the West, along with a select few other regions across the Sun Belt. Many of these areas benefitted from either a return of their tourism sector or a rebound from particularly severe job cuts during the recession.

Nationally, the Bridgeport-Stamford-Norwalk metro area in Connecticut surpassed Midland, Texas, for the highest per capita personal income — $106,382 in 2015. Not too far behind were the San Jose and San Francisco metro areas in California.

In addition to work-related earnings, personal income data reflect income received from ownership of homes or businesses, along with transfer receipts from business or the government, but do not include capital gains or losses.

The following five metro areas recorded the top percentage increases in per capita personal income over the three-year period ending in 2015.

Merced, Calif.

The Merced, Calif., metro area has experienced the top personal income growth of any region since 2012, climbing an estimated 13.7 percent when adjusted for inflation.

One big contributing factor to the region's growth is the expansion of the University of California's Merced campus. The school, which opened only a decade ago, continues to add students, faculty and staff.

The expansion has further supported new developments around Merced, where long-vacant downtown retail spaces have started filling up. City officials recently announced plans to renovate one building to make way for a boutique hotel, as well as construct a new mixed-use development with more than 50 apartments.

Still, with an economy tied largely to agriculture, the metro area remains poorer than most other regions in California. Personal incomes declined only slightly in 2008 and 2009, then experienced sharp growth since 2012. The per capita personal income for the metro area of 268,000 residents was $36,185 in 2015.

Greeley, Colo.

Weld County, Colo., has become the epicenter for the state's latest energy boom, fueling economic growth as oil and gas companies invested significantly across the region. The area saw its real personal income grow by 13.4 percent since 2012.

Richard Werner, president of Upstate Colorado Economic Development, said the energy industry's expansion has further led to rapid growth in other sectors, such as small manufacturing and food processing. "There's a diversification of industry that has really spurred the increase in household income," he said.

More recently, declining oil and gas prices hurt the energy sector. But the region isn't experiencing the same bust cycle as the Dakotas and parts of Texas since other sectors of the economy remain strong. Last year, with the exception of energy, all other industries in Northern Colorado continued expanding. Werner said workers who lost oil and gas jobs are finding new work in industries like construction, manufacturing and food processing without needing to relocate.

As the region's economy expanded, an influx of new residents followed; the metro area's population increased an impressive 8 percent over the three-year period.

Provo-Orem, Utah

An expanding tech sector has spurred significant economic growth across the Provo-Orem, Utah, metro area in recent years, helping to push up per capita personal income by 12.2 percent over the past three years.

It all started when the software giant Adobe, after acquiring an existing local company, opened a new 280,000-square foot campus in 2012, according to Ryan Clark, the city of Orem's economic development manager. Since then, other tech firms have relocated to the region, while numerous local entrepreneurs launched smaller tech startups. The Interstate 15 corridor, stretching from Salt Lake City down to Provo, now markets itself as the "Silicon Slopes."

The financial sector there is also expanding, and some of the ski resorts might be benefiting from increased tourism as well. "Traditionally, a lot of the graduates in this area would leave the state," Clark said, "but I think more grads are sticking around now."

The metro area took a hit during the recession, but the downturn wasn't as severe as other parts of the country. Clark said he suspects a massive construction project started in 2010 that expanded and rebuilt several stretches of highway helped to prop up the local economy.

The region's inflation-adjusted incomes have steadily climbed each year since 2010, reaching $34,227 last year. While that's still well below most other regions, it's a long way from 2010 when personal incomes dropped to around $28,000.

Napa, Calif.

Like many other regions of California and the Sun Belt, the Napa Valley took a deep hit during the Great Recession. But it has since rebounded just about as well as any other region.

The metro area's per capita personal income — already higher than most other regions — jumped from $54,899 in 2012 to $61,483 last year in inflation-adjusted dollars, an increase of 12 percent.

The inland areas of California experienced much sharper declines in employment and home values than the coastal parts of the state, said Sean Randolph of the Bay Area Council Economic Institute. This meant that places like the Napa Valley had a deeper hole to climb out of, reflected in the region's recent growth.

Wineries, hotels and other businesses in the Napa Valley benefitted from an improved tourism sector. Those with second homes in the area or others with more expendable incomes also helped to prop up the region as the economy has recovered.

Santa Rosa, Calif.

Santa Rosa, a metro area of about a half million residents, benefits from a larger, more diversified economy than Merced, Napa and other regions of California with sharp income gains. The area's growing industries include tech, hospitality and health care. Kaiser Permanente and a casino resort serve as Sonoma County's two largest employers.

The Bay Area Council Economic Institute's Randolph said the region also benefits from its proximity to San Francisco as some residents commute to high-paying jobs in the city but reside further out where homes are more affordable.

Back in 2008 and 2009, the region's personal incomes experienced sizable declines. The subsequent recovery took a few years to begin to accelerate, but real personal incomes have climbed an estimated 11.9 percent over the past three years.

GOVERNING.COM

BY MIKE MACIAG | DECEMBER 2, 2016

New Municipal Bond Sales Slowed in November to Year Low.

Sales of municipal bonds and notes slowed to $23.7 billion in November, the slowest month this year and less than half of October's record high, according to Thomson Reuters data.

The slump in new issuance came during a month peppered by holidays and the U.S. presidential election. In October, $51.6 billion of new sales came to market, the biggest month of issuance since records began in the 1980s.

Bond issuers also canceled some deals in November as market volatility spiked and yields surged after the surprise Nov. 8 election of Donald Trump as president.

"The combination of a selloff in Treasuries affecting fixed income in general and a less active primary market caused much of the activity to go elsewhere," Janney Fixed Income Strategy reported on Wednesday.

Municipal supply had been surging in recent months as state, city and other public agencies eagerly sold bonds and notes at low interest rates.

Reuters

Wed Nov 30, 2016 | 1:48pm EST

(Reporting by Robin Respaut; Editing by James Dalgleish)

High-Grade Munis Now a Gift in Bond Rout: Kotok

David Kotok, chairman and chief investment officer at Cumberland Advisors, and Bloomberg's Michael McKee examine higher bond yields and the impact of infrastructure spending on municipal bonds. He speaks on "Bloomberg Daybreak: Americas."

Watch video.

Bloomberg

December 5, 2016

Five Approaches to Reviving Aging Mall Sites.

Aging shopping malls—many burdened with high vacancy rates or even abandoned—are being transformed into vibrant, mixed-use destinations that are connected to their surrounding communities. Once-popular regional shopping malls are being hit from all angles: by the explosion of online shopping, millennials' preference for vibrant urban experiences, and ever-changing retail customers' tastes. At the 2016 ULI Fall Meeting, "the mall of the future" was explored by a panel of design, development, and placemaking experts.

Sarah Kimes, an associate vice president with design consultancy CallisonRTKL, (download presentation) discussed her firm's recent study of how aging mall sites might present opportunities for community regeneration. Her company's team developed conceptual transformations of five older shopping malls in the Dallas metropolitan area. The design teams were given no budgetary or feasibility restraints. The results presented food for thought:

- Ridgmar Mall in Fort Worth: Build a lake on the site and connect the site to surrounding uses.
- Irving Mall: Bring housing and an airport-connected transit center onto the site.
- Vista Ridge Mall in Lewisville: Make it plug-and-play adaptable and sustainable.
- Collin Creek Mall in Plano: Bring back the creek and redevelop the mall with a mix of uses.
- Six Flags Mall: Turn it into a drone port! And add on-site urban farming.

"What all these concepts had in common was a flexible, nimble program with diverse uses," said Kimes. "In the future, malls will be integrated with their surrounding communities; there will no longer be a delineation between the mall and the city. And these sites will have a thriving natural landscape, rather than being seas of concrete."

Kenton McKeehan, a managing director with Hines, agreed, saying: "Each shopping mall is a micro-economy, which must be sustainable and competitive beyond the obvious challenges such as internet sales. Malls of the future must address consumers' needs easily so that they don't have to go elsewhere. The success of malls will be driven not so much by thin retail profit margins, but instead by a mix of uses."

Repositioning shopping malls is easier said than done, noted Mark Bulmash, a senior vice president with the Howard Hughes Corporation, whose company is reimagining New York City's South Street Seaport after Hurricane Sandy took care of the demolition phase. In the absence of a natural disaster, developers can't just wave a magic wand to update tired shopping destinations. Department store anchors often have 75-year leases and other legal documents that must be "unwound" before a developer's vision can even begin to be realized.

"Stores want to monetize their assets," said Bulmash. "You have to talk them into selling their properties or convince them to agree with your plans." Added McKeehan: "Sometimes these guys are just not going to move, and you have to work around them."

While regional suburban shopping malls present a unique set of issues, many of their owners' challenges are shared by the entire retail sector. The good news for bricks-and-mortar retailers is that only 10 percent of U.S. retail sales are purely online, and even the most successful online retailers are expanding their physical presence so that customers can see and touch their wares. How can retailers make their offerings so compelling that customers will come to them?

One answer is to curate the entire customer experience in the shopping destination, including food, entertainment, and programming. Dining is becoming a draw for tourists, with travelers choosing hotels based on their proximity to restaurants they want to try. But retail destinations can easily become oversaturated with overpriced dining options. Some retailers are exploring use of technology to augment customers' experiences: for example, mirrors that show what garments would look like in other colors. The idea is to create experiences that are not replicable online.

All of these trends mean that developers need to change the ways they plan projects. "Good cities grow to meet demand, but developers don't think that way," said McKeehan. "We end up building assets that exceed demand." By transitioning mall sites to a mix of uses, he posited, developers can help create consumer demand within the vibrant, modern micro-economies that will become the nonmalls of the future.

The Urban Land Institute

By Leslie Braunstein

November 14, 2016

[New Information Document Request (IDR) – What's the Point?]

On November 21, as most of us were preparing for a relaxing Thanksgiving holiday, the IRS publicly released two internal guidance memoranda (both available at [TEGE-04-116-0028]) addressed to "All TE/GE Examiners," the first of which describes new procedures for the preparation and issuance of IDRs in connection with tax-favored bond audits and procedures for the enforcement of responses to those IDRs, and the second sets forth IDR "Best Practices." The announcement of the new procedures on the IRS website describes their purposes:

"The updated process will:

- Provide for open and meaningful communication between the IRS and taxpayers.
- Reduce taxpayer burden and provide consistent treatment of taxpayers.
- Allow the IRS to secure more complete and timely responses to IDRs.
- Provide consistent timelines for IRS agents to review IDR responses.
- Promote timely issue resolution."

A review of the new procedures, however, gives the clear impression that they are primarily designed to provide IRS agents increased leverage to force issuers and their counsel to respond more quickly to the often lengthy and burdensome IDRs that the IRS has been lately issuing, while imposing no pressure on the IRS to resolve audits more quickly.

The following are some key excerpts from the new IDR procedures, with a little commentary of my own.

Continue reading.

Squire Patton Boggs

The Public Finance Tax Blog

By Bob Eidnier on December 1, 2016

TAX - TEXAS

City of Austin v. Travis Central Appraisal District

Court of Appeals of Texas, Austin - November 10, 2016 - S.W.3d - 2016 WL 6677937

City brought action seeking judicial review of appraisal review board's order, which denied city's challenge to level of appraisal for vacant land and commercial real property for 2015 tax year, and challenging constitutionality of provisions of Tax Code concerning unequal appraisal protests by property owners.

The District Court granted a plea to the jurisdiction filed by a group of commercial property owners and a motion for summary judgment filed by a separate commercial property owner. City appealed.

The Court of Appeals held that:

- City failed to plead injury sufficient to confer standing to challenge constitutionality of Tax Code provisions, and
- City failed to exhaust its administrative remedies in connection with its challenge to appraisal levels.

City failed to establish injury sufficient to confer standing to challenge constitutionality of provisions of Tax Code allowing appraisal district to defeat property owner's unequal appraisal protest by demonstrating that median appraised value of reasonable number of comparable properties exceeded appraised value of owner's property. City was not charged with giving effect to provisions or ensuring their fulfillment, as provisions did not describe or concern any mechanism by which tax units to were to access, impose or, collect ad valorem taxes, and fact that city would eventually calculate and impose ad valorem taxes based on property values determined by appraisal district failed to demonstrate an injury that was concrete and particularized to city, as opposed to its property owners.

City failed to exhaust its administrative remedies in connection with its challenge to level of appraisals for vacant land and commercial property for 2015 tax year, and district court thus lacked subject-matter jurisdiction to consider city's petition for judicial review of appraisal review board's order denying city's challenge petition. Although city's attorneys and representatives attended hearing on its challenge petition, it did not present a case on the merits of its challenge, but rather presented a joint motion requesting that the review board enter an order denying its challenge petition, thus depriving the review board of any opportunity to decide the merits of the petition.

TAX - SOUTH CAROLINA

Olds v. City of Goose Creek

Court of Appeals of South Carolina - November 16, 2016 - S.E.2d - 2016 WL 6776295

Taxpayer appealed decision of city council regarding computation of gross income under business license tax ordinance, and further asserted claims against city for violation of equal protection, violation of procedural due process, abuse of process, violations of state and federal constitutions, and violation of the South Carolina Freedom of Information Act, against city administrator and city finance director for conspiracy, and against city's department of public works for breach of contract.

The Circuit Court affirmed the city council's decision regarding the meaning of gross income under city ordinance, and granted city summary judgment on taxpayer's other claims. Taxpayer appealed.

The Court of Appeals held that:

- City's power to levy a business license tax under statute governing the powers conferred upon municipalities was not limited by the meaning of the term "gross income," as used in the remainder of the statute;
- Taxpayer's gross income for business license tax purposes constituted the total revenue of his business, before deducting expenditures for any purpose;
- On appeal to the Circuit Court from decision of city council regarding computation of gross income under business license tax ordinance, any evidence of animus that existed between taxpayer and city employees was irrelevant in determining the meaning of gross income under the ordinance;
- Affidavit of law professor offered by taxpayer on appeal to the Circuit Court was inadmissible because it constituted nothing more than a legal argument;
- City council's refusal to allow taxpayer to participate in appellate hearing with regard to appeal from business license tax assessment, and city's decision to withhold water service until taxpayer paid past due business license tax, did not prejudice defendant, as required to support due process claim; and
- No evidence existed to demonstrate that city singled out taxpayer for disparate and arbitrary tax treatment, and shut off the water supply to his properties in an attempt to force him to capitulate to city's position in a business license tax dispute.

City's power to levy a business license tax under statute governing the powers conferred upon municipalities was not limited by the meaning of the term "gross income," as used in the remainder of the statute. The only limitation on the broad grant of power was that the ordinance could not be inconsistent with the constitution or general laws of the state, and taxpayer challenging city's interpretation of "gross income" made no argument explaining how the ordinance was inconsistent with the constitution or general laws.

Notwithstanding city ordinance's later explanation that gross income for business license tax purposes shall conform to the gross income reported to the State Tax Commission and that gross income may be verified by the inspection of state and federal tax returns, taxpayer's gross income for business license tax purposes constituted the total revenue of his business, before deducting expenditures for any purpose, and thus, the term "gross income" applied to the total sale price of any real property, rather than merely to the business's gain.

On appeal to the Circuit Court from decision of city council regarding computation of gross income under business license tax ordinance, any evidence of animus that existed between taxpayer and city employees was irrelevant in determining the meaning of gross income under the ordinance.

On appeal to the Circuit Court from decision of city council regarding computation of gross income under business license tax ordinance, affidavit of law professor offered by taxpayer was inadmissible because it constituted nothing more than a legal argument.

City council's refusal to allow taxpayer to participate in appellate hearing with regard to appeal from business license tax assessment, and city's decision to withhold water service until taxpayer paid past due business license tax, did not prejudice defendant, as required to support due process claim. Because the issue regarding the interpretation of the ordinance was one of statutory construction, and taxpayer was able to raise the issue of water service again in the circuit court, the circuit court, in its appellate capacity, was able to review the issues without deference to the city council's decision.

Trump Infrastructure Plan May Undermine Municipal Market.

President-elect Donald Trump and a Republican-controlled Congress may take steps to make municipal bonds less attractive to investors, potentially undermining a popular tool to finance bridges, roads and other public projects.

Trump is calling for $1 trillion worth of infrastructure spending that would be financed in part through tax credits to investors and construction companies, Frank Shafroth, director of George Mason University's Center for State and Local Government Leadership, told Bloomberg BNA Nov. 29.

"Tax credits to investors insert federal, instead of state/local authority, guidance," Shafroth said. "It risks undercutting the planning of a state or local government."

A further concern for states and local governments is that Trump and Congress may move to tax municipal bonds to pay for credits or tax cuts in other areas. If that happens, expect states and cities to jump into the fray.

"Stated simply, state and local governments will want to preserve the existing rule for tax exemption of municipal bond interest because to eliminate it would increase the cost of borrowing," Charles S. Henck, a Ballard Spahr LLP partner who practices in public finance and tax law, told Bloomberg BNA Nov. 28.

The president-elect's transition team didn't respond to repeated requests for comment.

Trump Advisers

Trump economic advisers question whether state and local governments should be able to issue debt on which the interest is exempt from federal taxes.

Those advisers—private-equity investor Wilbur Ross and University of California at Irvine business professor Peter Navarro—argue that municipal bonds aren't an efficient way to pay for public projects. For one, a percentage of the money goes to the bondholder.

Navarro declined to comment for this story, and Ross, the billionaire who Trump is expected to nominate as commerce secretary, couldn't be reached.

Navarro and Ross, however, authored a paper during the general election campaign explaining problems with tax-exempt bonds and outlining alternative methods Trump is considering.

Private investment and federal tax credits could serve as a “critical” supplement to existing financial programs, public-private partnerships and Build America Bonds, the paper said.

Shafroth, however, said that a federal plan of private investment and tax credits may fail to take into account that states and local governments—unlike the federal government—have capital-planning processes and capital budgets that could be disrupted.

Cowboys, ‘Big Dig.’

When investors buy municipal bonds, they are lending a local or state government money for a fixed period of time, often to pay for roads, schools and other construction projects.Arlington, Texas, for example, is paying off $300 million in bonds used to finance AT&T Stadium, home of the Dallas Cowboys. In Massachusetts, the governmental entity known as MassPort continues to pay for the “Big Dig,” a $24 billion project that placed Interstate 93 under the city of Boston.

In exchange for an investment, the local or state governments pay the investor interest throughout the term of the bond. Currently, interest isn’t taxable.

The investor is also entitled to the principal of the bond.

Spurred to Act

Generally, states don’t involve themselves in Washington tax debates when Congress moves to repeal tax breaks or lower tax rates, because a broader tax base for the federal government means a broader tax base for states, Joe Henchman, vice president of legal and state projects at the Tax Foundation, told Bloomberg BNA Nov. 22.

But eliminating the bond interest exemption could make bonds—a favorite method of paying for large, expensive projects—less attractive to investors.

If the exemption is “on the table, states may get directly involved in the debate,” Henchman said.

Bloomberg BNA

By Che Odom

November 30, 2016

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Progressive Think Tank: Trump’s $1 Trillion Infrastructure Plan ‘Shovels Money at Wealthy Investors’

President-elect Donald Trump’s ambitious plan to raise $1 trillion for infrastructure is a boondoggle that would line the pockets of wealthy investors while not meeting the need for infrastructure repair or improvement in much of the country, according to an analysis released Thursday by a progressive think tank.

Trump’s plan “shovels money at wealthy investors instead of solving real infrastructure challenges,” according to a white paper from the Center for American Progress.

The paper figures to be the first salvo in a lively debate if Trump follows through on his promise to make refurbishing the nation’s roads, bridges and transit systems a centerpiece of his administration, coupling it with his vow to put unemployed middle-class Americans back to work.

“It’s really a huge failure because it just doesn’t deliver on what the actual needs are out there,” said Kevin DeGood, the report’s author. “These really complicated deals for which contracts [with private investors] can be beneficial only apply to one-half of 1 percent of the need that is out there.”

Trump’s transition team did not respond when forwarded a copy of DeGood’s report for comment.

DeGood is director of infrastructure policy at the center, which was founded and led by John Podesta until he resigned to become chairman of Hillary Clinton’s presidential campaign.

The challenge is a simple one: Investors want a return on their money, and very few transportation projects provide one. Tolls can be imposed on selected roads and bridges, but the vast majority of them offer no opportunity to recoup investment.

“That would be a very rude shock to a lot of people who voted for Donald Trump if they suddenly found that the rural roads in Nebraska or Indiana — the interstate highway, which they paid for and they’re still paying gas taxes — now they have to pay a toll on top of that?” said Rep. Peter A. DeFazio (Ore.), the ranking Democrat on the House Transportation Committee. “They probably wouldn’t be happy.”

The Congressional Budget Office said last year that just 26 private-investment projects were completed or underway nationwide.

The Trump plan would give private investors an 82 percent tax credit to put money into projects. Trump said his plan would lead to up to $1 trillion worth of new projects, but simply lowering the cost of money with tax credits to investors is unlikely to unleash a new round of big-ticket projects, because states already have access to the municipal bond market.

According to Trump, his proposal would play a central role in funding $1 trillion in projects without draining taxpayer dollars lost by offering the tax credit incentives. That’s because, he said, the tax revenue would be recouped by taxing the wages of people put to work on the projects and from taxes paid by contractors hired to do the work.

DeGood’s paper says: “The Trump plan calls for spending as much as $137 billion from the federal treasury in the form of tax credits to wealthy Wall Street investors. This massive subsidy would lower the cost of equity capital to a level roughly equivalent to municipal bonds.”

In an interview as his analysis was released, DeGood said the lack of sufficient tax dollars, not a need for financing, was the cause of the failure to address infrastructure needs.

“If just having access to debt at 3 percent were all that project sponsors needed to kick off big projects, then that would have happened already,” he said. “We’re in the lowest cost financing universe that we’ve been in since World War II, and yet we don’t see explosive growth in construction activity because it’s a lack of tax revenue, not a lack of access to debt.”

The second part of the Trump plan involves repatriation, a much-talked about idea to lure home $2.5 trillion in cash held overseas by U.S. corporations. Trump has proposed reducing the rate companies would pay to bring the money home to 10 percent from 35 percent. Those companies then could invest slightly more money in infrastructure projects, gain the 82 percent tax credit and effectively erase that 10 percent tax.

The Washington Post

By Ashley Halsey III

December 1

New Center for American Progress Brief Shows How Trump's Infrastructure Proposal Is Fatally Flawed.

Washington, D.C. —(ENEWSPF)–December 1, 2016. President-elect Donald Trump's fatally flawed infrastructure proposal enriches Wall Street investors while passing the bill to middle-class Americans in the form of high tolls and other user fees, a new issue brief from the Center for American Progress explains. In the place of actual federal spending on critical projects, President-elect Trump has pushed the idea of authorizing a pool of tax credits that would flow to equity investors in large public-private partnership, or P3, deals. These project debts would be repaid by tolls and other fees levied on the people and businesses that use the new facilities.

"Trump's infrastructure plan, which is built on tax credits for Wall Street, is not a plan for America because it would do nothing for the vast majority of Americans," said Kevin DeGood, Director of Infrastructure Policy at CAP.

As CAP's brief explains, Trump's plan suffers from a number of major flaws:

The plan would push state and local governments to use equity capital that can cost 300 percent to 500 percent more than capital raised through traditional municipal bonds. The primary challenge facing state and local governments with regard to infrastructure financing is not access to credit but a lack of tax revenues to repay project debts. The Trump plan calls for spending as much as $137 billion in the form of tax credits designed to lower the cost of equity capital to a level roughly equivalent to municipal bonds. As the massive $3.7 trillion municipal bond market already provides project sponsors with access to low-cost financing, these credits only enrich elite investors rather than helping build needed projects.

The plan would provide no support for thousands of critical maintenance and reconstruction projects. The Trump infrastructure plan does nothing for repair and incremental expansion, which make up the vast majority of critical infrastructure projects. Many of these projects, while necessary for the communities in which they are located, would not be attractive to the elite Wall Street investors toward whom Trump's plan is geared. This includes projects in rural communities and smaller cities and towns.

The plan would raise taxes on middle-class Americans in the form of high-cost tolls and other user fees necessary to satisfy the 10 percent to 14 percent annual returns demanded by equity investors. By using expensive equity capital and a concession model based on tolling and revenue risk transference, Trump's plan would raise the total cost of major projects by more than 30 percent—money that must come from the American taxpayer.

The plan would not meaningfully increase total economic activity, employment, or real

wages. The most likely outcome of Trump's infrastructure plan is little to no net increase in overall construction activity. Assuming the plan is passed in its current form, state and local leaders—who are responsible for planning and building infrastructure projects—would receive zero additional funding from Washington, while Wall Street would receive considerable tax breaks.

In contrast, CAP proposed an infrastructure plan that lays out a comprehensive approach to repairing and expanding the country's infrastructure. CAP's plan not only calls for increasing investment across sectors but also for substantial policy reforms to ensure that federal funds flow to the projects that would generate the greatest economic, social, and environmental return on investment—an approach that would pay dividends for generations to come.

Disruptive Technology in the Muni Bond Market.

If you rummage through the records of the Smithsonian Institution, you'll find that at the dawn of the 1900s, the City of Dayton, Ohio had the most patents per capita for a city its size than any other in America. Not a surprise, really; in its day, Dayton was the epicenter of transformational industry. Along with innovative manufacturing of everything from cash registers to sewing machines, there were several bicycle building businesses. It was from one of those shops where what is undoubtedly one of mankind's greatest inventions took flight.

Fast-forward to these days of transformational technology. The hub that comes to mind is California's Silicon Valley, filled with apps and chips. Mentioning 'transformational technology' in the same sentence as the municipal bond market, the state of Ohio and tax-exempt variable rate debt seems wildly incongruous.

That would be a serious error. With the state of Ohio's recent issue of $32.3 million Series C Capital Facilities Lease-Appropriation Variable Rate Bonds (Aa2-VMIG1/AA-A-1+/AA-F1+) using ClarityBidRate's e-trading platform to reset the rates, this financing uses e-technology in a way that may well completely transform the variable rate securities market.

Variable Rate Bonds In A Nutshell

Given how many investors hold tax-exempt money market funds in their portfolios—the Investment Company Institute (ICI) reports there are nearly 270 retail funds/share-classes with nearly $130 billion in assets—it's surprising how little most investors know about the securities held in those funds. In fact, variable rate debt (VRDO is the abbreviated professional nomenclature) comprises a majority of the investments held in those funds.

Issuers like the state of Ohio borrow using VRDOs for a variety of reasons, such as taking advantage of short-term rates or as part of a larger debt management program. While VRDOs are structured with long maturities, 20 or 30 years, the rates are reset regularly. Customarily, the reset is done weekly, but there are some financings that reset as frequently as daily or as long as semi-annually. When the rate resets, the borrower—in this case, the State of Ohio—is obligated to pay on whatever is the new rate.

Traditionally, the VRDO market revolves around the remarketing agent, who determines what the reset rate is. Almost invariably, the agent is also the underwriter who brought the financing. The reset rate comes from those traders who buy and sell VRDOs off of the firm's short-term debt trading desk.

Utilizing ClarityBidRate's platform, the reset rate is set based on real trades between buyers and sellers directly. The highest bid clearing the last trade sets the rate. There is no remarketing agent.

In effect, the e-trading platform creates a VRDO exchange. ClarityBidRate takes the invisible hand of the market and makes it visible. No longer are VRDO rates dependent on an opaque over-th--counter market, controlled by the vagaries of a few short-term trading desks. On an e-trading platform, orders and trades are clear to everyone. For investors, this transparency translates into efficiency—better pricing, better executions, better liquidity.

Ohio Leads The Transformation

Why would the state of Ohio choose to lead the way for VDROs into the vanguard of an electronic trading platform? Mr. Seth Metcalf, the deputy treasurer for the State of Ohio, explained his rationale for his "faith in innovation." With $492 million of VRDO debt outstanding, Ohio has more than a passing interest in how the rates are set. He outlined the problems in the VRDO market since the Credit Crisis of 2008: banks are not readily extending credit, auction-rate securities are gone and bond insurance is gone—all three previously critical factors in the short-term market. With the numbers to back it up, he demonstrated that, at least for Ohio short-term paper, the market as it currently exists isn't functioning efficiently.

Mr. Metcalf's observations of the positive impact of an e-trading platform for the borrower are spot on: using ClarityBidRate's platform means more competition for the highly rated Ohio paper. For the good citizens of the state of Ohio, this means lower interest costs and fees—something always on the fore of the mind of the Treasurer's office. Mr. Metcalf shrewdly observed that leveraging this technology "democratizes the process." He hoped that others would have the courage to follow suit. Given the solid reputation of the Buckeye State and the billions in tax-exempt VRDOs being issued by municipalities and public authorities, it will undoubtedly garner attention.

The Impact Of Electronic Trading Platforms

Ohio and ClarityBidRate may be leaders in the VRDO e-trading space, but fixed income e-trading platforms are coming into the broader bond market—and with increasing frequency. The 2016 SIFMA Electronic Bond Trading Report details 19 electronic trading platforms, 15 of which entered the space in the past two years alone. However, the report notes, "more platforms support corporate securities than municipals securities." In fact, of all those new platforms, 13 were in corporate bonds. Only two were in municipals—including one platform that entered both markets.

The increase in electronic trading platforms in fixed income is being driven by fundamental market changes. With hundreds of bond funds fighting for performance in a low interest rate environment, every basis point is precious. Correspondingly, portfolio managers are demanding the best execution on their trades from their counter-parties. As never before has market transparency and price discovery been so important.

For the investment banks, this low-rate environment means that short-term desks can't find spread or charge fees sufficient to cover costs, much less create meaningful margin. They are becoming a concierge service rather than a profit center. Then there is the intense regulatory pressure on the market. On one side, the Federal Reserve Bank and Dodd-Frank placed limits on how much capital trading desks can commit. The short-term desks can no longer provide the liquidity for the VRDO market that they had in the past.

On the other regulatory side, the Securities and Exchange Commission issued its own set of money market regulations in October 2016. These came in response to the severe dislocation—and for a time the near complete breakdown—in the tax-exempt variable rate market during the credit crisis.

Among other things, the new SEC regulations permit floating net asset values in money market funds. Gone is the sacrosanct “$1 NAV” and with it the near religious admonition to “never break the buck.” Additionally, the new regs allow funds to impose ‘redemption gates’—meaning a fund manager can restrict a shareholder’s ability to sell shares. The presumed ready liquidity a money market fund traditionally offered an investor is also gone.

Between low rates and regulator changes, some fund managers exited the business altogether. The ICI reports that for Q3-2016 alone, $58 billion left the retail side of these funds, a 31% decline. Even more dramatic is the near elimination of institutional tax exempt money market funds. That asset class had an exit of $38.6 billion—a stunning 89% decline. Barely $4 billion remain in those funds.

With diminished demand for VRDOs from traditional tax exempt money market funds, the municipalities, authorities and nonprofits (who still need to sell this paper), will have to attract investors from outside the municipal bond market—corporate treasurers, sovereign funds, non-domestic banks. These investors, more familiar with the more visible, structured and liquid taxable short term markets, will demand that the short-term municipal bond market offer the same efficiency, transparency and liquidity they are accustomed to in the taxable market. The tax-exempt VRDO market will have to compete with taxable short-term instruments on all of those.

For e-trading platform firms like ClarityBidRate, MarketAxess and others, it couldn’t be better timing. E-trading offers standardization, transparency and liquidity — all of which result in the more efficient markets taxable short-term buyers have come to expect. For the municipal borrower, a more efficient market with more participants should translate into tighter spreads and lower interest rates.

Another benefit of electronic trading for municipal bonds will be the ability to capture significant amounts of trading data. Until recently, munis lacked the ‘big data’ capture other more trade-transparent markets offer. More and better market analysis will help both market participants garner trading efficiencies and regulators craft more effective policy.

Even so, as with any newly emergent technology and market, there are some aspects that need tweaking. Platforms may offer standardization, but there are still some 42 electronic trading and execution protocols across various vendors. There are also differing processes in place on book management and counter-party visibility. However, the market will evolve, and fairly rapidly, to ultimately create uniform best practices.

There are some detractors who prefer having a human element to counter-party with. What will happen if—and when—the market experiences another period of dislocation? How will all these e-trading platforms perform then? It’s a reasonable question and concern. However, keep in mind that during the credit crisis of 2008, having people on the desks did nothing to make the market more liquid or efficient. If anything, it did exactly the reverse.

So how did Ohio do with the ClarityBidRate managed rate resets? Everything went off smooth as silk. The fourth reset was completed on November 30, 2016. Ohio is paying .565% (annualized)—a mere 1 basis point off of the bellwether SIFMA Municipal Swap Index rate for the week. The folks in Ohio’s state Treasurer’s office have got to be smiling.

Barnet Sherman is the Senior Managing Partner of The Tenbar Group, a financial services consulting firm advising on successful strategies to manage the credit risk in municipal bond porfolios.

Forbes

by Barnet Sherman

Dec 2, 2016

SIFMA Warns Fed Basel Capital Standards for Trading Would Hurt Munis.

WASHINGTON – The Securities Industry and Financial Markets Association wants bank regulators to avoid adopting harsh international capital standards for trading that could have a chilling effect on the municipal market and hurt liquidity.

The dealer group made a plea for more flexible standards in a letter it sent to the Federal Reserve Board about the final rule on Minimum Capital Requirements for Market Risk, also known as Fundamental Review of the Trading Book (FRTB), published in January by the Basel Committee on Banking Supervision.

The Fed and other bank regulators are charged with U.S. implementation of the international framework that the Basel Committee adopted, which among other things, is meant to ensure that banks have adequate capital relative to risks on their trading books. SIFMA plans to send similar letters to other bank regulators as well.

Michael Decker, managing director and co-head of munis at SIFMA who authored the letter, said that the FRTB would increase the amount of capital required to trade munis by three to six times the current levels. "The higher costs of holding trading inventory would have a chilling effect on all dealers' ability to trade bonds and would materially erode liquidity in the market," Decker wrote in the letter. The decrease in liquidity would ultimately lead to increased borrowing costs for state and local governments, he added.

"SIFMA is very concerned about the potential effects of significantly higher capital requirements on the municipal market and the potential material harm to liquidity," he wrote. "Past Basel capital regimes have long recognized the lower historical market risk and default probability of municipal securities in rulemaking, and FRTB as drafted would reverse this treatment and potentially penalize trading in municipal securities relative to other asset classes."

The goal of SIFMA's letter, Decker said, is to try to raise concerns with U.S. banking regulators before they get too far along in the process of drafting regulations.

Decker detailed the changes SIFMA would like to see in the two different approaches a bank could take under the framework, the sensitivity based approach (SBA) and the internal model approach (IMA), which allows banks to devise their own model subject to regulatory approval. He called the SBA "the default method for calculating capital charges for securities held by banks or bank-affiliated broker-dealers for trading" and wrote it will likely be what most dealers choose when working to comply.

"Many dealers will need to capitalize municipal security trading using SBA, either because they cannot justify the added administrative cost of implementing IMA or if some IMA requirements, such as the back-testing requirement, themselves prove too difficult to implement," Decker wrote.

The part of the SBA that SIFMA believes would most affect munis is the approach's measurement of default risk. Decker said the approach assumes default risk rates of 0.5% to 6% for investment grade securities, which is more closely aligned with corporate securities and thus much higher than the 0.03% to 0.42% that municipal market participants experience.

“Using risk weights based on corporate default rates would imply that default risk weightings would be 750 times too large for general obligation municipal bonds and 37.5 times too large for revenue bonds,” Decker wrote. He added that the default rate risk, among other parts of the approach, “reflects a lack of attention or a lack of understanding on the part of the Basel committee of the way the municipal market behaves relative to other products.”

SIFMA would also like to see the SBA’s treatment of general interest rate risk (GIRR) altered. GIRR is designed to measure the interest rate risk associated with a bank’s trading portfolio and measures how much more or less volatile a particular security is in relation to general interest rates.

SIFMA is concerned that the currently proposed method of evaluating GIRR would overstate the interest rate risk associated with munis because it would not capture the reduction in risk that banks realize when they hedge their muni positions, such as by shorting treasuries.

Additionally, Decker said SIFMA believes the SBA’s approach to credit spread risk, a separate part of the SBA, also overstates the risk associated with a municipal product. Munis are “a very safe product” in “a very safe market” where there tends to be relatively little volatility associated with changes in credit risk, Decker wrote.

Without SIFMA’s changes, Decker said, banks would need to have roughly seven times more capital for triple A-rated bonds and nine-and-a-half times more capital for those that have a triple B-rating. Even with the changes though, required capital for munis would still be from two to 20 times the current standardized capital requirements, according to Decker. It would be 2.3 times higher for triple-A bonds and 3.6 times higher for those rated triple-B.

Decker also asked the Fed to change some guidelines for the IMA so that it would designate municipal credit risk as a 20-day horizon for investment grade and a 40-day horizon for sub-investment grade instead of the 40-day and 60-day horizons the guidelines currently have, respectively. The liquidity horizons refer to the time required to exit or hedge a risk position without materially affecting market prices in stressed market conditions.

He also raised concerns that the IMA guidelines have a floor default rate probability of 0.3% while many munis have default rates that are much lower than 0.3%.

The Bond Buyer

By Jack Casey

December 2, 2016

SIFMA Submits Comments to the Federal Reserve System on FRTB.

On November 30, SIFMA submitted comments to the Board of Governors of the Federal Reserve System on the effects of the Fundamental Review of the Trading Book (FRTB) framework on municipal securities. The letter reviews potential effects of the FRTB on the municipal securities market and offers suggestions for certain clarifications and changes.

SIFMA Comment Letter

Basel Committee’s Release on the FRTB

MSRB's Mark-Up Disclosure Rule to Take Effect May 14, 2018: Webinar

The Municipal Securities Rulemaking Board (MSRB) today announced the effective date for amendments to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to customer transactions, and Rule G-30, on prices and commissions, to require municipal securities dealers to disclose mark-ups and mark-downs to retail customers on certain principal transactions, and to provide dealers guidance on prevailing market price for the purpose of determining mark-ups and mark-downs and other Rule G-30 determinations. The new disclosure requirements and prevailing market price guidance will become effective on May 14, 2018, approximately 18 months from the date of Securities and Exchange Commission approval of the amended rule. Read the regulatory notice.

The MSRB will host a free educational webinar about the rule changes and guidance on Thursday, January 12, 2017 at 3:00 p.m. to 4:00 p.m. ET. Continuing professional education credit is available.

Register for the webinar.

Muni Volume Remains on Pace for Record Year.

Long-term municipal bond volume remains poised to set an annual record.

Volume dipped 9% in November to $23.87 billion, from $25.39 billion in November of 2015, mostly due to post election shockwaves that hit munis hard, causing yields to balloon. Still, with 11 months down and one to go, year-to-date volume reached $416 billion, meaning $18 billion in December would be enough to surpass 2010’s record $433 billion. At this point last year, volume sat at $375.5 billion.

“It will be close, but I would bet that a new record is set,” said Alan Schankel, a managing director at Janney Capital Markets. “I did not anticipate [we would see a] record until the middle of our exceptionally busy October, so although I am not surprised now, I would not have projected record volume at mid-year.”

After a yearlong series of inflows of investor money into muni funds ended in October, weekly outflows accelerated to a record $3 billion in the week of Nov. 16, according to Lipper FMI. As of Nov. 29, muni yields had climbed as many as 123 basis points from the record lows earlier in the year. Analysts attributed the change to uncertainty over tax policy and the economy after Donald Trump’s unexpected victory in the presidential race on Nov. 9.

“The election has driven the market. We have seen the decline in refundings as the curve has steepened,” said Scott Andreson, director of municipal research for Seix Investment Advisors. “Issuance is down because of the volatility, and what we have seen post-election is a glimpse at what we will see in 2017.”

Refundings, which have been strong for most of the year due to persistent low interest rates, dropped 7.2% to $7.29 billion in 295 transactions, from $7.85 billion in 371 transactions during the same period last year, according to data from Thomson Reuters.

“There will be roughly $40 billion less of bonds that are eligible for refunding next year,” Andreson said. “That plus impending interest rate hikes will put a damper on refunding activity.”

New money sales decreased 20.7% to $10.17 billion in 447 deals from $12.83 billion in 497 deals, while combined new-money and refunding issuance climbed 36.2% to $6.41 billion from $4.71 billion.

Andreson, who is the secretary of the National Federation of Municipal Analysts, said that although new money was down this month due to continuing rising yields, it won’t be down for long.

“New-money issuance is going to increase next year. 2017 will be the year of new issuance rather than refunding, which has been the major story line the past two years,” he said.

Negotiated deals, at $18.07 billion, were higher by 2.9%, while competitive sales decreased by 1.5% to $5.61 billion from $5.70 billion.

Issuance of revenue bonds decreased 7.3% to $15.59 billion, while general obligation bond sales dropped 3.3% to $8.29 billion.

Taxable bond volume was 14% higher at $2.07 billion, while tax-exempt issuance declined by 5.2% to $21.28 billion.

Minimum tax bond issuance slipped to $524 million from $1.12 billion, while private placements sank to $192 million from $2.13 billion. Zero coupon bonds increased to $122 million from $66 million.

Bond insurance dropped 10.7% for the month, as the volume of deals wrapped with insurance dipped to $1.84 billion in 138 deals from $2.06 billion in 126 deals.

Six out of the 10 sectors saw year-over-year gains. Utilities increased 23.7% to $3.41 billion from $2.75 billion, development gained 35.4% to $862 million from $637 million, health care rose 17% to $1.86 billion from $1.59 billion and education and electric power saw modest gains of 0.2% and 4.2%, respectively.

The four sectors in the red all saw at least a 6.8% decrease, with housing suffering the biggest drop to $654 million from $1.72 billion.

As for the different types of entities that issue bonds, only three were in the green: districts, colleges and universities, and local authorities. Districts improved 24.9% to $7.08 billion, colleges and universities more than tripled to $897 million from $253 million and local authorities’ borrowing was up 1.1% to $4.38 billion from $4.33 billion. On the other end of the spectrum, the other six saw at least a 2.2% decrease, led by state governments, which declined 50.7% to $1.03 billion from $2.09 billion.

California remains the top issuer among states for the year to date, followed by Texas, New York, Pennsylvania and Illinois.

Issuance from the Golden State so far this year has totaled $60.81 billion, with the Lone Star State next at $50.41 billion. The Empire State follows with $41.12 billion. The Keystone State is in fourth with $18.94 billion and The Prairie State rounds out the top five with $17.52 billion.

“Tax reform is front and center, as it has been said that we need a lower and simpler tax code,” said Andreson. “Whether that impacts munis it remains to be seen. We would be surprised if there is anything that is passed that takes away issuers’ ability to issue tax exempt bonds, we think that corporate tax reform is more likely but nothing is off the table as of now.”

The Bond Buyer

By Aaron Weitzman

November 30, 2016

[MSRB's Markup Disclosure Requirements to Take Effect in May 2018.]

WASHINGTON – Dealers will have until May 14, 2018 to get ready for requirements that they disclose their markups and markdowns in certain transactions, the Municipal Securities Rulemaking Board announced on Tuesday.

The requirements are the result of MSRB rule changes the Securities and Exchange Commission approved, along with parallel rule changes from the Financial Industry Regulatory Authority, on Nov. 17.

The effective date gives dealers approximately a year and a half to implement the changes necessary to comply with the revised rules. The MSRB had originally recommended a one-year implementation timeline. But dealers complained that they would be facing several other large undertakings during that time period, such as shifting to a two-day settlement cycle from the current three-day cycle, and would have trouble completing everything on time.

Bond Dealers of America said dealers should have been given at least two years to implement the rule while the Securities Industry and Financial Markets Association had pushed for at least three years.

The MSRB will hold a webinar on the rule changes on Jan. 12, 2017.

MSRB chair Colleen Woodell has said that the muni market “will gain an unprecedented level of transparency” when the rule changes become effective.

The changes are to MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The amendments will require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security in an amount that in aggregate equals or exceed the size of the customer trade, to disclose its markups and markdowns in the confirmation it sends the customer. Markup disclosures will have to be given as a total dollar amount and a percentage of the prevailing market price.

There are three exceptions to the rule under which markup disclosure will not be required: an offsetting trade done by a functionally separate trading desk; primary market trades at the list offering price; and trades of municipal fund securities.

The amendments also establish a waterfall of factors for determining prevailing market price, which dealers are to use to calculate their compensation. Dealers initially are to look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They will then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that can be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

The main dealer complaint about the rule changes is that it will be difficult to automate a compliance system to take into account the waterfall of factors, with some saying the regulators do not understand the complexity and cost associated with implementing the changes.

The SEC said in its approval order that the MSRB's changes were reasonably designed to ensure their purpose while limiting the impact of operational challenges for dealers. The commission also concluded that it is feasible for dealers to automate the determination of prevailing market price in accordance with the self-regulator's guidance and that the changes reflect the lowest overall cost approach to achieving a worthy regulatory objective.

Under the rule changes, dealers will not be allowed to label their markups or markdowns on confirmations as "estimated" or "approximate" but can include explanatory language or disclosures on the confirmations to give context or help investors understand how the markups are calculated. The MSRB has also acknowledged that different dealers can reasonably reach different conclusions as to whether securities are similar for use in the prevailing market price determination.

Dealers are allowed to rely on third-party services as part of their reliance on economic models at the bottom of the waterfall. However, the MSRB has said that if a dealer chooses to do that, it still keeps the ultimate responsibility to ensure the fairness and reasonableness of a price and any markup or markdown under the prevailing market price calculation.

The Bond Buyer

By Jack Casey

November 29, 2016

[CDFA Releases Administration Transition Paper.]()

Administration Transition Paper: Unlocking Development Finance Capital in the United States to Create Jobs & Increase Private Investment

Recommendations for the Next Administration to Address and Remove Barriers to Capital Access to Support and Maximize America's Investment in Infrastructure, Energy, Small Business, Urban Communities, Rural Development and Agriculture.

[Read the Transition Paper.]()

Puerto Rico Power Utility Seeks to Extend Debt-Cutting Deal.

- Bond-purchase agreement with creditors expires on Dec. 15
- Company was sued for breaching federal racketeering laws

Puerto Rico's main electricity provider won't meet its deadline to issue the new securities needed to restructure its $9 billion of debt. Instead it is seeking to extend a long-sought resolution with creditors that is viewed as a potential guide for how other Puerto Rico agencies could cut their debt as the government runs out of cash.

Under the agreement struck a year ago, the Puerto Rico Electric Power Authority, the largest U.S. public-power provider, has to issue the new debt by mid-December as part of its bond-purchase agreement with creditors, who agreed to take a 15 percent loss by exchanging their bonds for the new securities. The utility, also known as Prepa, would use a 3.10-cent-per-kilowatt-hour surcharge to back new debt issued as a result of the deal.

The $7 to $8 billion transaction now requires approval from the federal oversight board, appointed under a U.S. rescue law known as Promesa. Javier Quintana Mendez, the utility's executive director, said to a local newspaper El Nuevo Dia that the new issuance will not proceed this year.

"Several of the RSA milestones will not likely be met by December 15," Quintana Mendez said in an e-mailed statement to Bloomberg News, using an acronym for Restructuring Support Agreement, which expires in about two weeks. "As a result, we do not anticipate that Prepa's legacy bonds will be exchanged into new securitization bonds by such date and we are beginning the process of negotiating RSA extensions with Prepa's creditors."

Jose Luis Cedeno, a spokesman for the control board, said members were not immediately available for comment.

Richard Donner, Moody's Investors Service lead analyst for Prepa, said he expects the oversight board to approve the agreement, without amendments.

"We expected it to be moved into next year because this is a very complicated restructuring," Donner said. "The deadline for the end of this year will very likely be extended as all deadlines have been."

Bond insurance companies like MBIA Inc. and Assured Guaranty Ltd. would provide the surety policies that will guarantee repayment in the event of a default. MBIA said the delay doesn't change its views on the agreement. On a Nov. 9 conference call, Chief Operating Officer William Fallon said the restructuring will likely move forward in the first half of 2017.

Robert Tucker, a spokesman for Assured Guaranty Ltd. couldn't immediately be reached for comment. Chief Executive Officer Dominic Frederico said that he expects the board to support the agreement "as currently constituted," according to a Nov. 4 conference call transcript.

The accord is the largest-ever restructuring in the $3.8 trillion municipal-bond market. Puerto Rico has been defaulting on a growing share of its $70 billion debt. Prepa's obligations would be cut by more than $600 million if the bond sale goes through. The utility's next major payment is Jan. 1, when $200 million is due, according to Mendez.

Prepa bonds maturing in 2026 traded Monday at an average price of about 64.75 cents on the dollar for a yield to worst of 10.95 percent, data compiled by Bloomberg show. That price is below the 85-cent recovery rate that investors would receive when they exchange their bonds for the new securities.

Adding to its woes, the electric utility has been sued for violating federal racketeering laws by allegedly accepting fuel oil that didn't comply with U.S. environmental regulations and selling it at a pricier, compliant fuel rate, resulting in $1 billion in overcharges.

The suit concerns suppliers such as Petrobras America, a subsidiary of Brazil's state oil company embroiled in a massive corruption scandal, that allegedly paid kickbacks to Prepa executives. Other defendants such as Shell Trading is appealing a court's decision to reject a motion to dismiss the lawsuit.

Prepa is unlikely to settle the claims in the near term, Brandon Barnes, senior litigation analyst for Bloomberg Intelligence, wrote in a note. "The defendants will likely wait on the outcome of Shell Trading's efforts to secure early dismissal of the entire lawsuit at an appeals court, as well as the next round of motions, before turning to talks."

Brunilda Torres Torres, a spokesperson for Prepa, declined to comment on the lawsuit.

Bloomberg

by Tatiana Darie

November 28, 2016 — 2:30 PM EST November 28, 2016 — 4:55 PM EST

New Jersey Averts Atlantic City Bond Default as Revival Plotted.

- No Garden State municipality has defaulted since the 1930s
- After casino collapse dealt blow, the state took control

By the end of today, Atlantic City will use $2.3 million to cover payments due on its bonds, saving investors from the toll of the seaside casino town's financial collapse.

With New Jersey seizing control of the city's finances to avoid a default, the burden is poised to fall instead on residents, municipal employees and businessmen like John Exadaktilos, the owner of the Ducktown Tavern that's a few blocks from the shuttered Trump Plaza casino. He said his property tax bill this year was $51,000, more than twice what it was over a decade ago, and is set to rise again next year.

"It's becoming harder and harder," said Exadaktilos, 40, who predicts that more local businesses will buckle under the increasing burden. "They're going to close. It's becoming too hard."

Atlantic City is the latest test for New Jersey, which hasn't allowed a local government to default or go bankrupt since the Great Depression — a commitment that's left even its distressed municipalities able to raise money for schools, roads and other public works in the bond market. This stands in contrast to what has been seen in California, Alabama and Michigan, where municipalities resorted to bankruptcy after the most recent recession to escape from debts they could no longer afford.

"Let's say that there was a bankruptcy-type scenario in Atlantic City, the optics would bleed out to other local credits and they would be penalized by the capital markets," said Eric Kazatsky, a municipal credit analyst at Janney Montgomery Scott in Philadelphia. "It would reflect poorly on the current administration if that happened under their watch."

The city of 39,000 residents has been veering toward insolvency since a third of its casinos shut down in 2014 due to the proliferation of legalized gambling on the East Coast, which undercut the city's gambling monopoly. That dealt a blow to its finances, leaving an ongoing budget shortfall of about $100 million, as revenue disappeared and casinos still opened successfully challenged their annual property-tax bills. The Taj Mahal, once owned by President-elect Donald Trump, shut in October.

In May, Governor Chris Christie signed legislation that gave local officials 150 days to draft a plan for Atlantic City's recovery or risk being stripped of their control. Last month, New Jersey rejected the city's plan, saying it failed to take steps sufficient for a turnaround. As a result, the state approved a takeover overseen by former state Attorney General Jeffrey Chiesa, who has the power to seek to break labor contracts, sell off city assets, or oversee a restructuring of Atlantic City's $500 million debt.

On Nov. 9, the state imposed a $241 million budget on the city that boosted the property tax by 15 cents to $1.898 for every $100 of assessed value. New Jersey's Department of Community Affairs said in a statement that Chiesa will take immediate steps to ensure that all debt payments are made on time while working on a long-term solution. Tammori Petty, a spokeswoman for the department, didn't respond to requests for an interview with Chiesa.

Further tax increases or spending cuts will likely be needed, said Marc Pfeiffer, a senior fellow with Rutgers's Bloustein Local Government Research Center.

"I think you've got to start bringing some finality to this process," he said. "If you take a softer approach and try to negotiate, it could take longer and I don't think this administration is necessarily in the mood to negotiate anymore."

Such plans may not go unchallenged. Virginia Darnell, president of the city's white collar union, said workers may file suit to keep employees covered by labor contracts from losing their jobs. City council president Marty Small said that while talks with Chiesa have so far been productive, the city is taking a "wait and see approach."

"You can't just take over Atlantic City and not take over its problems," said Small in an interview. "They're getting a rude awakening. It's easy from the outside to look in and criticize, but they'll see."

While the loss of control has rankled city officials, New Jersey's pledge to cover its debts has triggered a rebound in the price of its bonds, which tumbled as Atlantic City failed to shore up its finances. General obligations due in 2023, which traded for as little as 62 cents on the dollar in early May, sold for 81 cents on Nov. 29 to yield 8.7 percent. The securities were issued in 2013 for 107 cents on the dollar, or a yield of 4.2 percent.
City councilman Frank Gilliam, who criticized the city fiscal recovery plan that was dismissed by the state, said he'd prefer that bondholders ultimately share in the sacrifice, though he's optimistic that New Jersey will revive his town.

"I would love to have the bondholders take a haircut," he said. "We've had residents and businesses carry this burden."

"I like to use the analogy that Atlantic City is the kid that doesn't want to take the cap full of medicine," he said. "Atlantic City has a sickness, and we need to actually be taking the medicine."

Bloomberg

by Katherine Greifeld

December 1, 2016 — 5:00 AM EST

The Rust Belt Needs a Bailout. A Big One.

Trade and immigration restrictions won't bring back the Rust Belt. What might? Consider the transformation of the Sun Belt.

The South used to be the nation's Rust Belt. The devastation of the Civil War rightly gets the headlines, but the devastation didn't end when Sherman marched out of Atlanta. Industrial agriculture had the same impact on the Southern economy that automation and outsourcing have had on the manufacturing economy of the Midwest. In the late 19th century, much of the South consisted of an increasingly uncompetitive agricultural economy and woefully inadequate infrastructure. Those who could leave for other parts of the country, like factory jobs in what we now call the Rust Belt, did.

Many parts of the South continue to struggle to this day, but those that are thriving embraced two things — infrastructure and recruitment. Much of the infrastructure was courtesy of the federal government — programs like the Tennessee Valley Authority during the Great Depression, military bases during World War II and interstate highways later on. But the recruitment was an attitude the New South adopted on its own. By seeking out talent and businesses from the rest of the country and the world, the major metro areas of today's South generated some of the strongest economic growth and most promising labor trends in the country.

The Rust Belt has two main challenges to address — poor demographics and legacy obligations in the form of pension costs and physical infrastructure that needs maintaining. The demographic component is the part it most needs to solve on its own.

One type of institution has figured this out: the region's universities. Last week, in college football, the University of Michigan played Ohio State University in their annual rivalry game. But in some ways it wasn't a clash between Rust Belt foes. Michigan's coach, Jim Harbaugh, was hired from the West Coast. Ohio State's coach, Urban Meyer, was hired from Florida. Both teams have rosters full of increasing numbers of players from regions other than the Midwest. The reason is simple. Youth populations are shrinking in the Midwest, and increasingly the best high school football players are in other parts of the country like the South and the West that still have growing populations. Both universities hired coaches from elsewhere, and both coaches are using the prestige of their universities to recruit the best players in the country, no matter where they're from.

This recruitment isn't just happening on the football field. To address enrollment shortfalls due to dwindling numbers of home-grown students, Midwest universities are recruiting students from all over the world. Two of the eight universities in the U.S. with more than 10,000 international students are in the Midwest — Purdue University and the University of Illinois at Urbana-Champaign.

As a recruitment pitch, the Midwest needs to figure out its message and sell it to the world. As

Midwest urbanist and blogger Pete Saunders noted in a tweetstorm this week, the resurgence of coastal cities began with assets that the cities had all along. Wall Street and media for New York, higher educational institutions for Boston, the federal government for Washington, a unique topography and culture in San Francisco. Similarly, the Midwest has great educational and medical institutions, an incredibly affordable lifestyle that becomes more compelling as housing costs rise on the coasts and in the Sun Belt, plentiful water that could become a competitive advantage because of climate change, and a sense of “rootedness” that many find compelling.

The most influential policy change the federal government could employ to “save” the Midwest is one that would have been unthinkable when Congressional Republicans were battling President Obama — a huge bailout of the Rust Belt’s legacy obligations. Pension costs are eating a higher and higher share of tax revenue in cities like Chicago and states like Illinois. That leaves municipalities less money to spend on ongoing operations and maintenance, let alone infrastructure improvements. Eroding public services not only keep people from moving to the area, but also encourage young people to leave for places with better public services. If President-Elect Donald Trump could persuade Congress to bail out the region, that could the fiscal slate clean and give the Midwest the breathing room to invest in its future.

It took a Nixon to go to China, perhaps it takes a Trump to save the Rust Belt.

Bloomberg View

By Conor Sen

Dec 2, 2016

Conor Sen is a Bloomberg View columnist. He is a portfolio manager for New River Investments in Atlanta and has been a contributor to the Atlantic and Business Insider.

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

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[Yields on Treasury-Backed Muni Bonds Soar to Highest Since 2009.]

- Mutual fund selling creates bargains for pre-refunded bonds
- Bloomberg Barclays Muni Prerefunded Index hits 1.53%

The more than $5 billion exodus from municipal-bond funds in November is creating bargains in an often overlooked corner of the tax-exempt debt market.

An index of municipal bonds that are pre-refunded — or paid off as they come due with the proceeds of Treasuries that are held in escrow — yields 1.53 percent, the highest since July 2009. To meet redemptions, mutual-fund mangers are selling the bonds, which are rated AAA because they’re secured by the income from the federal-government debt.

The selloff triggered by Donald Trump's presidential victory drove state and local-government securities to a 3.46 percent loss in November, the worst month since September 2008, when financial markets seized up after the collapse of Lehman Brothers, according to the S&P Municipal Bond Index.

The Republican's pledge to cut income taxes and boost spending on infrastructure stoked speculation that the Federal Reserve will need to increase interest rates more aggressively to keep inflation from picking up. Tax cuts could also lessen demand for municipal bonds, whose interest payments are exempt from the federal income tax.

Bloomberg Markets

by Martin Z Braun

December 1, 2016 — 2:35 PM EST December 1, 2016 — 2:35 PM EST

Bloomberg Brief Weekly Video - 12/01

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch the video.

Bloomberg

December 1, 2016

Counties Urge Preservation of Tax-Exempt Municipal Bonds.

For over 100 years, municipal bonds have served as a key tool for county and state governments to finance roads, bridges, schools and other facilities while saving taxpayers money.

At a Capitol Hill briefing today, National Association of Counties Executive Director Matthew Chase urged Congress to preserve the tax exemption of municipal bond interest in any potential rewrite of the federal tax code. Removing the interest deduction would increase state and local borrowing costs by over $500 billion, costs that would be ultimately shifted to local taxpayers and potentially result in decreased infrastructure investment.

"Much of the complex infrastructure counties, states and cities deliver can only be delivered through municipal bond financing," said Chase.

Through municipal bonds, state and local governments have invested more than $3 trillion in infrastructure between 2003 and 2012.

For America's counties, it's a substantial portfolio of responsibility, as counties:

- own and maintain 46 percent of the nation's public roads
- own nearly 40 percent of all public bridges

- are involved with nearly a third of the country's transit systems and airports
- operate 91 percent of all local jails, and
- operate 976 hospitals and over 1,500 local health departments.

Additionally, taxing municipal bond interest would violate the principle of sovereign tax immunity — states cannot tax the powers, the operations or the property of the United States, nor how the United States executes its powers, nor can the United States tax either the instrumentalities or the property of the states.

"Municipal bonds are not only a fundamental building block of the federalism system, but they also help to build America's infrastructure," said Chase.

For more information, visit http://www.naco.org/advocacy/action-centers/municipal-bonds

National Association of Counties

Nov. 29, 2016

[Numbers Don't Add Up for Trump's Trillion-Dollar Building Plan.]

Construction stocks soar, but the proposed funding proposal has glaring flaws

"Build it and they will come" worked like a charm in Hollywood. Washington is a different story.

Donald Trump's trillion-dollar infrastructure plan has sent investors piling prematurely into stocks that could benefit. The share prices of building materials companies Vulcan Materials and Martin Marietta Materials both hit all-time highs days after the election while construction-related companies Aecom, Tutor Perini and United Rentals did even better, appreciating between 30% and 40% since Nov. 7.

The reason for skepticism certainly isn't a lack of demand. The American Society of Civil Engineers estimates that simply repairing existing infrastructure in the coming decade would cost more than three times as much as the president-elect's proposed expenditure. The problem is paying for it. The cornerstone of the Trump plan, outlined by proposed Commerce Secretary Wilbur Ross and economist Peter Navarro, is to use tax credits to spur public-private partnerships. This would, in theory at least, be revenue neutral for the federal budget.

Such projects have fared poorly in the past. A 2015 Congressional Budget Office report counted 14 completed highway projects that relied on some form of private financing. Of the eight that have been open for more than five years, half, including projects in Texas, California, and South Carolina, have either declared bankruptcy or experienced a public buyout of the private partners. All relied on toll revenue. They built it, but not enough came.

Equity investors under the Ross-Navarro proposal might still like those odds given the sweeteners it contains, though that confidence might not extend to lenders on the projects. The proposal assumes that $1 trillion of spending would require about $167 billion of private-equity investment that would then receive an 82% tax credit. That would, they calculate, reduce the total cost of financing by 18% to 20%.

On top of that, the authors assume that projects would be cheaper simply because private-sector contractors are more efficient than government builders, even though private contractors already oversee many road and bridge projects today. The authors then calculate that the proposals would be revenue neutral because taxes on the additional wage income plus profits, even at Mr. Trump's proposed 15% corporate tax rate, would roughly equal the outlay. This ignores the impact that the tolls would have on spending by drivers on other goods and services.

Even if their math holds up, toll roads require state or local approval and are typically contentious. Those governments receive about $45 billion in federal highway funding annually and won't take kindly to it being replaced overnight. What is more, the lion's share of highway spending already benefits from indirect federal subsidies.

In 2014, for example, three-quarters of highway spending came from state and local governments that can issue tax-free bonds and have benefited from ultralow interest rates recently. Muni bonds must be attractive to buyers. The required payout has risen since yields on 10-year Treasury notes have risen by half a percentage point since the election.

Muni bonds' tax advantages would be eroded if Mr. Trump lowers the top federal income tax bracket from 39.6% to 33%. Combining the two, all else being equal, required yields on municipal bonds and the cost of debt financing will have risen by about 40%.

Meanwhile, all isn't well with the federal portion of that spending either. The CBO reported in February that the Highway Trust Fund, which is funded by motor fuel taxes, hasn't been able to make promised payments to states since 2008. In order to keep it from running dry, Congress had by that point transferred $143 billion to it from other sources. Bringing the fund back into balance might require a politically toxic 10 cent a gallon increase in gas taxes.

If the rubber on Mr. Trump's infrastructure proposals is slow to hit the road then a reversal of some or all of the gains in construction-related stocks is likely. While fundamentals already were improving for some of them, spending pledges from both presidential candidates created froth. A basket of eight companies that fetched 14.5 times projected earnings for the next 12 months on average at the beginning of 2016 now trades at 18.2 times.

Public-private partnerships seem like an easy way to build infrastructure without borrowing too much. History shows that such plans are harder than they appear.

THE WALL STREET JOURNAL

By SPENCER JAKAB

Updated Nov. 30, 2016 10:34 p.m. ET

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Bond Market Slide Intensifies.

Rise in yields since July has pushed the 10-year Treasury note up by more than 1 percentage point

The worst bond rout in three years deepened Thursday, hammering debt issued in emerging markets and many U.S. states and cities, while sparing large companies the brunt of the impact.

The yield on the 10-year Treasury note rose to a 17-month high, at 2.444%, up from 2.365% Wednesday. Yields rise as bond prices fall.

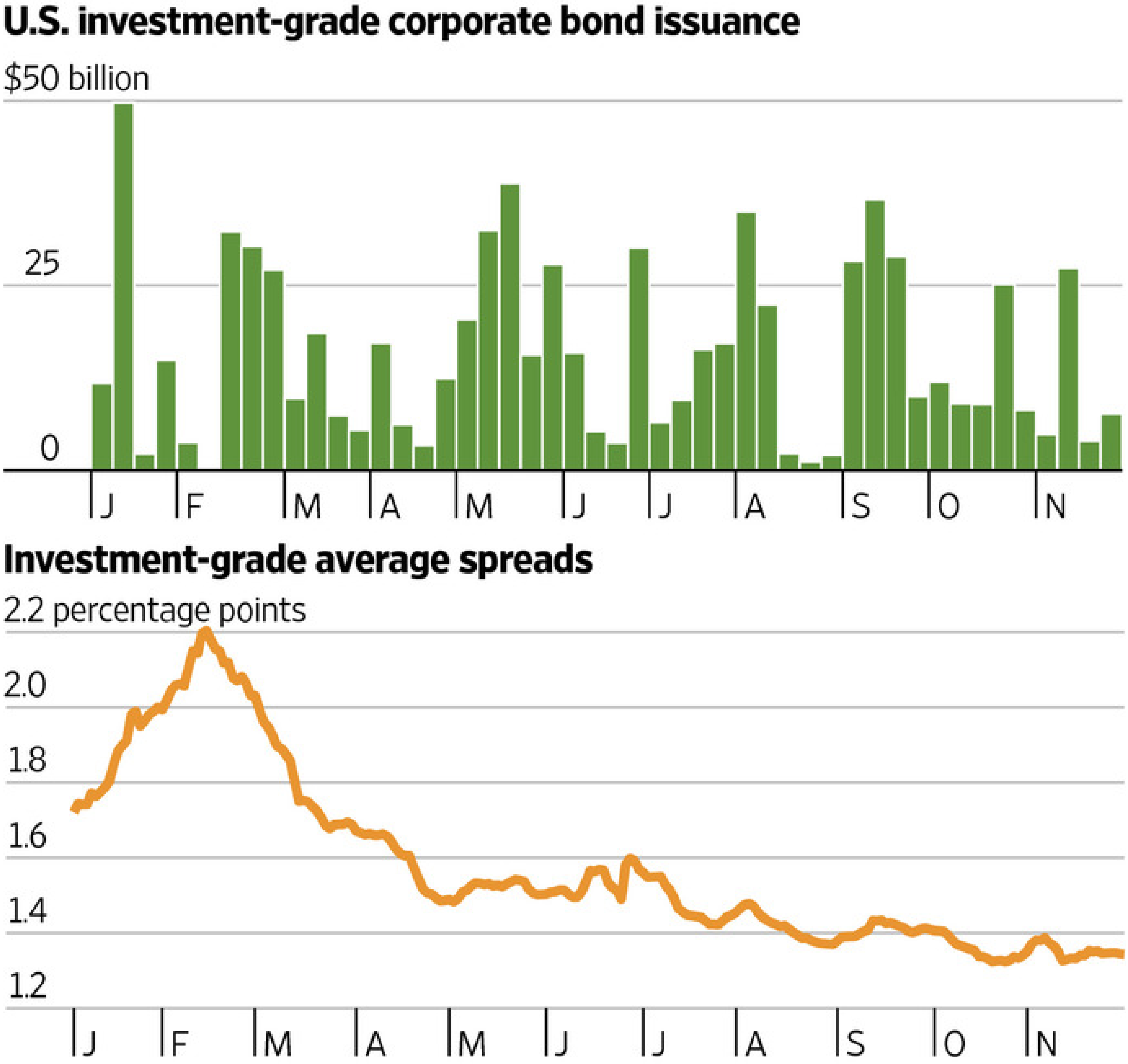
The surge since July has pushed the 10-year yield up by more than 1 percentage point, only the fourth time it has risen so much so fast since 2009. Rising rates can reflect optimism about economic prospects, yet over time they can also slow growth by making borrowing more expensive for consumers and businesses.

Bonds issued by emerging-market countries like Mexico and Turkey have been hit hard in recent weeks, reflecting fears that a strong dollar and the prospect of slower global trade under a Donald Trump administration will hurt companies there. U.S. municipal bond prices also have declined amid concerns that tax cuts could erode the value of the debt’s tax breaks.

American companies are emerging as relative winners in the selloff. Yields are rising off such a low base that few economists or traders are concerned for now about ripple effects through the economy.

Staying the Course

Large companies have continued to sell bonds at a rapid clip since the election, as expectations that the economy will strengthen have driven down the yield difference between corporate and Treasury debt.



Sources: Dealogic (issuance); Bloomberg Barclays (spreads) THE WALL STREET JOURNAL.

The cross currents are the latest sign that Wall Street is placing a broad-ranging bet on an accelerating U.S. recovery. Expectations of higher growth and inflation have sent the Dow Jones Industrial Average to repeated records since Mr. Trump's election Nov. 8, while fueling gains in the U.S. dollar. On Thursday, the Dow industrials rose 68.35 points, or 0.4%, to 19191.93, its 18th record close this year.

Still, higher rates could eventually start weighing on stocks and the economy as companies begin to borrow less for expansion and consumers spend less on homes and other purchases.

"If rates were to move up dramatically higher, it will start to influence risk assets and growth and certainly housing demand," said Rick Rieder, chief investment officer of global fixed income at BlackRock Inc., the world's largest money manager by assets. But "we certainly are not at that level today."

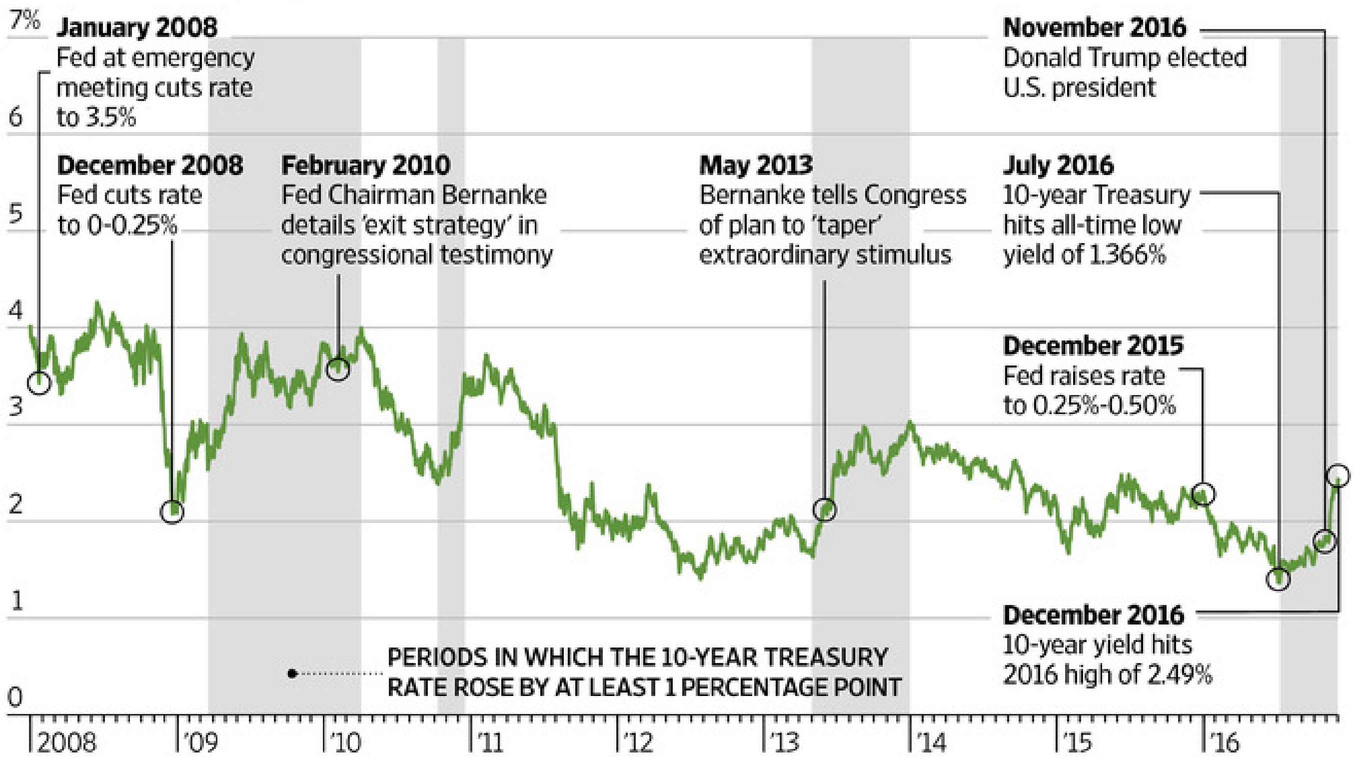
One sign of that optimism: Yields on investment-grade and low-rated corporate debt have risen less than Treasurys. That means the prices of corporate bonds have dropped less than government bonds, in a bet that economic conditions will continue to improve and help ensure firms can pay off debt.

The average spread—or the premium investors demand to buy riskier debt—of investment-grade corporate bond yields to Treasury yields has edged down to 1.34 percentage points on Wednesday from 1.37 percentage points on Nov. 8. Junk-rated corporate bonds have performed even better, with their average yield premium shrinking to 4.93 percentage points from 5.17 percentage points in that time, according to Bloomberg Barclays data.

Past, Prologue

Treasury yields have risen sharply during the fall bond selloff, but other similar episodes in the postcrisis period ended in reversals.

U.S. Treasury 10-year yields



Source: Ryan ALM

THE WALL STREET JOURNAL.

Though they largely took a break during the week of the election, U.S. companies have continued to sell bonds at roughly the same pace as before the election. Over a two-week period starting Nov. 14, investment-grade bond sales totaled $31.4 billion, compared with $33.3 billion over the two-week period between Oct. 24 and Nov. 4—the Friday before Election Day—according to data provider Dealogic.

Issuance has been especially robust from financial companies, including Wells Fargo & Co., which sold $7 billion of bonds Thursday. But nonfinancial companies, including junk-rated borrowers, have also joined the fray, with recent issuers including plane and train maker Bombardier Inc. and timeshare business Hilton Grand Vacations Co.

Mr. Rieder said rising yields will likely be a positive for the economy as long as the increases remain modest, because higher long-term rates boost bank profits and tend to be associated with higher levels of lending, which often feeds through to stronger economic growth.

That process is “helping a tremendous amount of the financial system,” he said.

The selloff in Treasurys has hit emerging markets hardest. Those bonds had only recently began rebounding from a slump spanning more than a year, caused by a decline in commodity markets.

The J.P. Morgan Emerging Markets Bond Global Index Diversified had gained about 14% through September but lost 1.2% in October and 4.1% in November. Investors pulled $1.4 billion out of emerging-market bond mutual funds in November, the first material outflow since February, according to data from Thomson Reuters Corp.’s Lipper unit.

“Emerging markets have been decimated,” said Peter Carril, founder of Patton Hall LLC, an investment adviser to high net worth individuals. “No one wants to touch it.”

Marco Santamaria, a portfolio manager at AllianceBernstein Holding LP, which invests $23 billion in emerging-market bonds, said the firm started selling some of its riskier emerging-market bonds ahead of the U.S. election and is still waiting to dip back in.

The election also sparked a rout in debt sold by U.S. state and local governments, pushing total returns for November in the S&P Municipal Bond Index to its worst month since September 2008, according to S&P Dow Jones Indices. The iShares National Muni Bond exchange-traded fund has lost 4.3% since Election Day.

The selling reflects concerns that a Republican-led Congress and White House will cut taxes, reducing the appeal of the tax-free interest payments that make municipal debt attractive to individual investors, some analysts said. Other concerns include the possibility that Mr. Trump’s proposed increase in infrastructure spending will flood the market with new bonds, pressuring prices.

Several investors said those concerns were overblown, and they viewed the decline as a chance to buy municipal bonds after yields hit record lows earlier this year.

“This panic selling in the municipal bond market seems overdone,” said Phil Blancato, chief executive at Ladenburg Thalmann Asset Management. “This is the first opportunity in a while to buy them cheap.”

The sharp rise in yields reminds some investors of 2013, when worries that the Federal Reserve would end its bond-buying program rattled the bond market. But so far, the outflows that characterized the “taper tantrum” have yet to materialize. U.S. bond mutual funds that target Treasury securities have had 11 consecutive weeks of outflows through Nov. 23. But investors pulled just $175 million over that span, according to Lipper. In one week in November 2013, outflows exceeded $300 million.

“The average retail investor will be slow to change direction in their mutual fund portfolios,” said Tom Roseen, head of research services at Lipper.

THE WALL STREET JOURNAL

By SAM GOLDFARB, MATT WIRZ and AARON KURILOFF

Updated Dec. 2, 2016 7:37 a.m. ET

—Min Zeng contributed to this article.

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MSRB Provides Guidance on Application of Rules to Transactions in Managed Accounts.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today provided interpretive guidance for municipal securities dealers to address questions about the application of certain MSRB rules to municipal bond transactions with registered investment advisers having full discretion to purchase or sell municipal securities on behalf of their investor clients.

"The MSRB is offering this guidance in response to questions from dealers about the applicability of disclosure requirements and other MSRB rules to transactions in managed accounts," said MSRB Executive Director Lynnette Kelly. The MSRB's policy on providing interpretive guidance is available on its website.

Specifically, the guidance clarifies certain obligations for dealers that execute transactions with a registered investment adviser that is classified as a "sophisticated municipal market professional" under MSRB rules and authorized to exercise full discretion on behalf of its clients. The guidance makes clear that, for purposes of complying with the rules addressed in MSRB Rule G-48, dealers do not owe obligations to clients of such registered investment advisers beyond those under Rule G-48, which outlines modified obligations for dealers when transacting with sophisticated municipal market professionals.

Date: December 1, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- IRS Publishes Arbitrage Guidance for Tax-Exempt Bonds.
- How Did Arbitrage "Rebate" Get its Name?: Squire Patton Boggs
- MSRB Reminds Investors of Risks of Rising Interest Rates in Municipal Market.
- MSRB Reminds Dealers of Time of Trade Disclosure Obligations Related to Market Discount Bonds.
- Issuers Took More Time to Complete Financial Audits in 2015.
- TE/GE Announces New Information Document Request Management Process.
- *Tutor Perini Corporation v. Banc of America Securities LLC* – Court of Appeals reverses District Court's grant of summary judgment in favor of broker-dealer and its parent company in investor's action asserting securities fraud claims under federal and state law by alleged misrepresentations and omissions regarding ARS market that eventually collapsed; finds multiple issues of material

fact.

- *New Jersey Alliance for Fiscal Integrity, LLC v. New Jersey Sports and Exposition Authority* – Appeals court authorizes transaction in which the New Jersey Sports and Exposition Authority will issue Redevelopment Area Bonds and Economic Redevelopment Grant Revenue Bonds and then sell those bonds to the Wisconsin Public Finance Authority, which will raise the money to purchase the bonds by issuing its own bonds and servicing the debt on those bonds with the revenue from the New Jersey bonds.
- And finally, If It Walks Like a Duck, Talks Like a Duck, and Looks So Peaceful and Lifelike Like a Duck is brought to you this week by *River's Edge Funeral Chapel and Crematory, Inc. v. Zoning Hearing Board of Tullytown Borough*, in which the court had to explain to the zoning board (presumably slowly and using very small words) that a business entailing "meeting with clients, arrangements, embalming, cremating, dressing of deceased, casketing, and conducting funeral services" is what we here in America call a "funeral home." Common sense clearly not a permitted use in Tullytown Borough.

ANNEXATION - GEORGIA

City of Atlanta v. Atlanta Independent School System

Supreme Court of Georgia.November 21, 2016--- S.E.2d ----2016 WL 6833419

City brought action seeking declaratory judgment that state house bill did not properly continue local constitutional amendment setting forth effects on territory of school systems and ownership of school property emanating from city's annexation of parts of county.

The Superior Court entered judgment declaring that local constitutional amendment was properly continued by the house bill. City appealed.

The Supreme Court of Georgia held that city's action did not present justiciable controversy.

City's action for declaratory judgment, seeking to confirm that state house bill did not properly continue local constitutional amendment setting forth effects on territory of school systems and ownership of school property emanating from city's annexation of parts of county, raised no justiciable controversy. Although three communities in county had submitted annexation petitions to become part of the city, no actual annexation of any of the properties was in question in the action, controversy was founded upon city's proposed annexation, and city simply wanted to know whether it was still subject to local constitutional amendment before it annexed county property.

AUCTION RATE SECURITIES - MASSACHUSETTS

Tutor Perini Corporation v. Banc of America Securities LLC

United States Court of Appeals, First Circuit - November 21, 2016 - F.3d - 2016 WL 6835375

Investor in student loan auction rate securities (ARS) sued broker-dealer and its parent company, asserting securities fraud claims under federal and state law, by alleged misrepresentations and omissions regarding ARS market that eventually collapsed, and asserting various state law claims.

The United States District Court for the District of Massachusetts granted defendants summary judgment. Investor appealed.

The Court of Appeals held that:

- Parent company was not liable for securities fraud as control person;
- Summary judgment was precluded on state securities fraud claim;
- Summary judgment was precluded on federal securities fraud claim;
- Investor waived any objection to summary judgment on federal securities fraud claim based on unsuitability;
- Summary judgment was precluded on state negligent misrepresentation claim;
- Investor waived any argument regarding state intentional misrepresentation claim; and
- Summary judgment was precluded on state unfair business practices claim.

Parent of subsidiary broker-dealer, that allegedly engaged in securities fraud in violation of federal and state securities laws in connection with sales of student loan auction rate securities (ARS) to investor, was not liable as control person, due to actions of two employees of parent and two dual employees of parent and subsidiary who analyzed maximum rate waivers and liquidity risks for deciding which auctions to fail, since investor never in four years of litigation ever alleged any facts indicating that parent actually exercised control over subsidiary.

Genuine issues of material fact remained as to whether broker-dealer made material omissions regarding nonviability of auction rate securities (ARS) market during time that broker-dealer was specifically recommending and selling student loan auction rate securities (ARS) to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's securities fraud claim against broker-dealer under Massachusetts law.

Genuine issues of material fact remained as to whether broker-dealer made material omissions regarding nonviability of auction rate securities (ARS) market during time that broker-dealer was specifically recommending and selling student loan auction rate securities (ARS) to investor while market teetered on brink of collapse and whether investor reasonably relied on outdated information that broker-dealer disclosed regarding state of ARS market, thus precluding summary judgment on investor's § 10(b) and Rule 10b-5 securities fraud claim against broker-dealer.

Investor waived any objection to district court's ruling that investor's suitability claim, under § 10(b), against broker-dealer that sold student loan auction rate securities (ARS) to investor was barred due to investor holding non-discretionary brokerage account in which investor directed all investments made, since investor cited no authority to support its view that nondiscretionary account holders could bring unsuitability claims and investor's appellate pleadings failed to offer any convincing explanation of what law should be, assuming investor found no on-point authority.

Genuine issues of material fact remained as to whether broker-dealer made material omissions regarding nonviability of auction rate securities (ARS) market during time that broker-dealer was specifically recommending and selling student loan auction rate securities (ARS) to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's claim against broker-dealer for negligent misrepresentation under Massachusetts law.

Investor waived any arguments regarding dismissal of intentional misrepresentation claim against broker-dealer, under Massachusetts law, in connection with auction rate securities (ARS) market during time that broker-dealer was specifically recommending and selling student loan auction rate securities (ARS) to investor while market teetered on brink of collapse, where investor's opening appellate brief suggested district judge erred in dismissing claim, but investor's appellate papers never explained how that was so.

Genuine issues of material fact remained as to whether broker-dealer acted unfairly or deceptively by making material omissions regarding nonviability of auction rate securities (ARS) market during time that broker-dealer was specifically recommending and selling student loan auction rate securities (ARS) to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's claim against broker-dealer for unfair business practices in violation of Massachusetts law.

BONDS - NEW JERSEY

New Jersey Alliance for Fiscal Integrity, LLC v. New Jersey Sports and Exposition Authority

Superior Court of New Jersey, Appellate Division - October 3, 2016 - Not Reported in A.3d - 2016 WL 5759377

The New Jersey Alliance for Fiscal Integrity LLC, (NJAFI) appealed from four Resolutions issued by the New Jersey Sports and Exposition Authority (NJSEA) approving issuance of bonds to provide a portion of the financing for the American Dream development in the Meadowlands to be built by intervenor Ameream LLC.

In summary, the NJSEA plans to issue two types of limited obligation bonds, which will be backed exclusively by two revenue sources: redevelopment area bonds (RAB bonds), backed by payments in lieu of taxes (PILOTs) which Ameream will begin paying once it completes the project; and Economic Redevelopment Grant revenue bonds (ERG bonds), backed by an Economic Redevelopment Grant which the Economic Development Authority (EDA) has awarded to Ameream and the proceeds of which Ameream will in turn sell to the NJSEA. Once the RAB and ERG bonds are sold, the PILOTs and ERG grant money, respectively, will provide the sole source of funding to pay the bondholders a return on their investment

The NJSEA will sell both the RAB bonds and the ERG bonds to one buyer—the Wisconsin Public Finance Authority (PFA or Wisconsin PFA) — in a negotiated sale. The financing documents anticipate that the PFA will pay the NJSEA approximately $300 million for the ERG bonds and $800 million for the RAB bonds. The PFA will obtain the purchase money by issuing and selling its own bonds (PFA bonds) to the public, in Wisconsin. The PFA intends to use the revenue it earns from the RAB and ERG bonds to pay the debt service on the PFA bonds. However, each State's agency is issuing its own bonds. Nothing in the NJSEA bond documents obligates the NJSEA to guarantee or pay the PFA's debt service on the PFA's bonds.

NJAFI raised a series of arguments challenging the issuance of both bonds. It contends that the NJSEA'a actions are ultra vires, violate "legislative policies," and are arbitrary; the RAB bond resolutions unlawfully pledge the PILOTs as "collateral for another state's debt issue"; the NJSEA cannot issue the ERG bonds because it cannot issue the RAB bonds; the Stimulus Act does not permit the securitization of ERG grant payments; issuance of the ERG bonds violates the Debt Limitation Clause unless approved by the voters; the NJSEA lacks statutory authority to issue the ERG bonds; the NJSEA Resolutions violate Executive Order 26 because they contemplate a private sale of the bonds to one buyer; and the RAB bond resolutions differ materially from the financial transaction approved by the Local Finance Board (LFB).

The Appeals Court affirmed, holding that:

- NJAFI's argument that – because the Wisconsin PFA will use the proceeds from the New Jersey bonds to pay the Wisconsin PFA bondholders a return on their investment – this means that the

NJSEA is “in effect” pledging the PILOTs as collateral for the Wisconsin PFA bonds mischaracterizes the financing;
- The fact that a purchaser of NJSEA bonds intends to use those bonds as collateral for some economic project of its own does not transform the NJSEA into the issuer or guarantor of the bond purchaser’s financial project;
- Because the ERG bonds are secured solely by the ERG grant revenue and the bondholders have no recourse against the State, the bonds are not “contract bonds” and their issuance would not violate the Debt Limitation Clause; and
- The ERG bonds will be issued pursuant to the NJSEA Law, N.J.S.A. 5:10-10, which authorizes the NJSEA to issue bonds or notes for any of its corporate purposes, including the redevelopment project to be financed here.

MUNICIPAL GOVERNANCE - NEW MEXICO

Felix v. City of Bloomfield

United States Court of Appeals, Tenth Circuit - November 9, 2016 - F.3d - 2016 WL 6634870

City residents brought action against city, alleging that it violated First Amendment by allowing placement of Ten Commandments monument on lawn in front of municipal building complex.

The United States District Court for the District of New Mexico entered judgment in favor of residents. City appealed.

The Court of Appeals held that:

- Residents had Article III standing;
- Monument was government speech regulated by Establishment Clause; and
- City’s conduct in authorizing continued display of Ten Commandments monument endorsed religion, in violation of the Establishment Clause.

City residents’ unwelcome encounters with Ten Commandments monument satisfied injury-in-fact requirement for Article III standing to bring Establishment Clause challenge to placement of that monument on lawn in front of municipal building complex. Residents had direct contact with the monument, as it sat outside main entrance of building, which included department where residents paid utilities bills, and monument was visible from major roadway, residents were polytheistic Wiccans who testified that they were offended and felt excluded by the Ten Commandments, and residents testified that they avoided the building, but still saw it from the roadway several times per week.

Display of granite Ten Commandments monument on front lawn of municipal building complex was government speech regulated by Establishment Clause, not private speech. Even though monument was funded by private donations, monument was permanent object located on government property, as it was 3400 pounds, with a foundation of steel, concrete, and wood embedded 14 inches in the ground.

City’s conduct in authorizing continued display of Ten Commandments monument on lawn in front of municipal building complex had primary or principal effect of endorsing religion, and thus, violated Establishment Clause. Text of Ten Commandments was unmistakably religious, the monument was located directly in front of principal municipal building, and was clearly visible to onlookers or persons driving by on roadway, funding for monument was initially sought exclusively through local churches, dedication of monument began with invocation by deacon of local church, other parts of dedication contained religious references, city residents brought action challenging monument only seven months after it was erected, and city's curative efforts, such as including disclaimer on monument and later adding secular items to the display, were insufficient to negate city's religious endorsement.

MUNICIPAL ORDINANCE - NEW YORK

People v. Stephens

Court of Appeals of New York - November 21, 2016 - N.E.3d - 2016 WL 6825633 - 2016 N.Y. Slip Op. 07819

Defendant was convicted, after a bench trial of third-degree criminal possession of a controlled substance, fifth-degree criminal possession of a controlled substance, and sound reproduction in violation of city's noise control ordinance. Defendant appealed.

The Supreme Court, Appellate Division, affirmed. Leave to appeal was granted.

The Court of Appeals held that city's noise control ordinance, prohibiting the creation of "unnecessary noise," was not unconstitutionally vague under due process principles, as applied to defendant.

City's noise control ordinance, prohibiting the creation of "unnecessary noise," was not unconstitutionally vague under due process principles, as applied to defendant. Ordinance defined "unnecessary noise" based on an objective standard involving a reasonable person of normal sensibilities, ordinance was tailored to specific context of creating unnecessary noise by playing a car radio or similar device that could be heard at least 50 feet away when being operated in a motor vehicle on a public highway, and it had become common knowledge what was usual noise in operating a car radio or other sound production device.

DEEDS - NORTH CAROLINA

Town of Belhaven, NC v. Pantego Creek, LLC

Court of Appeals of North Carolina - November 15, 2016 - S.E.2d - 2016 WL 6694585

Town, civil rights organization, and others brought action against operators of closed hospital for breach of contract, declaratory judgment, fraud, unfair and deceptive trade practices, breach of fiduciary duty, and civil rights violations.

After case was designated as exceptional, operators filed motion to dismiss for failure to state a claim. The Superior Court granted the motion, and town and others appealed.

The Court of Appeals held that:

- Land which town had deeded for construction and operation of hospital did not revert to town after hospital was closed
- Under mediation agreement, operator had right to close hospital if, by certain date, community board had not legally assumed responsibility for hospital's operation;
- Plaintiffs were not parties to or third-party beneficiaries of agreements and deeds among hospital

operators;
- Plaintiffs lacked standing to bring unfair and deceptive trade practices claims;
- Civil rights organization lacked standing to bring claim for violations of civil rights statutes; and
- Court lacked jurisdiction consider whether plaintiffs were denied right to a fair and impartial hearing through designation of case as an exceptional case.

Under deed, land which town had deeded to grantee to construct and operate a hospital did not revert to town after hospital was closed, even if town had a public purpose in mind at the time it conveyed the property, where deed provided that grantee was to have and hold the property “in fee simple,” and deed did not contain any express reversionary interest.

Town, as grantor of hospital land, could not maintain breach of contract and declaratory judgment claims against grantee and it successors based on alleged breach of deed’s hospital use restrictions, where deed conveyed title in fee simple, and grantee held property for well over 30 years.

Under mediation agreement with town and civil rights organizations, hospital operator had right to close hospital if, by certain date, community board had not legally assumed responsibility for hospital’s operation, and thus operator’s act in closing hospital on that date after board failed to assume control did not constitute fraud, despite claim that operator had secret plans to close and demolish hospital and build new clinics nearby.

Town and civil rights organizations were not parties to or third-party beneficiaries of agreements and deeds among hospital operator and successors, and thus did not suffer any damages from those agreements as required to have standing to maintain fraud claim against operator and successors following closure of hospital; agreements expressly provided that they were not intended to be third-party beneficiary agreements.

Hospital operators did not commit any fraud or deception, as required for town and others to maintain claim for unfair or deceptive trade practices, when they closed hospital pursuant to mediation agreement with town which called for closure of hospital if community board failed to take over operation of hospital by certain date.

Town and civil rights organizations which had entered into mediation agreement with hospital operator which allowed closure of hospital if community board did not assume operation of hospital by certain date lacked standing to bring unfair and deceptive trade practices claim against operator, where there was no business relationship between plaintiffs and operator, plaintiffs were not customers of operator, and plaintiffs did not plead any injury in fact beyond the mere abstract allegation that “Plaintiffs suffered actual injury as a result” of operator’s conduct.

Civil rights group lacked standing to bring action against operator of closed hospital for violations of civil rights statutes, as statutes only granted individually aggrieved persons or the North Carolina Human Relations Commission standing to bring an action.

Court of Appeals lacked jurisdiction consider whether plaintiffs were denied right to a fair and impartial hearing when the Chief Justice of the Supreme Court designated case as an exceptional case, as Superior Court had no jurisdiction to overrule a command of the Supreme Court and jurisdiction of the Court of Appeals was derivative of the Superior Court’s jurisdiction.

LIABILITY - NORTH DAKOTA

Frith v. Park Dist. of City of Fargo

Supreme Court of North Dakota - November 16, 2016 - N.W.2d - 2016 WL 6778246 - 2016 ND 213

In-line skater brought action against city's park district and Insurance Reserve Fund, seeking monetary damages for injuries she allegedly sustained while in-line skating on park pathway.

The District Court dismissed complaint, and skater appealed.

The Supreme Court of North Dakota held that:

- Three-year statute of limitations applied to skater's tort claims against district;
- Date when skater tripped on soft patching material used to fill a crack in the park pathway was when skater became aware of her injuries so as to trigger running of three-year statute of limitations; and
- District court did not have authority under civil procedure rule, governing extensions of time, to extend three-year statute of limitations.

Three-year statute of limitations applied to in-line skater's tort claims against city park district, alleging that she was injured when she tripped on soft patching material used to fill a crack in the park pathway. Although skater contended that six-year personal injury statute of limitations applied because a private contractor applied the patching material that was responsible for skater's injuries, skater sued the park district, which was political subdivision, and not the contractor.

Pursuant to discovery rule, date when in-line skater tripped on soft patching material used to fill a crack in the park pathway was when skater became aware of her injuries, so as to trigger running of three-year statute of limitations on skater's tort claims against city park district.

District court did not have authority under civil procedure rule, governing extensions of time, to extend three-year statute of limitations on in-line skater's tort claims against city park district; civil procedure rule did not apply to periods of time which were definitely fixed by statute.

ZONING - PENNSYLVANIA

River's Edge Funeral Chapel and Crematory, Inc. v. Zoning Hearing Board of Tullytown Borough

Commonwealth Court of Pennsylvania - November 16, 2016 - A.3d - 2016 WL 6777976

Proposed operator of funeral home and crematory filed appeal from borough's zoning hearing board's order affirming a zoning officer's decision to deny its application for a use and occupancy certificate to operate a funeral home.

The Court of Common Pleas reversed the board's order. Borough appealed.

The Commonwealth Court held that:

- Proposed development would constitute a "funeral home" under zoning ordinance permitting such development, and
- Principal use of property under development would be a funeral home, which was permitted under zoning ordinance, rather than a crematory, which was permitted as an accessory use but not as a principal use.

Proposed development on property would constitute a "funeral home" under zoning ordinance permitting such development. Development would provide services a funeral home offers, including a service, a viewing, and transportation of the body, and would employ individual required to offer licensed funeral services to the public.

Principal use of property under development would be a funeral home, which was permitted under zoning ordinance, rather than a crematory, which was permitted as an accessory use but not as a principal use. Crematory would only constitute 12% of total building area, large portion of building was dedicated to funeral home related services, property met requirements to be a licensed funeral home, and fact that earlier applicant with related ownership had sought to operate only crematory on site did not establish that current application was a pretext.

IMMUNITY - PENNSYLVANIA

Brewington v. City of Philadelphia

Commonwealth Court of Pennsylvania - November 14, 2016 - A.3d - 2016 WL 6677925

Parent, as guardian for her son, brought action against school district alleging negligence arising out of injuries to son when he hit his head on a concrete wall during a relay race in gym class.

The Court of Common Pleas granted school district's motion for summary judgment. Parent appealed.

The Commonwealth Court held that:

- Genuine issue of material fact existed as to whether school gymnasium was unsafe for its intended and regular use, and
- Parent's claims alleged an injury caused by school district's negligence in its care, custody, and control of real property, overruling *Rieger v. Altoona Area School District*, 768 A.2d 912.

Genuine issue of material fact existed as to whether school gymnasium, which had a concrete floor and concrete walls but no safety mats on walls, was unsafe for its intended and regular use, as required by the statutory real property exception to local government tort immunity, thus precluding summary judgment in negligence action arising from student tripping during a relay race in gym class and hitting his head on the wall.

Student's claims of a "defective and dangerous condition of the premises" and school district's failure "to conform to" its "own specifications and standards as to the design" of the school gymnasium, which had a concrete floor and concrete walls but no safety mats on walls, were claims alleging injury caused by school district's negligence in its care, custody, and control of real property, as required by the statutory exception to local government tort immunity in action arising from student tripping during a relay race in gym class and hitting his head on the wall; overruling *Rieger v. Altoona Area School District*, 768 A.2d 912.

TAX - WEST VIRGINIA

Matkovich v. CSX Transportation, Inc.

Supreme Court of Appeals of West Virginia - November 16, 2016 - S.E.2d - 2016 WL 6833988

Tax Commissioner appealed decision of the Office of Tax Appeals (OTA) which determined that taxpayer that paid motor fuel use tax was entitled to sales tax credit for the sales taxes it paid on motor fuel purchased from the cities, counties, and other municipalities of other states.

The Circuit Court affirmed. Tax Commissioner appealed.

The Supreme Court of Appeals held that dormant Commerce Clause required that taxpayer, which paid motor fuel use tax, receive sales tax credit for the sales taxes it paid on the motor fuel both to other states and to the subdivisions of other states.

Both the motor fuel use tax imposed on taxpayer and the corresponding sales tax credit allowed for sales taxes that taxpayer paid on motor fuel purchased from other states had substantial nexus with the State, as required for use tax and sales tax credit to comply with the dormant Commerce Clause. Taxpayer operated interstate rail transportation service in the State and purchased fuel outside the State which it used in its operations in the State.

Motor fuel use tax imposed on taxpayer that purchased motor fuel from other states which it used in its interstate rail transportation operations in the State was fairly apportioned, as required for use tax to comply with the dormant Commerce Clause. Use tax was calculated with specific reference to the amount of motor fuel that taxpayer used in the State, and use tax charged to taxpayer directly correlated to the fuel that it used for the miles it traveled within the State.

Dormant Commerce clause required that taxpayer, which paid motor fuel use tax, receive sales tax credit for the sales taxes it paid on the motor fuel both to other states and to the subdivisions of other states. Disallowance of sales tax credit for sales taxes imposed by subdivisions of other states would produce total tax burden on interstate commerce that was higher than purely intrastate transaction, and allowing sales tax credit only for sales taxes paid to other states would unfairly discriminate against interstate commerce.

TAX - ILLINOIS

Village of Arlington Heights v. Pappas

Appellate Court of Illinois, First District, Sixth Division - November 10, 2016 - N.E.3d - 2016 IL App (1st) 151802 - 2016 WL 6651591

Village appealed order of Circuit Court granting summary judgment in favor of the county treasurer on the village's declaratory judgment action and finding that the treasurer had the authority to seek repayment from the village for refunds the treasurer made to taxpayers of certain incremental tax payments received by the village during the lifetime of two tax increment financing (TIF) districts.

The Appellate Court held that legislature authorized treasurer to be reimbursed by village for her post-TIF refunds of protested property taxes.

Legislature authorized county treasurer, in Property Tax Code, to be reimbursed by village for her post-tax increment financing (TIF) refunds of protested property taxes. Although legislature never set forth a reimbursement mechanism specifically for post-TIF refunds, it did set forth a general mechanism for the refunding and reimbursement of overpaid taxes in the Code, and thus, policy adopted by treasurer, in making the post-TIF refunds out of Class A fund and then seeking reimbursement from next property taxes collected by village, was consistent with the Code.

TAX - CALIFORNIA

City of San Jose v. Sharma

Court of Appeal, Third District, California - November 3, 2016 - Cal.Rptr.3d - 2016 WL 6520123

City petitioned for writ of mandate to compel county to give city tax increment revenue from county's ad valorem tax on real property. County cross-petitioned for writ of mandate.

The Superior Court ruled that city was entitled to the tax increment portion of the tax proceeds to put toward the winding down of city's former redevelopment agency, but that tax increment revenue not needed to pay bond debt of the former redevelopment agency was subject to a passthrough agreement requiring the revenue to be passed through to the county. City and county appealed.

The Court of Appeal held that:

- Tax increment revenue from county's ad valorem tax on real property had to be used to pay obligations of city's former redevelopment agency, and
- The amount necessary to service former redevelopment agency's bond debt could be deducted from the amount that passed through to the county.

Under the constitutional provision stating that tax increment "shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency," tax increment revenue from a county's ad valorem tax on real property had to be used to pay the obligations of a city's former redevelopment agency, even though the tax was a special tax to finance county's participation in the Public Employees Retirement System (PERS), where the tax increment portion of the special tax had been, for 60 years, a tax on real property within the former redevelopment agency's project area to finance redevelopment in that area.

The constitutional provision stating that tax increment "shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency" prevails over the statute providing that "revenues from any special tax shall be used only for the purpose or service for which it was imposed," since the constitutional provision applies to all ad valorem taxes on real property, without regard to whether the tax is a general or special tax.

City's use of tax increment revenue associated with county's ad valorem tax on real property to pay the obligations of city's former redevelopment agency did not constitute an unconstitutional gift of public funds, since the tax increment revenue never belonged to the county, and since redevelopment in the city was a public purpose of general interest to the county, where the tax increment portion of the retirement levy was collected within the city's former redevelopment agency's project area, by law, for the purpose of paying the obligations of the redevelopment agency.

City's use of tax increment revenue associated with county's ad valorem tax on real property to pay the obligations of city's former redevelopment agency did not violate county employees' vested contractual rights to continuation of retirement benefits or of the funding for such benefits, even though the tax was a special tax to finance county's participation in the Public Employees Retirement System (PERS), since distribution of the tax increment portion of the retirement levy did not prevent the county from paying the required amount to PERS for the county employees' benefits.

Under the statute authorizing deduction of a trust fund deficiency from payment of passthrough funds in the "waterfall" payment schedule for the benefit of the holders of former redevelopment agency enforceable obligations, the amount necessary to service a former redevelopment agency's bond debt could be deducted from the amount that passed through to the county under a contractual passthrough agreement between the county and the former redevelopment agency, and thus tax increment revenue that would have passed through to a county could be used to pay the former redevelopment agency's enforceable obligations listed in the Recognized Obligation Payment Schedule (ROPS), where the passthrough agreement made payment of passthrough funds to the county subordinate to the former redevelopment agency's "debt service payments."

Under the statute authorizing deduction of "funds for servicing bond debt" from payment of passthrough funds in the "waterfall" payment schedule for the benefit of the holders of former redevelopment agency enforceable obligations, the amount that could be deducted from the ad valorem tax revenue proceeds that passed to a county under a passthrough agreement was limited to the amount necessary to service a former redevelopment agency's bond debt.

TAX - SOUTH CAROLINA

Olds v. City of Goose Creek

Court of Appeals of South Carolina - November 16, 2016 - S.E.2d - 2016 WL 6776295

Taxpayer appealed decision of city council regarding computation of gross income under business license tax ordinance, and further asserted claims against city for violation of equal protection, violation of procedural due process, abuse of process, violations of state and federal constitutions, and violation of the South Carolina Freedom of Information Act, against city administrator and city finance director for conspiracy, and against city's department of public works for breach of contract.

The Circuit Court affirmed the city council's decision regarding the meaning of gross income under city ordinance, and granted city summary judgment on taxpayer's other claims. Taxpayer appealed.

The Court of Appeals held that:

- City's power to levy a business license tax under statute governing the powers conferred upon municipalities was not limited by the meaning of the term "gross income," as used in the remainder of the statute;
- Taxpayer's gross income for business license tax purposes constituted the total revenue of his business, before deducting expenditures for any purpose;
- On appeal to the Circuit Court from decision of city council regarding computation of gross income under business license tax ordinance, any evidence of animus that existed between taxpayer and city employees was irrelevant in determining the meaning of gross income under the ordinance;
- Affidavit of law professor offered by taxpayer on appeal to the Circuit Court was inadmissible because it constituted nothing more than a legal argument;
- City council's refusal to allow taxpayer to participate in appellate hearing with regard to appeal from business license tax assessment, and city's decision to withhold water service until taxpayer paid past due business license tax, did not prejudice defendant, as required to support due process claim; and
- No evidence existed to demonstrate that city singled out taxpayer for disparate and arbitrary tax treatment, and shut off the water supply to his properties in an attempt to force him to capitulate to city's position in a business license tax dispute.

City's power to levy a business license tax under statute governing the powers conferred upon municipalities was not limited by the meaning of the term "gross income," as used in the remainder of the statute. The only limitation on the broad grant of power was that the ordinance could not be inconsistent with the constitution or general laws of the state, and taxpayer challenging city's interpretation of "gross income" made no argument explaining how the ordinance was inconsistent with the constitution or general laws.

Notwithstanding city ordinance's later explanation that gross income for business license tax purposes shall conform to the gross income reported to the State Tax Commission and that gross income may be verified by the inspection of state and federal tax returns, taxpayer's gross income for business license tax purposes constituted the total revenue of his business, before deducting expenditures for any purpose, and thus, the term "gross income" applied to the total sale price of any real property, rather than merely to the business's gain.

MSRB Reminds Dealers of Time of Trade Disclosure Obligations Related to Market Discount Bonds.

The Municipal Securities Rulemaking Board (MSRB) today published a regulatory notice to remind municipal securities dealers of their obligations under MSRB Rule G-47 to disclose to their customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. In periods when interest rates rise, municipal bonds may frequently be sold in the secondary market for less than par value at a market discount. The MSRB's notice states its interpretation that the fact that a municipal security bears a market discount is material information that must be disclosed under Rule G-47 to a customer that is not a sophisticated municipal market professional (SMMP). The existence of market discount may have significant tax implications and therefore impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond.

Read the regulatory notice.

P3 Digest for Week of Nov. 21

Powered by P3 INGENIUM, the most comprehensive source for P3 project updates in North America.

Read the Digest.

NCPPP

November 21, 2016

Issuers Took More Time to Complete Financial Audits in 2015.

WASHINGTON – Most state and local governments and their authorities took longer to complete their financial audits in 2015 than they did the year before, likely because of new pension reporting requirements, Merritt Research Services found.

Merritt published its report on audit timing on Monday. The report was written by Richard Ciccarone, president and chief executive officer of Merritt. It compared more than 84,000 audits that encompassed the period between 2007 and 2015 and based its analysis on the time it takes an issuer or borrower to finish and sign its audit after the close of its fiscal year.

The report focused on the audited financials in 16 primary muni credit sectors: local school districts, cities, counties, water and sewer districts, airports, community colleges, dedicated tax entities, hospitals, private higher education, public higher education, retail public power, wholesale public power, special districts, states and territories, tollways, and other revenue supported borrowers.

The median number of days that it took all of the Merritt-tracked muni credit sectors to complete their audits rose to 151 days in 2015, nine more than the 142 median in fiscal year 2014, and the first time since 2008 that the median rose above 150 days. Thirteen of the 16 muni sectors that merit tracks took longer to complete financial audits in 2015 than they did in 2014.

Retail electric and the miscellaneous category of “other revenues” were the only two sectors to improve their median reporting times while hospitals stayed the same from 2014.

“Audit timeliness remains an essential requisite to taxpayers as well as market accountability and transparency,” Ciccarone wrote in the report. “For municipal bondholders, late or stale audits inhibit accurate bond pricing and cloud assessments of risk.”

Of the sectors, states and territories took the longest to report with a median of 182 days and counties were a close second with a median reporting time of 180 days, which follows a trend Merritt has been seeing since 2008 where states and counties have been “running at the back of the pack.” Dedicated tax obligors and cities had median completion times of 173 and 172 days, respectively.

“Governmental type municipal borrowers were more than likely affected and slowed down in 2015 by the new experiences of reporting pension information under the newly effective” Governmental Accounting Standards Board 67 and 68 rules, Ciccarone said in the report.

GASB 67 and 68 revised existing GASB guidance for the financial reports of most pension plans for state and local governments. GASB 67 took effect for pension plans in fiscal years beginning after June 15, 2013 and GASB 68 took effect for governments in fiscal years beginning after June 15, 2014. He said that despite the delays, the rules are welcome because they lead to more detailed and descriptive pension information.

The implementation of the new accounting rules also affected some revenue bond issuers and borrowers, according to Ciccarone. He gave an example of an airport that reports its audits in its city’s comprehensive annual financial report and is therefore “tied into the city” that could be delayed because it is working with the new GASB rules.

Additionally, he noted that not every issuer or borrower suffered a slowdown after the new GASB rules. He used New York State and New York City as examples of complex credits that still managed to sign off on their 2015 reports in 115 and 121 days, respectively.

The only state to have a faster reporting time than New York in fiscal year 2015 was Michigan, which only took 92 days to file its audit. Michigan has had the fastest audit filing of all states and territories since fiscal year 2013 when it improved its time to 82 days from 151 days in fiscal year 2012. Michigan’s 2015 timing almost meets the SEC standard for corporations, which requires companies to complete audited financials in 60 to 90 days, depending on the company’s size.

Financially troubled entities took longer on their audits than others, the report found. San Bernardino, Calif., which was still in bankruptcy in 2015, took 456 days to file. Puerto Rico, which has been struggling with roughly $70 billion in debt that its governor has deemed unpayable, still hasn't filed its 2015 audit and took 731 days to file its information for 2014.

Alabama and the Northern Mariana Islands join Puerto Rico as the only other states or territories that the report found did not file their audited financials for 2015.

Alabama consistently filed its audits within about 180 days since fiscal year 2008, according to the report data.

The Bond Buyer

By Jack Casey

November 21, 2016

Updated Guidelines for Residential Pace Financing Programs.

On Nov. 18, 2016, the U.S. Department of Energy (DOE) released Best Practice Guidelines for Residential PACE Financing Programs.

Since 2009, more than 100,000 homeowners have made energy efficiency and renewable energy improvements to their homes through residential Property Assessed Clean Energy (PACE) programs. By 2016, residential PACE programs had allowed homeowners to invest nearly $2 billion in energy efficiency, solar, and other upgrades to their homes.

Homeowners have made these energy upgrades with no upfront costs by electing to repay their loan through a special assessment along with their property taxes. With PACE, homeowners are installing high-efficiency equipment and products, including ENERGY STAR-qualified heating and cooling systems, and other clean energy technologies that can help reduce their energy consumption and lower costs, while improving their homes' comfort, health, safety, and resiliency.

The DOE guidelines outline best practices that can help state and local governments, PACE program administrators, contractors, and other partners develop and implement programs and improvements that effectively deliver home energy and related upgrades. The updated best practices reflect input gained from over 200 comments on a draft of the guidelines that was released for public review earlier this summer.

In the guidelines, special emphasis is placed on recommended protections that PACE programs should put in place for consumers who voluntarily opt into the service, as well as for lenders that hold mortgages on properties with PACE assessments. DOE also provides additional program design recommendations that address the unique needs and potential vulnerabilities of low-income and elderly households, to help ensure that PACE financing is used appropriately and at the least cost for low-income households that otherwise meet program eligibility criteria.

Specific topics addressed in the updated guidelines include:

- Enhanced PACE eligibility criteria, including requirements for review of income, existing debt obligations and credit score; clear and understandable consumer disclosures of all PACE terms,

including interest rates and fees, repayment procedures, and lien requirements;
- Additional consumer protections for low-income households, including enhanced screening procedures (e.g., verbal confirmation of PACE terms with the homeowner), written disclosures, and recommendations to structure PACE financing to be cost-effective for low-income participants
- Recommendations for quality assurance, contractor management, and enforcement procedures; and
- Recommendations for access to dispute resolution procedures or other mechanisms if work is performed improperly.

In combination with guidance for lenders from the Federal Housing Administration and the U.S. Department of Veterans Affairs, these best practices enable more states and communities to develop and implement residential PACE programs As the PACE market continues to grow, the Energy Department recommends that state and local governments incorporate these guidelines into existing or planned residential PACE programs, engaging local stakeholders to ensure PACE programs remain a sustainable model for financing energy upgrades and meeting community goals.

DOE will continue to work with state and local governments by providing information, technical assistance, and peer exchange opportunities to support incorporation of the best practices outlined in the guidelines into residential PACE programs. Upcoming next steps include:

- The National Association of State Energy Officials (NASEO) and DOE have partnered to establish a new residential PACE Task Force to support policy maker education and learning. Core members of the Task Force will include interested state energy office directors and staff, NASEO, and DOE.
- DOE and Lawrence Berkeley National Laboratory (LBNL) will conduct an impact evaluation to quantify energy savings from residential PACE projects in California, which will inform future program design recommendations.
- DOE will support state and local governments in incorporating the guidelines into PACE statutes and regulations as they are developed and modified.

For more information, continue to visit the State and Local Solution Center to learn more about residential PACE financing and state and local best practices in clean energy.

This Nonprofit Is Funding Good Ideas From People, Not Big Organizations.

It's part of a new philanthropic approach to improving neighborhoods.

Giacomo Ciminello had a pretty good idea: projecting massive versions of old video games onto blighted buildings. It draws people into neighborhoods they might not otherwise visit and highlights structures in need of an overhaul.

The way Ciminello got the funding to execute his plan wasn't a bad idea, either.

The Haile U.S. Bank Foundation is a leading philanthropy in Cincinnati, routinely writing seven-figure checks to support civic functions such as schools, parks and streetcars. But lately, it's been trying a different approach, giving money not to nonprofits, but to individuals like Ciminello.

It's done through a spinoff of the foundation called People's Liberty. The organization provides fellowships to a couple of people who present good ideas for making life better in and around the city; the fellowships allow recipients to take a year off to try to make their idea happen. Other grantees receive five-figure sums to carry out local initiatives that are innovative and achievable within a set time frame.

The aim is to reach beyond the usual pool of nonprofit groups and potentially tap creativity from anywhere within the community. Plenty of people bat around good ideas for revitalizing empty storefronts or overgrown lots, says Jake Hodesh, vice president of People's Liberty. The foundation not only gives them cash, but also helps them get set up.

It's an experiment in philanthropy that's drawing attention from groups around the country curious about the potential upside of spreading money through unusual channels. Giving money directly to individuals carries risks, as Hodesh acknowledges. Working out the kinks with the IRS took time, and there's clearly less accountability than dealing with a standard-issue nonprofit.

But working with individuals opens up lots of new ideas — an indoor urban gardening project, say, or educational popups teaching kids about science and music. People's Liberty is funding an apprentice program that links retired trade workers with younger homeowners looking to rehab properties.

Ciminello says he never would have been able to afford a projector big enough to light up an entire building if not for the unexpected grant he received. "I can't tell you how many people you come across who have a great idea but don't know where the money can come from," Ciminello says. Now, "the local preservation groups are constantly calling us to light up a block on a weekend night to highlight some activities they've got going on."

GOVERNING.COM

BY ALAN GREENBLATT | NOVEMBER 2016

From Police Shootings to Playground Injuries, Lawsuits Drain Cities' Budgets.

Municipalities spend more than a billion dollars a year on settlements and claims from citizens. Some are trying hard to rein in those costs.

There's a big silver dome in the corner of Union Square Park in New York City. Kids love to scramble up the six-foot-high stainless steel structure, called the Mountain, and then slide back down. The only problem is, the thing gets hot in the sun. Really hot. One afternoon in 2012, the metal surface was so warm that a young girl climbing on it suffered severe burns to her hand from the scorching hot steel. Her father filed a claim against the city, which was later settled for $24,500. (The city has since added a shade structure to shield the dome from the sun.) But that wasn't the only injury in Union Square Park that year. City records show three other families also filed claims in 2012 holding the government liable for injuries on the playground — one of the highest tallies in the city's parks system.

The next year, a falling tree struck a man in the park, resulting in a $15,000 payout from the city. A few months after that, a police tow truck allegedly hit a teenage boy crossing an intersection near the north end of the park, prompting another filing.

Claims and lawsuits are an everyday occurrence in the Big Apple, where about 9,500 cases were filed against the city last fiscal year. In all, New York paid out $720 million in judgments and claims in fiscal 2016, which amounts to about $84 per resident. That's only about 1 percent of the city's total expenditures, but it represents much-needed funding that could be directed elsewhere. For instance, it's more than the combined budgets of the Parks and Recreation Department and the Department of Buildings.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | NOVEMBER 2016

Private Companies Face Big Fines for Commuter Rail Problems

As delays and safety issues continue on privatized transit systems, that arrangement is getting new scrutiny.

How do commuter railroads make sure their trains run on time? Many hand operations over to private companies, giving them financial incentives for on-time performance. It's a well-established practice that works most of the time.

But it hasn't been working in Boston and Denver lately, where the private companies running both regions' commuter rail lines have faced hefty fines for structural problems.

In Denver, one of the biggest challenges right now is taking place on the region's brand new line connecting downtown Denver to the airport. The problem is with the crossing gates — they stay down too long. Flaggers have been hired at crossings to make sure impatient drivers and pedestrians obey the gates and don't go around them.

The problems with the gates follow a number of other early disruptions to the much-anticipated airport rail service. At first, the gaps between power sources on the rails were too big, which could leave unpowered trains stranded. Lightning strikes also caused damage to overhead wires and, in one case, caused the line to shut down for seven hours and forced firefighters to help passengers evacuate a stranded train on an overhead pass.

While most of those issues have been resolved, Denver Transit Partners, the private company that oversees the rail, has paid at least $78,000 for missing their marks for on-time performance. On top of that, the company has had to pay $250,000 a month for signaling issues, or about $1.25 million so far.

"We're in a bit of a world of hurt," said John Thompson, the executive project director of Denver Transit Partners. "There's no question about that, because we didn't see that we'd be faced with these deductions when we bid these contracts six years ago."

In Boston, the company Keolis has paid more than $12 million in fines in its first two years of running commuter rail for the Massachusetts Bay Transportation Authority (MBTA). Now, just two months into the third year of its contract, Keolis has already paid another $1 million in fines.

While the fines may not seem like much in the context of a 12-year deal worth roughly $4.2 billion, Keolis has said that it is losing money on its Boston-area service.

Of late, the biggest controversy has been about the fines the company hasn't paid. The Boston Globe recently reported that MBTA waived $839,000 in fees incurred for widespread problems on Keolis' commuter rail service during the winter of 2015. A series of storms dumped 100 inches of snow on Boston in a month, which snarled the city's transportation networks, including passenger rail. MBTA charged Keolis the maximum allowable fine during that time for poor on-time performance, but it rescinded fees for items like dirty trains and uncollected garbage.

"During this recovery period, we prioritized our resources toward activities that would enable us to return the fleet back to full operations, an approach which the MBTA fully supported. Under the terms of our contract, when there are extreme circumstances such as what was experienced in 2015, it is permissible for the MBTA to grant us relief from certain penalties and we are grateful for this support," said Keolis spokeswoman Leslie Aun.

MBTA's forgiveness of the fines have angered several legislators. Fourteen lawmakers signed a letter to the state's transportation secretary calling the decision "indefensible." Labor unions, which have fought the transit agency over the privatization of some jobs, also criticized the decision.

But Massachusetts Gov. Charlie Baker has backed the waivers. Keolis' contract allows waivers in the case of unforeseen circumstances, often characterized as force majeure or an act of God.

"It's pretty hard to argue that the winter of 2015 wasn't an act of God," Baker told the Globe last month.

Whatever the immediate fallout, the contractors and transit agencies in Denver and Boston have a lot at stake in getting things right.

Keolis, for one, is only in the third year of an eight- to 12-year contract with MBTA. And Denver Transit Partners, which actually designed and built the commuter rail to the airport, is opening two other lines this year and is slated to oversee all three lines for 28 years.

Thompson, the executive from the consortium, is optimistic despite the first-year hiccups.

"We've had 20-odd days where we were really disappointed with our service, out of over 200 days of services so far," he said. "Ridership continues to increase, so some people think we're doing a good job and are telling others about it."

GOVERNING.COM

BY DANIEL C. VOCK | NOVEMBER 22, 2016

Doing More with Less: State Revenue Limitations and Mandates on County Finances.

Executive Summary

Counties provide front line support for the health, safety and prosperity of communities and residents. But they are struggling to deliver essential services around the country. States increasingly limit counties' capacity to raise adequate revenue to fund their activities. At the same time, state and federal governments are imposing more mandates on counties, without providing adequate funding. Counties have adopted additional fiscal solutions, but they are not sufficient to cover the needs of their residents and communities. NACo conducted interviews with state associations of counties and state and county officials in each of the 48 states with county governments between February and July 2016 to better understand county funding sources, state revenue limits, federal and state mandates on counties, new fiscal challenges and county fiscal solutions. Supplemented by additional research of state statutes, tax codes and local government finance literature, this analysis shows that:

Continue reading.

NACo POLICY RESEARCH PAPER SERIES, ISSUE 5 • NOVEMBER 2016

JOEL GRIFFITH, JONATHAN HARRIS & DR. EMILIA ISTRATE

TE/GE Announces New Information Document Request Management Process.

The Tax Exempt and Government Entities Division of the Internal Revenue Service has issued new internal guidance for its agents on issuing information document requests (IDRs). The IRS issues IDRs to gather information during an examination. The new process will go into effect on April 1, 2017. Prior to its implementation, TE/GE will provide training to its agents on the new process.

Under the new process:

1. Taxpayers will be involved in the IDR process.
2. Examiners will discuss the issue being examined and the information needed with the taxpayer prior to issuing an IDR.
3. Examiners will ensure that the IDR clearly states the issue and the relevant information they are requesting.
4. If the taxpayer does not timely provide the information requested in the IDR by the agreed upon date, including extensions, the examiner will issue a delinquency notice.
5. If the taxpayer fails to respond to the delinquency notice or provides an incomplete response, the examiner will issue a pre-summons notice to advise the taxpayer that the IRS will issue a summons unless the missing items are fully provided.
6. A summons will be issued if the taxpayer fails to provide a complete response to the pre-summons letter by its response due date.

The new process requires the examiners' managers to be actively involved early in the process and ensures that IRS Counsel is prepared to enforce IDRs through the issuance of a summons when necessary. Throughout this process, the IRS will respect taxpayer rights and the changes will reflect the agency's commitment to the Taxpayer Bill of Rights.

The updated process will:

- Provide for open and meaningful communication between the IRS and taxpayers.
- Reduce taxpayer burden and provide consistent treatment of taxpayers.
- Allow the IRS to secure more complete and timely responses to IDRs.
- Provide consistent timelines for IRS agents to review IDR responses.
- Promote timely issue resolution.

How Did Arbitrage “Rebate” Get its Name?: Squire Patton Boggs

Rick Weber of Norton Rose Fulbright is the Editor-in-Chief of The Bond Lawyer, NABL’s quarterly journal. He writes a wonderful column on language that introduces each issue, and in the Summer 2016 issue, he posed the following question: When issuers are required to pay arbitrage profits earned on investments of tax-exempt bond proceeds to the federal government, why is it called “rebate,” when the arbitrage profits were not the federal government’s money in the first place? “In order to have a “return” or “refund” or “pay-back” of funds to the US government,” Weber notes, “the funds must start there.” We venture an explanation below.

Continue reading.

Squire Patton Boggs

By Johnny Hutchinson on November 21, 2016

SEC Seeks Record Penalty Against Former Miami Budget Director: Holland & Knight

After a federal jury found the City of Miami’s (City) former budget director guilty of defrauding investors in connection with a 2009 bond offering, the U.S. Securities and Exchange Commission (SEC) is seeking a record $450,000 civil penalty against the former official – an amount that is nine times greater than any previous fine against a municipal official.1

In addition, the SEC is seeking a permanent injunction that would bar the City’s former budget director from violating anti-fraud provisions of federal securities laws in the future.

The official was found guilty on three of four counts involving violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and that he aided and abetted the City’s violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The jury found that both the City and its former budget director hid the City’s declining financial position by using inter-fund transfers to cover up a general fund deficit, information that was not disclosed to rating agencies or in three separate bond issues in 2009, totaling $153.5 million.2

Through a settlement, attorneys for the SEC secured an injunction and a $1 million civil penalty against the City for its role in the fraud.3 The SEC now argues that the former official should be fined $150,000 for each of the three 2009 bond issues at question in the civil case.4

In its brief, the SEC stated that “a complete absence of both the sincerity of the former official’s assurance against future violations and recognition of the wrongful nature of his conduct dictate that a penalty must be imposed.” The SEC gave no indication that the court should reduce the penalty because the former official “remains gainfully employed, earning, per his counsel, about the same amount as he did when he was the budget director.”5

The attorney representing the former budget director pushed back on that notion, saying in a court filing that his client “is a man of limited means who has no assets” and that “he has been financially ruined” fighting securities fraud charges.6

The significant penalties sought by the SEC against an employee of a governmental entity reflect the SEC's changing approach in holding individuals accountable. This is a relatively modern trend of the SEC, but the penalties sought against the City's budget director are unprecedented in the municipal context. This is consistent with the SEC's Municipalities Continuing Disclosure Cooperation (MCDC) Initiative in which it stated that settlements with a governmental entity did not preclude the SEC from seeking enforcement actions against the staff of such entity. The SEC is clearly signaling that it will hold not only an issuer accountable for bad disclosure but will seek personal penalties against staff as well.

Footnotes

1. See The Bond Buyer article "SEC Seeks a Record $450,000 Penalty Against Miami Official."

2. *Jury Verdict, Securities and Exchange Commission v. City of Miami and Michael Boudreaux, Case No. 13-22600-CIV-ALTONAGO/O'Sullivan, (S.D. Fla. September 14, 2016.)*

3. See Miami Herald article "SEC wants $450,000 penalty against former Miami budget director."

4. Id.

5. See The Bond Buyer article "SEC Seeks a Record $450,000 Penalty Against Miami Official."

6. See The Bond Buyer article "Former Miami Official Says SEC Penalty Would Mean Financial Ruin."

Last Updated: November 22 2016
Article by Michael R. Millett

Holland & Knight

Michael R. Millett is an Associate in our Tampa office.

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.

San Diego Unified School District's Rating Upgrade On GO Bond Named The Bond Buyer's 2016 Far West Deal Of The Year.

In a deal shaped by an Orrick team's legal guidance, the San Diego Unified School District's rating upgrade to "AAA" on its General Obligation Bond was awarded 2016's Far West Deal of the Year by The Bond Buyer. Winners will be honored December 1 at a reception in New York.

"The San Diego Unified School District delivered a deal that smashed the template for local GO bonds in California to benefit students and taxpayers," The Bond Buyer observed. "The winners here are students who benefit from their school district's easier, more affordable market access and taxpayers who will get smaller bills because the GO bonds they authorized will pay lower interest."

For the last several years, Orrick's General Obligation Bond Group has led an effort to improve the ratings and reduce the borrowing costs associated with California General Obligation Bonds for all school and community college districts, cities, counties, and other local governments that issue them. On November 4, 2015, after Orrick helped write state legislation and then delivered a legal opinion to rating agencies on the “special” nature of the funding for these bonds, Fitch assigned a “AAA” rating to $550 million of San Diego Unified School District’s 2016 General Obligation Bond.

The development was viewed as a potential sea change in the rating and sale of school district, community college district and other local agency general obligation bonds in California.
The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Last Updated: November 17 2016

Article by Mary Collins and John Palmer

Orrick

TAX - CALIFORNIA

City of San Jose v. Sharma

Court of Appeal, Third District, California - November 3, 2016 - Cal.Rptr.3d - 2016 WL 6520123

City petitioned for writ of mandate to compel county to give city tax increment revenue from county’s ad valorem tax on real property. County cross-petitioned for writ of mandate.

The Superior Court ruled that city was entitled to the tax increment portion of the tax proceeds to put toward the winding down of city’s former redevelopment agency, but that tax increment revenue not needed to pay bond debt of the former redevelopment agency was subject to a passthrough agreement requiring the revenue to be passed through to the county. City and county appealed.

The Court of Appeal held that:

- Tax increment revenue from county’s ad valorem tax on real property had to be used to pay obligations of city’s former redevelopment agency, and
- The amount necessary to service former redevelopment agency’s bond debt could be deducted from the amount that passed through to the county.

Under the constitutional provision stating that tax increment “shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency,” tax increment revenue from a county’s ad valorem tax on real property had to be used to pay the obligations of a city’s former redevelopment agency, even though the tax was a special tax to finance county’s participation in the Public Employees Retirement System (PERS), where the tax increment portion of the special tax had been, for 60 years, a tax on real property within the former redevelopment agency’s project area to finance redevelopment in that area.

The constitutional provision stating that tax increment “shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency” prevails over the statute providing that “revenues from any special tax shall be used only for the purpose or service for which it was imposed,” since the constitutional provision applies to all ad valorem taxes on real property, without regard to whether the tax is a general or special tax.

City’s use of tax increment revenue associated with county’s ad valorem tax on real property to pay the obligations of city's former redevelopment agency did not constitute an unconstitutional gift of public funds, since the tax increment revenue never belonged to the county, and since redevelopment in the city was a public purpose of general interest to the county, where the tax increment portion of the retirement levy was collected within the city's former redevelopment agency's project area, by law, for the purpose of paying the obligations of the redevelopment agency.

City's use of tax increment revenue associated with county's ad valorem tax on real property to pay the obligations of city's former redevelopment agency did not violate county employees' vested contractual rights to continuation of retirement benefits or of the funding for such benefits, even though the tax was a special tax to finance county's participation in the Public Employees Retirement System (PERS), since distribution of the tax increment portion of the retirement levy did not prevent the county from paying the required amount to PERS for the county employees' benefits.

NABL Ethics Teleconference.

Playing it Safe: Reducing Your Potential Liability in a Bond Transaction

Wednesday, December 14 1:00-2:30 pm

Registration Fees:
► $195 for members
► $295 for non-members.

Description: A panel of experts will provide a practical overview of some areas where legal liability may arise for bond lawyers and offer strategies to alleviate these risks. The panel will focus on a hypothetical revenue bond issue that appears straightforward and noncontroversial on its surface and highlight situations where investors may nevertheless decide to file suits against participants in the transaction. In addition, the panel will provide responses and defenses which may be utilized in light of the Model Rules and recent case law. The inclusion of members of the plaintiffs' bar and malpractice insurance representatives on the panel will provide "real life" perspectives on liability scenarios and the responses thereto.

Moderator:
N. Gordon Knox (Miles & Stockbridge P.C.)

Panelists:
Michael P. Cillo (Davis & Ceriani, P.C.)
Matthew K. Corbin (Aon Risk Solutions)
Jeffery J. Qualkinbush (Barnes & Thornburg LLP)

CLE Information: NABL has applied for and anticipates receiving ethics CLE credit for between 1.5 and 1.8 hours in most states that accredit teleconferences. No credit will be available in Pennsylvania. To obtain CLE credit you must pay the CLE fee listed below and fill out the payment form. Be sure to include your CLE states and identifying numbers on the payment form. Certificates of Attendance will be e-mailed to you , and credit hours will be reported to those states that require sponsors to report credit.

Register online here, or download the printed registration form.

SEC Approves MSRB's Markup Rule, Drawing Criticism From Dealers.

WASHINGTON – The Securities and Exchange Commission has approved the Municipal Securities Rulemaking Board's proposal to require dealers to disclose their markups and markdowns in certain transactions, drawing criticism from dealers.

The SEC approved the proposal late Thursday along with a parallel one by the Financial Industry Regulatory Authority.

"The commission believes the establishment of a requirement that dealers disclose markups/markdowns to retail investors, as proposed, will advance the goal of providing retail investors with meaningful and useful information about the pricing of their municipal securities transactions," the SEC said in its approval order.

The commission added that the changes will promote transparency of dealers' pricing practices and potentially promote price competition among dealers.

Colleen Woodell, chair of the MSRB's board of directors, said the muni market "will gain an unprecedented level of transparency" when the new rule is put in place roughly a year and a half after the approval date.

"We have been working tirelessly to improve transparency for municipal bond investors and the changes set in motion today will allow them to assess their municipal bond transaction costs in a way similar to other markets," Woodell said.

The MSRB is amending its Rules G-15 on confirmation and G-30 on prices and commissions. The changes will require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

The amendments also establish a waterfall of factors for determining prevailing market price, which dealers will then use to calculate their compensation. Dealers will initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Bond Dealers of America and the Securities Industry and Financial Markets Association have consistently criticized the rule changes as overly complex and potentially harmful to market liquidity. The main dealer complaint is that it will be difficult to automate a compliance system to take into account the waterfall of factors.

John Vahey, managing director of federal policy with BDA, said that the group doesn't believe that regulators fully appreciate the extent to which automating the waterfall is "a serious and complex and costly project for dealers."

He added that the SEC's approval follows a recent MSRB letter that said liquidity is a risk to retail investors.

Vahey said complex and costly regulation is a contributing factor to the consolidation of dealers and thus liquidity concerns for the market, which already has 19% fewer dealers today than it did in 2012. The MSRB, in its filings on the rules changes, has acknowledged the possibility that the amendments could lead some firms to exit the market or merge with other firms.

Leslie Norwood, managing director and co-head of municipal securities with SIFMA, said the SEC's approval of the requirements represents a "monumental change" for dealers and a significant change for investors.

"Now the hard work begins, as the devil is in the details of implementing such a significant change," she said. "Over the next 18 months, our members will continue to work with the MSRB regarding necessary guidance on this historic new rule," particularly as dealers work on a number of compliance issues.

Despite the dealer complaints, the SEC concluded that the changes were reasonably designed to ensure their purpose "while limiting the impact of operational challenges for dealers." It added that it believes it is feasible to automate the determination of prevailing market price in accordance with the proposed MSRB guidance. The SEC also noted that the MSRB has said that the changes reflect the lowest overall cost approach to achieving a worthy regulatory objective.

In addition to the issues with automating the waterfall, dealers had also posed several other compliance-related questions to the MSRB.

The firms had asked about whether they could be allowed to disclose the markups or markdowns on a confirmation as "estimated" or "approximate" given the level of subjectivity involved in some levels of the waterfall. The MSRB said such labelling would not be allowed because it could suggest that the amount listed is unreliable and might diminish the value of having the markup listed. However, the board said dealers could include explanatory language or disclosures on the confirmations to give context or help investors understand how the markups were calculated.

Dealers also questioned how the changes applied to fair pricing determinations. The MSRB said that if a dealer that uses reasonable diligence to determine the prevailing market price of a muni in accordance with the MSRB's guidance discloses a markup based on that determination, it should generally be able to rely on that determination for fair pricing purposes.

The MSRB also acknowledged that different dealers can reasonably reach different conclusions as to whether securities are similar for use in the prevailing market price determination.

Dealers had also questioned whether the reliance on economic models at the bottom of the waterfall could include use of third-party pricing services. The MSRB said that while a dealer can choose to rely on third-party services, the dealer still keeps the ultimate responsibility to ensure the fairness and reasonableness of a price and any markup or markdown under the prevailing market price calculation. The self-regulator also said that a dealer should have a reasonable basis to believe that the third-party pricing service produces evaluated prices that reflect actual prevailing to use it.

The Bond Buyer

By Jack Casey

November 18, 2016

Bonds Are a Fair, Responsible Way to Finance Projects.

Despite opposition on these pages (Chris Edwards, DownsizingGovernment.org, "Bonds Are Taxes" Nov. 2, 2016), Fairfax County, Va., voters last week overwhelmingly approved three referenda authorizing the issuance of $312 million in municipal bonds.

By definition, these referenda forced voters to consider the details of, and costs for, each project to be financed. Voters were provided with extensive information on these issues: The ballot questions were detailed, and supplemental guides available in print and online provided page after page of information about the parks and park facilities, Metro improvements, senior center, community center and emergency homeless shelters that will be built and the cost for building them.

Fairfax County will begin paying for these projects almost immediately upon issuance of the bonds, forcing real budget choices: a dollar spent on debt service (and so on long-term infrastructure investments) cannot be spent on some other program. These payments are spread over time – and often over the useful life of the project – meaning those who use the parks (or Metro stations or community centers) are paying for them. It is simply sound finance to spread the cost of long-term capital improvements over their useful life so that the beneficiaries of those improvements pay for them, rather than just those who around during the construction period.

Data show communities like Fairfax County take these votes seriously and are budgeting for these expenses appropriately. Since the global financial meltdown, while the federal debt has sky-rocketed and non-bank business debt has risen, state and local debt (like household debt) has fallen. In fact, state and local borrowing is at its lowest point as a percentage of GDP since at least 2005 the means for estimating state and local debt changed in 2005, so it is not possible to make apples to apples comparisons for 2004 and before. If anything, state and local governments are underinvesting in their infrastructure and other capital needs.

Finally, while it is colorful to refer to "debt-fueled spending" burning fiscal houses down, the truth is that municipal defaults and bankruptcies – debt-fueled or otherwise – have been and remain rare. The nation's roughly 39,000 municipalities have an annual municipal bankruptcy rate of about 0.0043% and a rate of 0.0044% in the seven years since the global financial meltdown.

So, again, I agree wholeheartedly that Fairfax County — and communities throughout the country — should transparently and conscientiously decide whether to build schools, repair roads, fix bridges, and make the other investments necessary to help our economy grow and keep our communities livable. And, that is exactly what happened last Tuesday in Fairfax County.

Dan Marsh, President-Elect, National Development Council (NDC). NDC is a national non-profit dedicated to bringing capital to underserved communities by providing technical assistance in economic development and housing finance and development and small business lending. Mike Nicholas, CEO, Bond Dealers of America (BDA) is the Washington, DC-based trade association that exclusively represents securities dealers and banks whose primary focus is the U.S. fixed income markets. BDA and NDC are members of the MUNICIPAL BONDS FOR AMERICA (MBFA) coalition, a non-partisan coalition of municipal bond issuers and State and local government officials along with other municipal market professionals working together to explain the benefits of the tax-exempt municipal bond market which provides the financing needed to build vital infrastructure throughout the United States.

THE HILL

BY DAN MARSH AND MIKE NICHOLAS – 11/21/16 03:15 PM EST

The views expressed by authors are their own and not the views of The Hill

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Municipal Bonds: What to Do as Prices Drop.

Trump's pro-growth fiscal-stimulus plans, such as lower tax rates and higher infrastructure spending, are particularly worrisome for munis.

Municipal-bond investors face a conundrum. The spike in interest rates since the election has made long-term tax-exempt bonds more attractive than they've been in years. You can now buy highly rated 10-year munis yielding near 3%—more than Treasuries and high-quality corporate bonds. That's equivalent to a 4% taxable yield for investors in a high tax bracket.

Yet higher interest rates are a two-edged sword. At the same time, muni prices are falling. As of Friday, the benchmark-tracking iShares National Muni Bond exchange-traded fund (ticker: MUB) had a negative 1% year-to-date return. (At the end of October, it had been up 2.3%.) For investors who bought muni funds this year, harvesting tax losses makes sense. Bond-fund outflows, which began in the past two weeks, are likely to pick up into December.

The pro-growth fiscal-stimulus plans of President-elect Donald J. Trump, such as lower tax rates (which could crimp demand for munis) and higher infrastructure spending (which could increase supply), are particularly worrisome for munis. With the Federal Reserve poised to hike rates in mid-December, the near-term outlook is bearish—even though many observers believe "the selloff in munis has gotten too extreme," as Dan Heckman, fixed-income strategist at U.S. Bank Wealth Management, puts it.

His solution: Implement a barbell strategy—that is, invest in both very short-term and longer-term munis. The long end (think 10-year, not 30-year) boosts the portfolio's income, while the short end provides stability if rates keep rising. Conversely, if the economy slows and rates fall, the longer-term bonds will outperform shorter-term bonds and provide a buffer from declines in riskier assets, such as stocks and high-yield bonds.

Rumblings from the Federal Reserve make this strategy more compelling. "A December hike is almost a foregone conclusion," says Paamco senior credit strategist Putri Pascualy. "The path of rate hikes after that is highly uncertain." Economic growth is picking up at the same time Trump's stimulus plans are taking shape, which could mean a more-aggressive rate-hike path next year. That would likely cause the yield curve to flatten, with long-term bonds rising in price, as inflation expectations fall, while short-term bonds dip.

INVESTORS WHO HAVEN'T looked at ultrashort-term muni rates may find them surprisingly attractive. Yields of ultrashort-muni and tax-exempt money-market funds have already climbed from nothing to something this summer due to the impact of money-market reform, which triggered massive outflows, says Colleen Meehan, who directs muni-money-market-fund strategies at BNY Mellon. These funds mostly own seven-day floating-rate tax-exempt securities whose yield this year has jumped to 0.55% from 0.01%. The expected Fed December rate hike of 0.25 percentage points should increase these yields, she says.

Peter Hayes, BlackRock's head of municipal-bond investing, suggests investors put new money in ultrashort muni funds or keep a cash cushion. He also likes 15-year munis, which have 87% of the yield of the longest-term bonds. For investors who want to be tactical, Thomas Byrne of Wealth Strategies & Management recommends keeping maturities very short for now and moving to longer-duration bonds as fund outflows pick up.

Munis in the two-year maturity range will get hit hardest by Fed tightening, says Jim Grabovac, senior portfolio manager at McDonnell Investment Management. He recommends that long-term investors extend maturities now. He isn't too worried about Trump's proposals. Even if they come to fruition, he says, the muni market has weathered marginal tax-rate reductions and increases in supply just fine in the past.

"Some of this reaction is overdone, and near term, it provides an opportunity to do some portfolio restructuring and curve extension," Grabovac says.

Barron's

By Amey Stone

November 26, 2016

Upside in Puerto Rico Municipal Bonds.

Puerto Rico's new governor is intent on restructuring the island's debt.

The recent election of a new governor in Puerto Rico, and the formation of a powerful federal financial control board this summer, have resulted in some optimism about a bondholder-friendly restructuring of much of the island's $70 billion of debt.

The situation is still unsettled, but the new governor, Ricardo Rosselló, is viewed on Wall Street as a serious leader who wants to put the island on a stronger financial footing, bolster a weak economy, and work out a reasonable agreement with bondholders. Rosselló contrasts with the more combative outgoing governor, Alejandro García Padilla, who clashed with bondholder groups and then opted to default on $1 billion of debt-service payments on July 1.

Rosselló's election came after midyear, when President Barack Obama signed the Puerto Rico Oversight, Management, and Economic Stability Act, which created a seven-member control board with broad fiscal and debt-restructuring authority.

The benchmark Puerto Rico 8% general-obligation bond due in 2035 rallied after the Rosselló win, to about 72 cents on the dollar from 69 cents, but has since slipped back to about 69 cents. The market for Puerto Rico's senior sales-tax revenue bonds, known by their Spanish acronym Cofina, has been stronger, with long-term senior debt trading up to the low $70s from the high $60s in the summer, as Puerto Rico has continued to make payments to that debt.

Barron's was among the first to warn about Puerto Rico's growing financial troubles in a cover story more than three years ago ("Troubling Winds," Aug. 26, 2013).

Key future developments will be a new fiscal proposal from the incoming governor and recommendations from a task force about steps the U.S. government can take to ease Puerto Rico's financial burden.

Things should heat up in early 2017 because a stay on bondholder lawsuits ends in February—with a potential extension to around May 1. This means that a bond restructuring plan probably needs to be in place by then. There is apt to be considerable wrangling among different bondholder groups, and there is overall risk given Puerto Rico's fiscal, economic, and pension problems.

Against that backdrop, the general-obligation bonds, trading at less than 70 cents on the dollar, look like the best way to bet on a bondholder-friendly deal that could give GO holders a package worth 85 cents to 90 cents on the dollar.

Barron's

—Andrew Bary

November 26, 2016

Muni Selloff to Continue in Weeks Ahead, Bank of America Says.

– *"Sloppy" market provides buying opportunities, firm says*

– *Flow of cash from municipal mutual funds expected to persist*

The selloff in the $3.8 trillion state and local-government bond market, which has sent yields on 10-year AAA benchmark bonds up by more than half a percentage point since the U.S. election, should continue for another two to three weeks, the Bank of America Merrill Lynch municipal research team led by Philip Fischer wrote in a report.

Mutual-fund redemptions should continue for the next few weeks, but the worst outflows have either happened or are about to "very soon," the Friday report said. Last week, investors yanked $3.1 billion from municipal-bond funds, the biggest outflow since 2013, according to Lipper US Fund Flows data.

"We think the market sell off in munis is likely to continue to the end of November and into the first full week of December in a slow and negotiating fashion in order to reach an exhaustion point," the report said. "This sloppy market provides buying opportunities, in our view."

Bank of America Merrill Lynch projects that the bull market in bonds that began in 1981 should run for another two years given the current and expected health of the global economy.

Bloomberg

by Martin Z Braun

November 21, 2016 — 12:15 PM EST

Bloomberg Brief Weekly Video - 11/23

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

Watch the video.

Bloomberg

November 23, 2016

Municipal-Bond Selloff May Be Overdone as New Sales to Slow.

The worst municipal-bond rout in three years may have gone too far too fast.

Speculation that President-elect Donald Trump and a Republican-led Congress will slash taxes and ramp up spending sent bond prices tumbling globally since the Nov. 8 election, driving municipal yields to the highest in more than a year. The selling blitz has pushed the relative strength index, which uses past trends to gauge whether the market has moved beyond typical ranges, to the highest since at least 2009, signaling the securities are oversold and may be in for a rebound.

Investors may be overlooking another important indicator: the record-setting pace of bond sales will likely slow as higher interest rates give local governments less incentive to refinance outstanding debt.

"The market is actually putting the cart before the horse," said Vikram Rai, head of municipal strategy at Citigroup Inc. "We are worried about a drop in issuance because refundings are going to be down, and the increase in new-money issuance will not be enough to offset the decline."

The amount of bonds eligible for refinancing in 2017 is set to shrink because municipalities slowed their issuance of new debt after 2007, according to Citigroup.

While longer-maturity state and local government bonds often have a "call option" that allows them to be bought back after 10 years, much of the debt issued a decade ago has already been refinanced through so-called advanced refundings, said Rai. That's when a government sells bonds and uses the proceeds to purchase U.S. Treasury or agency securities, which are kept in an account that pays off the previously issued debt as it comes due or is called back.

Besides, with the Federal Reserve set to raise interest rates for the first time in a year, there will be fewer opportunities to refinance, according to Barclays Plc. Advanced refunding, which makes up almost half of refinancings, will "decline meaningfully" next year, Mikhail Foux, head of municipal strategy at Barclays, said in a note last week.

As the municipal market has its worst month since June 2013 — sending Bank of America Merrill Lynch's index down 2.8 percent — some investors are wary of wading back in yet. This week, BlackRock Inc., the world's largest asset manager, advised remaining on the sidelines, given that the exodus of cash may continue.

Further out, an expected drop in new bond sales may ease some pressure on the market. After hitting $250 billion already this year, total refundings will drop to $200 billion next year, according to Citigroup, while Barclays predicts an even deeper decline to about $185 billion.

The new-issue calendar has already started to dwindle as issuers brace for volatility stemming from an expected Fed hike next month. Municipal issuers plan to sell about $10 billion of bonds over the next 30 days, down from as much as $25 billion in mid-October, according to data compiled by Bloomberg. The actual number of sales may wind up being higher because some deals are announced only days ahead of time.

A buying opportunity may be at hand because the rout could exhaust itself in a few weeks, the Bank of America Merrill Lynch municipal research team led by Philip Fischer wrote in a report. Tax-exempt bonds are also becoming more attractive relative to their federal counterparts, with both 10- and 30-year municipals yielding more than Treasuries.

That could lure so-called crossover buyers, investors who typically prefer taxable securities but may purchase tax-free debt at discounted valuations, according to Barclays' Foux.

Bloomberg

by Tatiana Darie

November 23, 2016 — 5:00 AM EST November 23, 2016 — 9:49 AM EST

Fitch: Majority of US State & Local Govts Inherently Stable Despite Growing Divergence from Minority.

Fitch Ratings-New York-22 November 2016: While the vast majority of state and local governments are able to maintain high credit quality with no risk of missing debt service commitments during economic stress, there is a growing divide from a minority of issuers who face fundamental credit weaknesses, according to a new Fitch Ratings report.

"There is growing divergence between the vast majority of state and local governments which are stable and strong, and a small number that continue to struggle deep into the economic expansion. The struggling governments have been unable to address the credit issues they face because of fundamental credit weakness," said Eric Kim, Director.

U.S. tax-supported credits do face significant credit issues that could threaten credit quality if left unaddressed, including rapid fixed cost growth, rising healthcare spending, weakening demographic trends, and infrastructure.

Some state and local governments continue to face significant difficulty maintaining structural balance. Challenges like rising pension burdens are particularly acute for certain credits.

These governments remain isolated cases and not reflective of the overall condition of U.S. state and local government credit quality. Most governments have strong ability to address budget challenges through reasonable revenue and cost measures.

Fitch's average annual rating default rate for U.S. subnational governments between 1999 and 2015 was just 0.02%. This reflects an average general government rating in the 'AA' rating category; by contrast, the average corporate rating is in the ‘BBB’ rating category.

The full report titled ‘Looking Beyond the Headlines: State and Local Credits Maintain Underlying Strength and Stability’ is available at www.fitchratings.com.

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Additional information is available at ‘www.fitchratings.com’.

S&P: U.S. Not-For-Profit Health Care Children's Hospital Median Financial Ratios.

Children’s hospital ratios are generally rated higher on the rating spectrum than stand-alone hospitals and more in line with health care systems even though most are stand-alone providers.

Continue reading.

Sep. 21, 2016

S&P: U.S. Not-For-Profit Acute Health Care Ratios Are Calm On The Surface But Turbulent Underneath.

The overall financial performance of U.S. not-for-profit acute health care organizations rated by S&P Global Ratings continued the improvement we saw last year when we returned the sector outlook to stable from negative, albeit at a more reserved pace.

Continue reading.

Sep. 21, 2016

S&P: U.S. Not-For-Profit Health Care Small Stand-Alone Hospital Median Financial Ratios.

S&P Global Ratings defines a small stand-alone acute care hospital, which is a subset of our stand-alone hospital universe, as one having net patient service revenue below $125 million.

Continue reading.

Sep. 21, 2016

S&P: U.S. Not-For-Profit Acute Health Care Speculative Grade Median Financial Ratios.

Speculative grade ratings are defined as those rated 'BB+' or below. Within speculative grade, a majority of the health care organizations are rated in the 'BB' category with fewer in the 'B' and 'CCC' categories.

Continue reading.

Sep. 21, 2016

S&P: U.S. Not-For-Profit Health Care System Median Financial Ratios -- 2015 vs. 2014

System medians, similar to the stand-alone medians, demonstrated operating margin improvement in 2015, which when combined with softer non-operating income produced modest coverage gains in the higher rating categories, with slight declines in the lower rating categories.

Continue reading.

Sep. 21, 2016

S&P: U.S. Not-For-Profit Health Care Stand-Alone Hospital Median Financial Ratios -- 2015 vs. 2014

Similar to the overall medians for stand-alone hospitals and health care systems combined, we saw stronger operating margins for stand-alone hospitals in 2015 at each rating category, offset by consistently softer non-operating revenue compared to 2014.

Continue reading.

Sep. 21, 2016

IRS Publishes Arbitrage Guidance for Tax-Exempt Bonds.

Read the IRS Guidance.

Bond Rout Pummels Muni Funds.

Investors are slashing bond holdings and questioning whether tax changes will dull muni demand

Money is pouring out of municipal bond funds at the fastest pace since the 2013 "taper tantrum" as investors slash bond holdings and wonder about potential changes to the tax code.

Investors pulled $3 billion from muni bond mutual and exchange-traded funds the week after the presidential election, the largest such withdrawal since June 2013, according to EPFR Global and Bank of America Merrill Lynch. The $7.3 billion iShares National AMT-Free Muni Bond ETF, ticker MUB, has fallen 3.4% this month and is on pace for its sharpest monthly drop since Sept. 2008.

Municipal bonds are considered nearly as safe as Treasurys, since the debts are backed by the revenues of states, cities or services. Investors also like munis since interest payments are typically free from federal taxes. But in a stark reversal from earlier this year, when muni fund assets hit an all-time record, what were viewed as perks have turned into reasons to sell.

Municipal bond investors have taken cues from U.S. government bonds, which have been hit by heavy post-election selling. The yield on benchmark 10-year Treasury note rose to 2.411% on Wednesday from 1.867% on Election Day.

Meanwhile, investors are considering whether a package of tax cuts eventually passed by Congress could diminish the after-tax yield advantaged that munis hold over comparable Treasury bonds.

"The municipal market appears to have already priced in a significant cut in federal tax rates," wrote Guy Davidson, chairman of the tax-exempt fixed income investment policy group at AB, the investment firm known until recently as AllianceBernstein.

The idea is that lower marginal tax rates could prompt the highest-earning investors to put their money elsewhere. At the same time, institutional buyers of muni bonds — banks and insurance companies — could find them less advantageous should corporate tax rates fall.

"Given the recent spike in yields and the murky policy picture, tax-exempt municipals may face continued near-term volatility," said David Hammer, head of municipal bond portfolio management at Pimco.

Such volatility is evident in muni-bond closed-end funds that own municipal debt. Unlike mutual funds and ETFs, closed-end funds have a fixed number of shares and sentiment changes can swing prices of the securities to premiums or discounts to the value of the fund's holdings. The discount of the $2.7 billion Nuveen Quality Municipal Income Fund, ticker NAD, has widened to 8.8% from 6.6% in September, according to Morningstar and Nuveen.

Market watchers caution that, historically, changes to taxes have had little impact on the municipal bond market. Vikram Rai, who heads municipal strategy at Citigroup, said that changes to the top marginal tax rate for municipal bonds since 1980 has fluctuated with "no correlation" to retail demand.

Still, Mr. Rai recently warned that muni bonds are likely to be under pressure as long as Treasury yields are on the rise.

"Municipal yields have been unsustainably rich for an extended period of time due to large inflows into this asset class driven by a reach-for-yield," Mr. Rai wrote. "We are quite pessimistic that municipal funds can endure the size of backup which seems to be taking root in Treasuries."

THE WALL STREET JOURNAL

By CHRIS DIETERICH

Nov 23, 2016 12:03 pm ET

The Tax Man Demands a Rain Check - Er . . . Stormwater Fee.

An EPA mandate to reduce runoff is inspiring a new levy on precipitation in my Virginia town.

When it rains, it pours—and where I live, stormy weather will soon be subject to a new tax. Such is life in a deep-blue Washington suburb that's trying to comply with a mandate from the Environmental Protection Agency.

Six years ago, the EPA issued a regulation forcing D.C. and the states in the Chesapeake Bay watershed to control the quality of their rainfall runoff. Alexandria's solution is to implement a new "stormwater management fee" to fund green pet projects like rooftop gardens on municipal buildings and permeable pavement in parks.

Maryland tried a similar approach under Gov. Martin O'Malley, a Democrat, in 2012. The state law required nine counties and Baltimore to levy a fee on every property owner in their jurisdiction. But the "rain tax," as it came to be known, was a point of public anger—and mockery. Republican gubernatorial candidate Larry Hogan made its repeal central to his 2014 campaign, and he fulfilled his promise by devolving the mandate down to local jurisdictions.

Virginia's system is roughly the same. It allows counties and independent cities like Alexandria to decide for themselves how to best comply by minimizing or treating runoff. But higher taxes seem to be what politicians are most eager to entertain.

That's certainly the case in Alexandria. Last month residents received an email inviting them to a public meeting with the city's Environmental Policy Commission, which would detail its proposal to meet the runoff mandate. My interest was piqued by a line suggesting that the city had decided not to "raise taxes or cut spending" but would instead pursue a "fee" on residents.

On the night of the meeting, several people—a mix of citizens, environmental activists and state and federal bureaucrats—crowded into the small conference room to watch a slideshow and ask questions. From the start, the committee described the new levy as a matter of fairness, that great progressive principle.

Currently, 70% of the money that the city is spending to comply with the mandate comes from the general fund, with the rest coming from property taxes. According to the city's math, this means residential properties—including homeowners like me—pay about 58% of the total cost, although we contribute only 37% of the rainfall runoff.

The committee's solution is a fee based on the percentage of a property's land that is covered with non-permeable surfaces—meaning it contributes to runoff. That way all parties would pay "their fair share." Commercial properties that contribute 63% of the runoff would pay 63% of the new fee. Homeowners would pay about $145 a year for a typical single-family dwelling, according to the city. That might seem low, but local taxes and fees add up quickly.

There are also a number of fictions hiding under the surface. Most glaring is the claim that the fee isn't a tax. This is a distinction without a difference—especially since the fee will be assessed annually with property taxes.

Nor does the facade of "fairness" hold up. Alexandrians might assume that the new fee will replace the existing taxes they pay toward complying with the mandate. It won't. When pressed by several attendees, city officials conceded that the fee will exist on top of the old revenue stream. The committee tried to deflect criticism by saying that the city council could decide to return that money to taxpayers later.

This elicited a few disbelieving laughs. The man seated next to me asked a pointed question: Had Alexandria ever passed a tax cut or refund in conjunction with a new fee? The city official couldn't think of an example—hardly a shock in a town as blue as mine.

Naturally, the rain tax will increase over time. One slide, which the committee sped by, indicated that the fee is expected to rise by 32% in its first four years. When one attendee pointed this out, another ruefully shook her head and mumbled, "That's how it always goes." After four years the city provides no projections, but the fee will probably keep on rising.

One official expressed hope that the rate would level off after a few years, but he also said the city's environmental projects will only require more capital over time. Although the updates to the city's infrastructure are supposed to be completed in 10 years, the fee will doubtless outlast it.

Judging by the meeting, it's unlikely that my fellow Alexandrians will respond the way voters did in Maryland. The general mood was one of approval, even excitement. One aging hippie could hardly contain his glee; another resident thought the tax didn't go far enough. By my count, only three people, including me, seemed opposed.

Before we broke for the evening, the Environmental Policy Committee reminded us that the rain-tax proposal was still subject to change. Lowering or eliminating the storm-water fee for churches, which will average $2,000 in the first year, was mentioned. But the City Council—composed entirely of Democrats—is all but guaranteed to include some version in its 2018 budget. Here's hoping it rains the day they vote.

THE WALL STREET JOURNAL

By STEPHEN FORD

Nov. 25, 2016 5:07 p.m. ET

Mr. Ford is a writer in Virginia.

Puerto Rico's Top Creditors Flex Muscles in Bond Fight.

Funds controlled by Franklin Advisers, OppenheimerFunds request to be entered as defendants in suit brought by hedge funds holding defaulted GO bonds

Puerto Rico's largest mutual-fund bondholders have broken their silence in an ongoing $30 billion creditor standoff, underscoring tensions between the commonwealth's traditional municipal investor base and the hedge funds now involved in its financial restructuring.

Funds controlled by fixed-income giants Franklin Advisers and OppenheimerFunds asked a federal judge last week to enter them as defendants in a lawsuit brought by hedge funds holding general obligation, or GO, bonds that have been in default since July.

The lawsuit pits those creditors against investors holding $17 billion in competing bonds known as Cofinas for their Spanish acronym and backed by sales tax revenues. If successful, the lawsuit could compromise the Cofina bondholders' liens and free up a fresh source of repayment for the GO bondholders, which are guaranteed under the Puerto Rican constitution.

The courts, on the other hand, could affirm the commonwealth's longstanding position that the sales-tax revenues are off-limits to the GO bondholders. U.S. District Court Judge Francisco Besosa could also freeze the dispute in the hopes that the warring investor groups will negotiate a settlement, as the Cofina investors have urged.

Congress installed a federal oversight board over the summer to take over Puerto Rico's financial decision-making, but it has yet to announce the hiring of legal and financial advisors with whom creditors will negotiate. The legal status of the Cofina revenues has never been tested in the courts, and resolving it now would take a major question on creditors' rights out of the board's hands. For now, it wants the dispute paused under the automatic stay provisions of the Puerto Rico Oversight, Management and Economic Stability Act, or PROMESA.

Franklin and Oppenheimer, along with Santander Asset Management, are cross-holders with a combined $3.6 billion in Cofina claims and $1.1 billion in GO claims, according to a filing in Puerto Rico federal court.

With $2.8 billion of their exposure in subordinated Cofina debt, the mutual funds said they have the "greatest possible interest" in protecting the sales taxes from being diverted. Junior Cofina bonds would suffer the most if the revenue stream were interrupted, although they have continued to be paid even with the territorial government in default on its constitutional debt.

Hedge funds exclusively holding senior Cofina bonds have already asked to be heard in the lawsuit. Those bondholders, including GoldenTree Asset Management, Merced Capital and Taconic Capital Advisors, hold zero-coupon bonds that don't come due for decades, according to people familiar with the matter. Their group has taken the position that diverting the sales taxes would cause their claims to come due immediately, leapfrogging over those of junior creditors.

As holders of both types of bonds, the mutual funds said they aren't conflicted and have reason to guard the interests of all creditors within the $17 billion Cofina debt stack. Puerto Rican lawmakers first segregated sales-tax revenues from its general fund a decade ago to create an alternate borrowing mechanism.

"The interests of Cofina, its bondholders generally and its current-pay subordinate bonds in particular are served by maintaining the statutory transfer," lawyers for Franklin, Oppenheimer and Santander wrote in court papers. "It is likely that the senior Cofina bondholders want Cofina to default."

A spokesman for the mutual funds declined to comment beyond the filing. Representatives for the GO bondholder group and for Cofina bond trustee Bank of New York Mellon didn't immediately respond to requests for comment.

James Doak of Miller Buckfire & Co., an adviser to the senior Cofina bondholder group, called the mutual funds' appearance "a positive for Puerto Rico, the oversight board and the incoming administration."

"Major, long-standing investors holding both GO and Cofina bonds are stepping forward to defend PROMESA's stay provision and reject more litigious GO bondholders' attempts to seize [sales tax] revenue," he said.

The benchmark 8%-coupon GO bonds due in 2035 traded Friday at 69.5 cents on the dollar, according to FactSet, having cooled off from a post-election rally that pushed prices to 73 cents. Puerto Rico recently elected Dr. Ricardo Rossello, a statehood supporter perceived by investors as friendlier to creditor interests, to replace Gov. Alejandro García Padilla. The new governor takes office in January.

THE WALL STREET JOURNAL

By ANDREW SCURRIA

Updated Nov. 23, 2016 7:57 p.m. ET

As Soda Taxes Gain Wider Acceptance, Your Bottle May Be Next.

For more than a decade, Coca-Cola, Pepsi and other beverage companies have fought mightily against efforts to tax sugary sodas, defeating more than three dozen such proposals around the country.

But this month, voters in San Francisco, Oakland and Albany, Calif., as well as Boulder, Colo., stunned the industry by approving ballot measures in favor of soda taxes. Cook County, Ill., followed a few days later, bringing a soft-drink tax to Chicago and surrounding areas. They are joining Berkeley, Calif., which passed a tax two years ago, and Philadelphia, which passed one in June, bringing to seven the number of American communities with soda taxes.

With that public momentum, a soda tax may be coming to a city near you.

Advocates say the recent sweep represents a watershed moment in the fight for soft-drink taxes. Once viewed as measures likely to find support only in largely health-conscious cities like Berkeley and Boulder, soda taxes have emerged as a bountiful revenue source for cash-strapped local governments to fund early childhood education, public safety and deficit reduction. Soda tax advocates say they believe more cities will now consider their own taxes on sweetened beverages to combat obesity and to finance local programs.

"There's a momentum with these taxes that will be hard for the industry to stop," said Kelly

Brownell, dean of the Sanford School of Public Policy at Duke University, who met with some ridicule when he first proposed a "sin tax" on junk food in 1994. "I expect a year or two from now that the taxes will be widespread."

All of the new measures so far impose a tax of at least a penny per ounce of sugary drinks, including sodas, sweetened iced teas and some fruit drinks. Soda tax supporters say they are taking inspiration from the fight against tobacco, which included successful efforts to impose hefty taxes on cigarettes as a way to curb consumption. They have even taken to calling the industry "Big Soda," a not-so-veiled reference to Big Tobacco.

The tax measures came as soft-drink sales were already slumping — more and more consumers have switched to bottled water and other drinks they consider healthier options than carbonated soft drinks. Viewing taxes as another threat to its core products, the beverage industry has fought vigorously, organizing local business coalitions, lobbying politicians, and spending millions of dollars on advertising and direct mail. The American Beverage Association, an industry trade group, spent $38 million opposing the fall ballot proposals, though it lost every one.

Even so, beverage makers say they are not convinced that soda taxes will be widely adopted. With the help of the beverage association, they have effectively painted the taxes as unfair nanny-state measures that are bad for business and impose a disproportionate burden on the poor.

"I'm originally from Iowa, born and bred, and I just don't see this discriminatory, regressive tax being embraced by Iowans or Midwesterners or Southerners and others in a large swath of the country," said Susan Neely, the president of the American Beverage Association. "I just do not believe that this is going to be a tax sweep throughout America."

But public opinion on soda has turned more negative in recent years, with a growing share of Americans believing that sugary drinks contribute to obesity, Type 2 diabetes and other maladies. And the industry now faces a more sophisticated and well-financed opposition. Soda taxes, once a fanciful cause of amateur health crusaders and academics like Dr. Brownell, have drawn the support of politically active billionaires. Michael R. Bloomberg, the former New York City mayor, poured nearly $20 million into the Bay Area soda tax campaigns, hiring political consultants and media experts with extensive experience lobbying city councils and shifting public opinion.

In 2012, when the mayor proposed a limit of 16 fluid ounces on sugary drinks sold in New York, he was pilloried by opponents and ridiculed by late-night comedians as a fun-hating scold. The measure was rejected in court. Four years later, Mr. Bloomberg said, he is still met at speaking engagements with Big Gulp cups, a gibe at his failed soda regulation effort.

But now he sees soft-drink regulation gaining mainstream acceptance.

"While we may have lost that battle in the courts, you can make the very good case that we won the war," Mr. Bloomberg said.

The industry remains adamant that it will continue fighting soda taxes. The beverage association argues that sugary drink consumption has not increased obesity, and that soda taxes will not reduce it. But the trade group also claims it is doing its part to reduce obesity by encouraging consumers to drink its diet and low-calorie options instead of full-calorie sodas. Ms. Neely, the beverage association president, has been trumpeting industry efforts to market lower-calorie choices as proof of a commitment to public health.

"One thing we'll continue to do with full gusto is try to reduce calories and sugar in the American diet," Ms. Neely said. "We don't want to fight with public health. We agree that more needs to be done, and we're trying to do it in a very serious and systematic way. We believe we have a responsibility to help address the obesity problem, and we're doing it in a way that we think is powerful and will yield lasting results."

Research from Mexico, which approved national taxes on sugary drinks and junk food in 2013, has found that taxes did drive down soft-drink sales, particularly among low-income populations that tend to drink the most of those. Research on Berkeley's soda tax found a similar trend. But it is too soon to know whether those drops in sales will lead to lower rates of obesity or diabetes.

Still, not every politician has needed a public health argument to embrace a soda tax. Jim Kenney, the mayor of Philadelphia, sold a tax there to City Council members by linking it to a popular initiative to expand prekindergarten. Cook County officials described the tax revenue as crucial to closing budget shortfalls so they could save public safety jobs. And Santa Fe, N.M., the latest city to propose a soda tax, presented it as a way to raise much-needed money for early childhood education.

John Arnold, a hedge fund billionaire who invested heavily in the Philadelphia and California campaigns, said he became interested in soda taxes for public health reasons, but also believes soda taxes have advantages over other ways to raise municipal money. "Do you do it by increasing sales taxes or increasing income taxes, or can you find ways, like through soda taxes, where you get an added benefit of improving the health at the local level in addition to raising money?" he asked.

Both Mr. Arnold and Mr. Bloomberg said they hoped the recent election successes would make soda taxes a more popular idea, able to attract political support and a wider array of financial supporters. Mr. Bloomberg said he was committed to funding well-organized efforts as they continue to emerge.

"We certainly aren't going to walk away from this," he said.

THE NEW YORK TIMES

By ANAHAD O'CONNOR and MARGOT SANGER-KATZ

NOV. 26, 2016

GFOA: Register for the 21st Annual GAAP Update Encore.

Learn everything you need to know about the most recent developments in accounting and financial reporting for state and local governments, including the latest GASB statements, exposure drafts, and implementation guidance, at the encore of GFOA's 21st Annual Governmental GAAP Update web-streaming event on December 1, 2016.

Learn More.

MSRB to Dealers: Inform Investors About Market Discount Bonds at Time of Trade.

Read the MSRB Notice.

MSRB Reminds Investors of Risks of Rising Interest Rates in Municipal Market.

Washington, DC – Following the recent steep rise in municipal bond yields, the Municipal Securities Rulemaking Board (MSRB), the national regulator for the municipal market, today issued a statement today cautioning investors about the potential risks to bond positions and bond portfolios of rising interest rates.

"Yields in the municipal bond market reached a one-year high last week," said MSRB Executive Director Lynnette Kelly. "Given this trend, it is important that investors review their municipal bond holdings with their financial professionals, monitor market developments and educate themselves about the risks of rising interest rates."

The MSRB provides multiple free investor education resources related to interest rate risk including the *Impact of Market Interest Rate Movement on Municipal Bond Prices and Yields*, *Evaluating a Municipal Bond's Interest Rate Risk* and *The Importance of Monitoring Municipal Bonds*.

"Municipal bond investors can use the MSRB's resources to learn about the risks of interest rate changes and considerations to discuss with their financial professional," Kelly said. The MSRB also makes available an online course aimed at financial professionals called *Rules and Risks: Applying MSRB Rules in Relation to Municipal Market Risks*.

Earlier this month, the MSRB identified changes in the ownership profile of municipal bonds in recent years as having increased the risk that a rise in interest rates could lead to market dislocation and reduced liquidity in the municipal market. In a letter to the Securities and Exchange Commission Investor Advocate, the MSRB cited greater mutual fund ownership and reduced dealer inventories as factors in the risk for investors.

Date: November 14, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- S&P: The Post-Election Landscape For Municipal Bonds.
- An Open Letter to the IRS on Revenue Procedure 2016-44: Squire Patton Boggs
- MSRB Files Amendment to Mark-up Disclosure Proposal.
- Trump and State and Local Governments: The Known Unknowns.
- *And finally,* Pleasure Doing Business With You is brought to us this week by *Weaver v. Stewart,* in which an intoxicated motorist had his vehicle impounded, bailed himself out, headed down to the towing company, fetched his car, and (still drunk) plowed back into oncoming traffic. Litigation ensued. The driver was subsequently asked to help sort all this out and speculated that it should have been obvious that he was all kinds of messed up. The court discounted his opinion, noting rather archly that the driver, "has no memory of that particular encounter." Practice tip: "I have no memory of that particular encounter" is contraindicated as a spousal retort.

REDEVELOPMENT AGENCIES - CALIFORNIA

Covarrubias v. Cohen

Court of Appeal, Third District, California - October 7, 2016 - 3 Cal.App.5th 1229 - 208 Cal.Rptr.3d 226 - 2016 Daily Journal D.A.R. 10, 119

City residents petitioned for writ of mandate to compel Director of the Department of Finance, the state Controller, city, and county auditor-controller to continue payments of set-asides from “tax increment” to city’s subsidized housing fund.

The Superior Court denied petition. Residents appealed.

The Court of Appeal held that:

- City’s set-asides for future affordable housing payments were not “deferred” payments that remained enforceable after the dissolution of the redevelopment agency, and
- City’s set-asides for future affordable housing payments were not “obligations imposed by state law” that remained enforceable after the dissolution of the redevelopment agency.

City’s scheduled future payments to the low and moderate income housing fund of city’s redevelopment agency were not “deferred” payments and thus were not within the definition of an “enforceable obligation” after the dissolution of the redevelopment agency, even though the Legislature authorized redevelopment agencies to plan for the surcharged set-asides as well as the underlying obligations.

Under the statute providing that “all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies” are inoperative, city’s set-asides for scheduled future payments to the low and moderate income housing fund of city’s redevelopment agency were inoperative, and thus they were not “obligations imposed by state law” under the statute providing that such obligations remained enforceable after the dissolution of the redevelopment agency.

EMINENT DOMAIN - CALIFORNIA

People ex rel. Department of Transportation v. Presidio Performing Arts Foundation

Court of Appeal, First District, Division 5, California - November 3, 2016 - Cal.Rptr.3d - 2016 WL 6554353

Department of Transportation (Caltrans) filed a lawsuit against performing arts foundation for declaratory relief regarding the value of its eminent domain claim. Foundation cross-complained for money due and owing.

The Superior Court entered judgment for Caltrans after bench trial. Foundation appealed.

The Court of Appeal held that:

- Foundation suffered a loss of “goodwill” from the taking of its lease, and
- Assuming foundation was required to quantify its loss of goodwill, it adequately did so.

Under the eminent domain business goodwill compensation statute, compensation for the loss of goodwill involves a two-step process: first, the court determines entitlement: that is, whether the party seeking compensation has presented sufficient evidence of causation, unavoidability, and no double recovery; and if the party meets this burden, the matter proceeds to a second step, in which a jury, unless waived, determines the amount of the loss.

Since the conditions set forth in the eminent domain business goodwill compensation statute all pertain to the “loss” of “goodwill,” the initial obligation to establish entitlement to compensation requires a showing, as a threshold matter, that the business had goodwill to lose.

Nonprofit performing arts foundation suffered a loss of “goodwill” from the taking of its lease under the eminent domain business goodwill compensation statute, even though the foundation was not making a profit even before the taking, where the foundation’s annual operating loss increased, the foundation was displaced to a new building with fewer structural advantages and less favorable lease terms, the taking imposed frequent and significant disruptions to the foundation’s operations, which led to a loss of students, employees, donors, and awards, and the shortfall in expected cash flow after the taking could not be attributed to tangible assets or any factor other than a decline in goodwill.

Even assuming that a nonprofit performing arts foundation was required to quantify its loss of goodwill from the taking of its lease in the bench trial phase of the inquiry under the eminent domain business goodwill compensation statute, the foundation adequately did so in showing how much the foundation’s annual operating loss increased, and showing that the shortfall in expected cash flow after the taking could not be attributed to tangible assets or any factor other than a decline in goodwill.

LIABILITY - LOUISIANA

Barnett v. City of Baton Rouge

Court of Appeal of Louisiana, First Circuit - October 31, 2016 - So.3d - 2016 WL 6426460 - 2016-0222 (La.App. 1 Cir. 10/31/16)

Motorist filed an action for personal injuries against city and parish, through the Department of Public Works, after overhead school zone traffic control signal crashed on the front of motorist’s vehicle and into his windshield.

The District Court granted the Department of Public Works summary judgment. Motorist appealed.

The Court of Appeal held that a genuine issue of material fact existed as to whether the Department of Public Works created the defective condition that caused school zone traffic control signal to fall onto motorist’s vehicle.

A genuine issue of material fact existed as to whether the Department of Public Works created the defective condition that caused school zone traffic control signal to fall onto motorist’s vehicle and into his windshield by its own substandard conduct in selecting and installing a potentially deficient sign, precluding summary judgment in motorist’s personal injury action against city and parish, through the Department of Public Works.

LIABILITY - NEW HAMPSHIRE

Weaver v. Stewart

Supreme Court of New Hampshire - October 27, 2016 - A.3d - 2016 WL 6276083

Motorcyclist brought negligence action against town, police officer, and towing company arising out of automobile accident in which motorcyclist was injured and his wife died, after being struck by intoxicated motorist who drove his vehicle into oncoming traffic and who had retrieved his vehicle from the towing company on the morning of the accident.

The Superior Court granted summary judgment for town and officer and the Superior Court granted summary judgment for company. Motorcyclist appealed.

The Supreme Court of New Hampshire held that:

- Motorcyclist could not recover on negligent entrustment claim against town and officer;
- Towing company did not need to obtain authorization from police or court before releasing vehicle to motorist; and
- Motorcyclist could not recover on negligent entrustment claim against towing company.

There was no evidence that police officer knew or should have known that, at time motorist arrived at towing company to pick up his vehicle the morning after his arrest for driving under the influence (DUI), he was impaired and unfit to drive, and thus motorcyclist could not recover on his claim of negligent entrustment against town and officer arising out of accident in which motorcyclist was injured and his wife died after being struck by motorist's vehicle. Motorist only speculated that it would have been obvious that he exhibited signs of impairment when he was at towing company, officer was not at towing company when motorist picked up his vehicle, and while motorist left voicemail message for officer from which officer allegedly was in position to know of motorist's intoxication, motorist had retrieved his car well before he left message.

Motorist's vehicle was towed pursuant to statute authorizing police officers to remove vehicle after owner was arrested if vehicle was menace to traffic, as opposed to statute authorizing officers to remove and impound vehicle because it might have been evidence of crime, and, thus, towing company did not need to obtain authorization from police department or court before releasing vehicle to motorist who had been arrested the previous night for driving under the influence (DUI). No officer ordered removal and impoundment of vehicle, vehicle was not placed in custody of law enforcement official or court and was not retained for any evidentiary purpose, and officer caused removal and storage of vehicle because he had reasonable grounds to believe that motorist was under arrest or otherwise incapacitated and vehicle would have been menace to traffic if permitted to remain in roadway.

There was no evidence that owner of towing company knew that motorist was unfit to operate his vehicle due to intoxication when motorist retrieved it from company on the morning after his arrest for driving under the influence (DUI), and thus motorcyclist could not recover on his negligent entrustment claim against company arising out of automobile accident in which motorcyclist was injured and his wife died after being struck by motorist's vehicle. Motorist merely speculated that it would have been obvious that he exhibited signs of impairment when he was at company, there was no indication in toxicology report as to whether motorist was impaired at time he picked up vehicle from company, and owner stated that motorist did not appear to be impaired when he picked up his vehicle, as he was not falling down, did not smell of alcohol, and did not have glassy eyes, slurred speech, or seem unsteady on his feet.

PUBLIC UTILITIES - NEW JERSEY

Matter of Petition of South Jersey Gas Company

Superior Court of New Jersey, Appellate Division - November 7, 2016 - A.3d - 2016 WL 6575214

Environmental organizations appealed from decision of executive director of Pinelands Commission finding that proposed natural gas pipeline was consistent with minimum standards for land use under Pinelands Comprehensive Management Plan (CMP) and decision of Board of Public Utilities granting public utility's petition seeking order declaring that Municipal Land Use Law (MLUL) and local government MLUL regulations did not apply to proposed pipeline project.

The Superior Court, Appellate Division, held that:

- Commission retained final decision-making authority as to whether public utility's proposed natural gas pipeline was consistent with the minimum standards for land use under CMP, and thus, matter would be remanded to allow Commission to review determination by its executive director, and
- Sufficient evidence supported Board's determination that public utility's proposed natural gas pipeline was reasonably necessary for service, convenience, or welfare of the public, as required to support Board's waiver of MLUL and local government MLUL regulations for pipeline project.

EMINENT DOMAIN - OHIO

State ex rel. Dynamic Industries, Inc. v. Cincinnati

Supreme Court of Ohio - November 10, 2016 - N.E.3d - 2016 WL 6646213 - 2016 -Ohio-7663

Property owner filed petition for writ of mandamus seeking to compel city, manager of city's department of planning and buildings, and head of department's historic conservation office to issue demolition permit.

The Court of Appeals dismissed petition. Property owner appealed.

The Supreme Court of Ohio held that:

- Court of Appeals lacked jurisdiction over claims for injunctive, declaratory, and monetary relief, and
- Property owner failed to exhaust administrative remedies.

Court of Appeals lacked jurisdiction over property owner's claims for injunctive, declaratory, and monetary relief stemming from city and city employees preventing property owner from demolishing building on owner's property.

Property owner failed to exhaust administrative remedies, and therefore constitutional takings claim against city and city employees stemming from city and employees preventing owner from demolishing building on owner's property was precluded, where property owner had not applied for a certificate of appropriateness.

EMINENT DOMAIN - OHIO

State ex rel. Cuyahoga Lakefront, L.L.C. v. Cleveland

Supreme Court of Ohio - November 8, 2016 - N.E.3d - 2016 WL 6646121 - 2016 -Ohio- 7640

After temporary street closure blocked access to one of parking lot's two entrances, owner of the parking lot brought action seeking writ of mandamus compelling city to commence appropriation proceedings.

The Court of Appeals issued writ of mandamus. City appealed.

The Supreme Court held that temporary loss of owner's access to street for 16-day period so that permit-holder could film scenes for movie did not substantially, materially, or unreasonably interfere with owner's easement to the street, and thus did not create compensable taking of owner's property under Ohio Constitution.

Temporary loss of parking lot owner's access to city street for 16-day period so that permit-holder could film scenes for movie did not substantially, materially, or unreasonably interfere with owner's easement to the street, and thus did not create compensable taking of owner's property under Ohio Constitution, where street closure blocked access to one of parking lot's two entrances, and parking lot was still accessible to public but customers had to take different route to access the lot.

EMINENT DOMAIN - OHIO

Sunoco Pipeline L.P. v. Teter

Court of Appeals of Ohio, Seventh District, Harrison County - September 29, 2016 - N.E.3d - 2016 WL 5719301 - 2016 -Ohio- 7073

Pipeline company filed petition for appropriation and complaint for condemnation of land for the purposes of running pipeline that would transport pure propane and butane.

The Court of Common Pleas granted petition and complaint. Landowner appealed.

The Court of Appeals held that:

- Pure propane and pure butane are "petroleum," for purposes of statute governing appropriation of land;
- Evidence supported finding of public use;
- Landowner failed to overcome presumption of necessity; and
- Landowner waived constitutional challenges that were not raised in the trial court.

Pure propane and pure butane are "petroleum," for purposes of statute governing appropriation of land by common carriers, when they are derived from splitting raw material or wet gas into its component parts.

Evidence supported finding of public use supporting common carrier pipeline company's exercise of its statutory authority to appropriate land for the purpose of running pipeline to transport pure propane and butane; production would be stifled without pipeline infrastructure, transportation of propane and butane provided economic benefit to Ohio and some of the necessities of life, pipeline took Ohio product to market, and pipeline was open for public use.

Presumption of necessity for common carrier pipeline company's appropriation of land for the purpose of running pipeline to transport pure propane and butane was not overcome by landowner's assertions that trucks or railroad could be used to transport product, that a cracker plant could be built next to fractionation plans, or that pipeline could be reconfigured to bypass landowner's land; testimony indicated the pipeline was the most efficient option to move the propane and butane.

Landowner waived constitutional vagueness challenge to authorizing statute in proceedings on pipeline company's petition to appropriate land for the purposes of running pipeline that would transport pure propane and butane; arguments presented to the trial court concerned the definition of the word "petroleum" and whether it included pure propane and pure butane, and landowner never argued to the trial court that company's interpretation would render the statute unconstitutionally void for vagueness, though such argument was apparent and could have been asserted.

Landowner challenging pipeline company's petition to appropriate land for the purposes of running pipeline that would transport pure propane and butane waived argument that statute creating a rebuttable presumption of necessity was unconstitutional, where landowner failed to raise the claim in the trial court.

UTILITIES - OKLAHOMA

Mustang Run Wind Project, LLC v. Osage County Board of Adjustment

Supreme Court of Oklahoma - November 1, 2016 - P.3d - 2016 WL 6462378 - 2016 OK 113

Applicant appealed decision of the county board of adjustment denying application for conditional use permit to operate energy facility using wind turbines.

The District Court ordered the board to issue the permit. Board appealed, and the appeal was retained.

The Supreme Court of Oklahoma held that:

- County board of adjustment possessed the authority under the City-County Planning and Zoning Act to grant conditional use permits to owners of real property located in the county;
- District Court considered board's general welfare objections to approval of conditional use permit application, even though the court did not expressly cite to county zoning ordinance allowing board to consider general welfare in deciding permit applications, and thus, court's failure to cite to ordinance did not render its order invalid;
- County zoning ordinance, which allowed county board of adjustment to deny conditional use permit applications, did not grant the board the discretion to deny conditional use permit application on the basis that operation of wind turbines was not beneficial to the community; and
- District Court's findings, that application for conditional use permit satisfied county zoning ordinances and that board's objections to approval of application were not based upon credible evidence, were not against the clear weight of the evidence.

PUBLIC RECORDS - PENNSYLVANIA

Commonwealth v. Walsh/Granite JV

Commonwealth Court of Pennsylvania - October 31, 2016 - A.3d - 2016 WL 6407282

State Department of Transportation petitioned for review of determination of Office of Open Records (OOR) granting in part and denying in part records request under the Right-to-Know Law (RTKL).

The Commonwealth Court held that unsuccessful bid proposals to state Department of Transportation for repair or maintenance of structurally-deficient bridges were exempt from disclosure under provision of Public-Private Transportation Partnership Law (P3 Law) exempting certain proprietary information following selection of a development entity to be a party to a public-private transportation partnership agreement, and therefore such proposals were not public records subject to disclosure under the Right-to-Know-Law (RTKL). P3 Law was a standalone law that was enacted after RTKL and was more specific.

TAX - MINNESOTA

Minnesota Energy Resources Corp. v. Commissioner of Revenue

Supreme Court of Minnesota - November 9, 2016 - N.W.2d - 2016 WL 6635550

Taxpayer, a natural gas utility, sought judicial review of determination by Commissioner of Revenue valuing its natural-gas pipeline distribution system for purposes of taxing personal property.

The Tax Court reduced valuation and ordered recalculation of tax liability. Taxpayer and Commissioner appealed.

The Supreme Court of Minnesota held that:

- Evidence supported Tax Court's exclusion of company-specific risk factor in calculating taxpayer's cost of equity;
- Tax Court failed to adequately explain its determination of beta factors used in calculating taxpayer's cost of equity, thus requiring remand for further explanation;
- Evidence supported Tax Court's rejection of build-up method of calculating taxpayer's cost of equity;
- General evidentiary principles, rather than heightened standard, applied to determination of whether taxpayer demonstrated external obsolescence, abrogating *Guardian Energy, LLC v. Cty. of Waseca*, 2014 WL 7476215, *Am. Crystal Sugar Co. v. Cty. of Polk*, 2009 WL 2431376;
- Taxpayer's intangible assets and working capital were exempt from taxation;
- Taxpayer acted within its discretion in deviating from formula for making specific deductions under regulation;
- Evidence supported Tax Court's use of 5% deductions for working capital and intangible assets; and
- Tax Court did not clearly err in declining to consider prior sale when estimating market value of system.

Tax Court's decision to exclude company-specific risk factor from its calculation of cost of equity for taxpayer, a natural-gas utility, as a component used to calculate value of pipeline distribution system under income approach to valuation of system for purposes of taxing personal property, was factual determination subject to clear error standard of review, not legal issue subject to de novo standard of review. Tax Court excluded company-specific risk factor from taxpayer's cost of equity based on lack of evidentiary support in record for proposition that taxpayer's business was riskier than the market, not because it determined, as a matter of law, that a regulated entity's cost of equity could never be augmented to account for additional risk.

Evidence supported Tax Court's exclusion of company-specific risk factors from calculation of cost of equity for taxpayer, a natural-gas utility, as component used to calculate value of pipeline distribution system under income approach for purposes of taxing personal property, though taxpayer's expert appraiser opined that addition of risk factor to cost of equity for small, undiversified firms was appropriate based on business valuation publication. Independent appraiser testified that there was no conclusive empirical evidence supporting risk premium, and Department of Revenue's employee largely agreed with independent appraiser, stating that he had not seen support for application of additional risk factor other than one relied on by taxpayer's expert.

Tax Court, in calculating taxpayer's cost of equity, as component used to calculate value of taxpayer's natural gas pipeline distribution system under income approach for purposes of taxing personal property, failed to adequately explain adoption of beta factor of less than one to account for relative volatility of specific investment compared to volatility of market as whole, and thus remand was warranted for further explanation. Other than stating that beta factor was less than one for each tax year in question, Tax Court did not specify value of beta factors it used for each year, much less explain how or why it selected them.

Evidence supported Tax Court's decision to reject build-up method of calculating cost of equity for taxpayer, a natural-gas utility, as component used to calculate value of pipeline distribution system under income approach to valuation for purposes of taxing personal property, though taxpayer's expert incorporated build-up method into his calculation. Independent appraiser identified problems with use of build-up method by taxpayer's appraiser, and nothing relied on by taxpayer contradicted independent appraiser's testimony regarding appropriate use of build-up method.

General evidentiary principles, rather than heightened standard requiring taxpayer claiming external obsolescence for natural gas pipeline distribution system to offer probative evidence of cause of claimed obsolescence, quantity of obsolescence, and that asserted cause of obsolescence actual affected subject property, applied to determination of whether system suffered from external obsolescence, so as to support downward adjustment to estimated value of system under cost approach to valuation for purposes of taxing personal property. Fact that taxpayer could not identify specific causes of external obsolescence and precisely calculate contribution of each to decreased revenues or profit margins did not mean that property did not suffer from external obsolescence, and external obsolescence could exist and be difficult to quantify, resulting in variation amongst experts in their estimation of impact of external factors on fair market value of certain properties; abrogating *Guardian Energy, LLC v. Cty. of Waseca*, 2014 WL 7476215; *Am. Crystal Sugar Co. v. Cty. of Polk*, 2009 WL 2431376.

Intangible property, including intangible assets and working capital, of taxpayer, a natural-gas utility, was not subject to tax as personal property under statute and relevant regulations granting Commissioner authority to tax pipeline systems' mains, pipes, and equipment attached thereto, and thus was required to be deducted from valuation of taxpayer's pipeline distribution system under income approach for valuation of property, though Commissioner of Revenue asserted intangible assets and working capital were taxable as reflecting going-concern value of property. Statute and relevant regulations allowed Commissioner to tax only tangible property, and deduction for intangible assets did not reduce taxpayer's going-concern value.

Tax Court, in determining valuation of taxpayer's natural gas pipeline distribution system under income approach for purposes of taxing personal property, acted within its discretion in making specific deductions for value of taxpayer's nonoperating and tax-exempt property, namely deductions of 5% for working capital and 5% for intangible assets, from income indicators of value, rather than following process set forth in regulations and making deductions after each indicators of value had been considered and weighed in calculating property's unit value, since regulations allowed for exercise of discretion when deviating from formula would lead to more accurate valuation.

Tax Court did not clearly err when it declined to consider prior sale of natural gas pipeline distribution system to taxpayer in calculating estimated value of system under market approach for valuing pipeline for purposes of taxing personal property. Taxpayer's purchase did not just include system, purchase price captured overall value of entire enterprise, including intangible assets, goodwill, investments, and working capital, some of which was nontaxable, as well as appliance-repair business that was completely separate from system, trial court was authorized to reject market approach after determining it was unreliable and unhelpful, and experts did not rely on market approach or sale in their valuation analyses.

NABL: Tax Reform On Its Way.

The election of Donald Trump and the Republicans holding their majorities in the House of Representatives and the Senate means that there will be an effort, probably a successful one, to enact tax reform. The exemption of interest on state and local obligations is at serious risk of being curtailed or even eliminated.

The Trump campaign put out its tax reform proposals that largely mirrored the tax reform plans put out by the House Republican leadership earlier in the year. Neither mentions municipal bonds, but the House proposal does include a provision that says that interest would have a 50 percent exclusion. It is unclear whether this refers just to currently taxable interest or to all interest, including interest on state and local obligations. It is also possible that some version of the proposals by the Obama administration to cap the value of the tax exemption at the 28 percent bracket could be proposed.

NABL members should contact their members of Congress, and urge their issuers clients to do so also, and make sure they understand the importance of municipal bonds. NABL has a tax reform resource page with information and sample letters.

Read more here.

NABL: SEC Chair White Expresses Possibility of Issuer Regulation.

On November 14, the House Financial Services Committee held a hearing on the U.S. Securities and Exchange Commission's (SEC) Fiscal Year (FY) 2018 Preliminary Authorization Request. The SEC, in its preliminary request, has asked for $2.227 billion, a $445 million increase over the FY 2017 request. When questioned by members on the request, Chair White emphasized that the increase in funding would help the SEC adapt to its growing complexity and extensive responsibilities. Representative Gwen Moore (D-WI) questioned Chair White on whether Congress should take action relating to SEC regulation over issuers, in light of the 2012 Report on the Municipal Securities Market and the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative. Chair White said that while the MCDC Initiative has been successful in increasing awareness of continuing disclosure obligations, the SEC staff is continuing to examine whether the SEC should have greater authority.

Chair White's testimony is available here. A recording of the hearing is available here.

TAX - WEST VIRGINIA

University Park at Evansdale, LLC v. Musick

Supreme Court of Appeals of West Virginia - October 26, 2016 - S.E.2d - 2016 WL 6407491

Taxpayer appealed decision of county commission, sitting as board of equalization and review (BER), which determined that taxpayer's protest to county assessor's assessment of its leasehold interest in property located on campus of State University was issue of taxability, rather than valuation, reviewable only by Tax Commissioner.

The Circuit Court denied petition for appeal. Taxpayer appealed.

The Supreme Court of Appeals held that taxpayer's challenge to assessment of its leasehold interest on the basis that leasehold purportedly did not have separate, independent value from freehold estate presented issue of valuation, rather than taxability, and thus was reviewable by BER, rather than by Tax Commissioner.

Although taxpayer alleged that leasehold's value was $0 resulting in lack of taxability, value of leasehold was threshold issue distinct from taxability, and taxpayer did not contend that its property was exempt from taxation.

An Open Letter to the IRS on Revenue Procedure 2016-44: Squire Patton Boggs

Dear Internal Revenue Service:

At the Bond Attorneys' Workshop this past October, certain of your officials indicated that you will be considering the issuance of clarifications and amendments of Revenue Procedure 2016-44 to address concerns that have been raised about particular provisions of this Revenue Procedure (which, by and large, is an excellent piece of guidance regarding which management contracts will not result in private business use of facilities financed by tax-exempt bonds). These officials indicated that there was no intent to change any law under the safe harbors from private business use for management contracts and that continuity was intended between Revenue Procedure 2016-44 and the safe harbors set forth in Revenue Procedure 97-13 (which is superseded by Rev. Proc. 2016-44).

When you issue these clarifications and amendments of Rev. Proc. 2016-44, please don't forget to address the concern raised by The Public Finance Tax Blog on September 27, 2016.

As detailed in that post, a manager is treated under Rev. Proc. 2016-44 as receiving compensation from the qualified user of the managed facility if the qualified user reimburses the actual and direct expenses (and related administrative overhead expenses) paid by the manager. Revenue Procedure 2016-44 further provides that the reimbursement of actual and direct expenses paid by the manager to unrelated parties is disregarded as compensation for purposes of determining whether the management contract attempts an impermissible sharing of net profits of the bond-financed facility through the payment of compensation that takes into account both the revenues and expenses of the managed facility. However, in direct contrast to Rev. Proc. 97-13, as interpreted by Private Letter Rulings 200222006 and 201145005, Rev. Proc. 2016-44 expressly provides that an employee of the manager is not an unrelated party to the manager. A literal interpretation of Rev. Proc. 2016-44 could therefore result in the conclusion that a manager of a tax-exempt bond-financed facility shares in the net profits of that facility in the not-uncommon arrangement where the manager is reimbursed for its employee expenses and also receives a percentage of the managed facility's gross revenues.

Subsequent to the post on The Public Finance Tax Blog, you issued Private Letter Ruling 201641002 on October 7, 2016, which continues the trend established by Private Letter Rulings 200222006 and 201145005 that the reimbursement of a manager's direct and actual employee expenses is disregarded as compensation to the manager under Rev. Proc. 97-13. Given your statements at the Bond Attorneys' Workshop that Rev. Proc. 2016-44 was not intended to effect a change in law and that continuity between Rev. Proc. 2016-44 and Rev. Proc. 97-13 was instead intended, please include in your amendments of Rev. Proc. 2016-44 an amendment to treat a manager's employees as unrelated to the manager so that the reimbursement of the manager's direct and actual employee expenses does not result in the conclusion that the manager shares in the net profits of the managed facility if the manager is reimbursed for such expenses and also receives a percentage of the facility's gross revenues.

Sincerely,

Everyone Who Cares About Good Administrative Guidance

Squire Patton Boggs

The Public Finance Tax Blog

By Michael Cullers on November 16, 2016

Trump Team Floats 'Infrastructure Bank' Derided by Campaign.

A key member of Donald Trump's transition team said the incoming administration is exploring ways to fund fixing bridges and roads including by establishing an "infrastructure bank," a concept Hillary Clinton promoted and the Republican's campaign had previously derided.

Steven Mnuchin, a member of the team's executive committee who was recommended for the position of Treasury secretary, said in brief comments to reporters Wednesday morning that a "very big focus is regulatory changes, looking at the creation of an infrastructure bank to fund infrastructure investments."

Trump's campaign had criticized Clinton's proposed infrastructure bank as being "controlled by politicians and bureaucrats in Washington" and funded by a "$275 billion tax increase on American businesses."

The billionaire's economic advisers previously said infrastructure spending can be unleashed without creating a government entity. They released a plan in October advocating the provision of as much as $140 billion in tax credits to support $1 trillion in infrastructure investment, which would offset the credits through tax revenue from the projects' labor wages and business profits.

Mnuchin and spokespeople for Trump didn't respond to requests to elaborate. Peter Navarro, a Trump campaign adviser and co-author of last month's infrastructure plan, also didn't respond to a request for comment.

According to Clinton's campaign website, her five-year plan would have allocated $250 billion to direct public investment in infrastructure and $25 billion to an infrastructure bank. The new institution would leverage the funds to support as much as an additional $225 billion in loans, loan guarantees and other "forms of credit enhancement."

Outgoing President Barack Obama has also proposed a U.S. infrastructure bank to lend at maturities as long as 35 years to fund transportation, water and energy projects. Such an entity would potentially emulate organizations from China, which led the establishment of the Asian Infrastructure Investment Bank in 2015, and Canada, where Prime Minister Justin Trudeau's government is creating a bank to provide low-cost financing for infrastructure projects.

"The economic priorities are clearly taxes, regulatory, trade, and infrastructure," Mnuchin said at Trump Tower in New York. "Right now we're just all in the planning stages, you can see. We want to be in a position where in the first hundred days we can execute the economic plan."

Private Investors

The president-elect's transition website says the new administration seeks "to invest $550 billion to ensure we can export our goods and move our people faster and safer." The details on the structure of the plan are still to come.

Whether Trump's ultimate proposal involves an infrastructure bank or tax credits, the plan's success, if enacted, may depend partly on the extent to which private companies and investors find sufficient incentives to put up their own money for individual projects.

The length of time it takes such wagers to come to fruition could discourage investment, and easing business concern will require more of a plan from Trump's administration, according to Jim McCaughan, who oversees about $400 billion at Principal Global Investors.

"When it's big-scale macroeconomics or politics that drives the infrastructure, the private sector has to be very careful," McCaughan, who runs Principal Financial Group Inc.'s asset manager, said Wednesday in an interview at the insurer's investor day in New York. "Giving the private sector the confidence to do it will actually be quite a challenge."

One Democrat, Representative John Delaney of Maryland, called the comments from Mnuchin about an infrastructure bank "encouraging" and said a bipartisan coalition in Congress is ready to work on rebuilding America, according to a statement from his office.

Bloomberg Politics

by Scott Lanman and Sho Chandra

November 16, 2016 — 2:10 PM PST

[Justice Mulls False Claims Act Charges Against Issuers, Borrowers, MAs.]()

WASHINGTON — The Justice Department is considering filing civil lawsuits under the False Claims Act against at least five issuers and borrowers, as well as two municipal advisors, for allegedly misusing the Treasury Department's state and local government series securities to exploit interest rates and obtain tens of millions of dollars.

The issuers and borrowers include: Greenville County, S.C., School District; Nationwide Children's Hospital in Franklin County, Ohio; Gulf Breeze, Fla.; the Louisville and Jefferson County Metropolitan Sewer District in Kentucky; and The University Financing Foundation in Georgia, according to documents obtained by The Bond Buyer, bond-related disclosures, and sources.

The municipal advisors are Christopher Monaghan and Michel Garner, who were principals of the now-defunct Enhanced Financial Solutions LLC and are now principals at Echo Financial Products, both based in Pennsylvania. EFS set the five issuers and borrowers up in proprietary "yield enhancement programs" for state and local government series securities (SLGS), according to filings with the Securities and Exchange Commission by Echo.

EFS was affiliated with Pottstown, Pa.-based Investment Management Advisory Group (IMAGE), which shut down following a Justice Department antitrust investigation of bid-rigging of guaranteed investment contracts and other muni bond investments.

EFS' yield management program monitored interest rates and purchased SLGS for the issuers and borrowers, then redeemed and/or modified them when rates changed to obtain redemption premiums.

An issuer, for example, would buy 20-year SLGS, hold them for 30 days, and, if interest rates dropped, sell them back to Treasury at higher prices.

The issuers made huge amounts of money over several-year periods. Greenville County School District, the largest school district in South Carolina, made $67.7 million from 2007 through 2012, the Louisville and Jefferson County MSD made $114.60 million from 2008 through 2011, and Gulf Breeze made almost $64.2 million between 2007 through 2012, according to Treasury documents obtained through the Sunshine Act.

DOJ earlier this year sent letters to the issuers, borrowers and MAs saying it had opened a civil investigation into whether the yield enhancement programs' alleged violation of SLGS rules "implicated" the False Claims Act (FCA).

The FCA imposes liability on persons and companies who defraud governmental programs. It is the federal government's primary litigation tool to combat fraud against the government.

Sources believe Treasury asked DOJ to help it recover some of the ill-gotten gains from the SLGS transactions.

If DOJ filed False Claims Act charges against the issuers, borrowers and MAs and prevailed, it could obtain triple damages as well as $5,500 to $11,000 per claim.

DOJ told the issuers, borrowers, and MAs that it could take other action, such as filing suits charging them with common-law breach of contract, fraud, or unjust enrichment.

But DOJ's preference, according to the letters it sent the alleged violators, would be to settle the disputes over the SLGS transactions without resorting to litigation.

The issuers and one borrower said they are cooperating with DOJ.

“The investigation remains in its early stages, and the hospital has had only preliminary discussions with DOJ to this point,” Nationwide Children’s Hospital said in the official statement for $129.3 million of revenue refunding bonds Franklin County, Ohio sold for it. “At this point the hospital cannot predict the outcome of the DOJ investigation, including the potential materiality of any monetary consequences.”

All but one of the other issuers and borrowers made similar disclosures in bond documents. Some made statements to The Bond Buyer and provided documents under the Sunshine Act.

Officials with The University Financing Foundation refused to comment and did not make any disclosures. Nationwide Children’s Hospital officials said they could not comment further than their disclosure because of the ongoing investigation.

A Treasury spokesman said the department probably would not be able to provide documents because of an ongoing investigation and privacy issues. But some issuer officials talked about the DOJ probe.

Doug Webb, general counsel for the Greenville County School District, told The Bond Buyer, “The school district participated in the [SLGS] program from 2007 to 2013. This program was administered by a financial services provider on behalf of the school district and was also utilized by other municipal bond issuers. The school district used this investment program for the sole benefit of its students and constituents.”

Gulf Breeze city manager Edwin Eddy said, “We are not taking it lightly. We hired a law firm, and determined that other agencies received the same legal advice we did. We’re taking it seriously to make sure we are prepared.”

The issuers, borrowers and MAs, who don’t think they did anything wrong, have hired lawyers that specialize in tax and government controversies, as well as the False Claims Act. The Greenville County School District is being represented by Bryan Cave, their lawyers said. The Louisville and Jefferson County MSD has hired Brad Waterman, a lawyer with his own tax controversy practice. Gulf Breeze has hired Jenner & Block. Several other bond counsel and law firms are involved. Michael Schwartz, a former U.S. attorney who is now a partner at Pepper Hamilton in Philadelphia, represents Monaghan and Garner and EFS. Most of these lawyers, with the exception of Schwartz, either could not be reached for comment or declined to comment.

SLGS Program

The SLGS program was created in 1972. SLGS are non-marketable special purpose securities issued by Treasury and purchased by state and local governments to help them comply with yield restriction and rebate requirements on their investments of bond proceeds.

SLGS are often purchased by issuers for their advance refunding escrows as alternatives to open-market Treasuries. Their maturity dates can be tailored to those of the bonds being refunded. But issuers can invest other bond proceeds in them as well.

In Gulf Breeze, reserve funds and replacement funds were invested in SLGS, documents show. The city also purchased SLGS with some of the proceeds from a $500 million variable-rate local government pool bond program that began in 1985 to provide loans to municipalities across the state.

In 1996, Treasury revised its rules to make SLGS more flexible for issuers. A year later, Treasury amended the SLGS rules to halt perceived abuses. The preamble to the rules said the amendments were to prohibit issuers from purchasing both SLGS and open-market Treasuries for the same advance refunding escrow as a “cost-free interest rate hedge or option for speculation in open market securities.” The rules contained examples of impermissible transactions involving purchase of both SLGS and open-market Treasuries.

In 2005, Treasury published final SLGS rules that expanded the examples of impermissible transactions, but all of the examples involved interest rates exploited through the use of SLGS and open-market Treasuries. None of the examples involved just SLGS.

SLGS Transactions
In September 2006, March 2008 and February 2012 letters, C. Willis Ritter, a lawyer at Ungaretti & Harris at that time who served as both special tax counsel and special SLGS counsel to Gulf Breeze and helped prepare its SLGS agreement, assured Gulf Breeze and later other issuers that the yield investment program did not violate SLGS rules and would not warrant any enforcement action from Treasury, according to documents.

Ritter had said in an earlier brief sent to clients and obtained by The Bond Buyer that the 2005 final SLGS rules “indicated” it was permissible to do these transactions. He could not be reached for comment.

Treasury became aware of EFS’ yield enhancement program and in October 2013 it began an administrative process to determine if the program violated SLGS rules. Treasury officials created a SLGS working group comprised from departmental staff to review the transactions done under the program and to submit a report and recommendations on those transactions. The department gave the issuers, borrowers and MAs the opportunity to tell it why their investment programs didn’t violate SLGS rules.

In December 2013, the late Frederic “Rick” Ballard, with Ballard Spahr, responded to Treasury on behalf of EFS, the Greenville County, S.C. School District, Gulf Breeze and Nationwide Children’s Hospital. He, like Ritter, said that Treasury had given an “implied” approval to these SLGS deals when it specifically proposed prohibiting them in the Notice of Proposed Rulemaking for the final rules, but then deleted that section from the final 2005 rules.

Ballard also said the issuers and borrowers had relied on counsel and that the transactions took place over an extended period of years, openly in filings with Treasury’s Bureau of Fiscal Service.

“EFS and the [SLGS] purchasers were not trying to hide anything from anyone,” he said.

Treasury Probe and Sanctions
In 2014, then-Treasury Fiscal Assistant Secretary Richard Gregg sent letters informing the issuers, borrowers and MAs that EFS’ yield enhancement program violated SLGS rules when they: purchased a long-term SLGS security and redeemed it before maturity to capture a redemption premium; changed the maturity or interest rate of a SLGS security already subscribed for to take advantage of interest rate movements; and changed the SLGS subscription amount, in response to movements in interest rates, in order to maximize redemption premiums or minimize potential losses.

Based on the SLGS Working Group recommendations, Treasury suspended the issuers and borrowers from the SLGS program for five years. Treasury permanently barred Monaghan and Garner from the program, according to disclosure documents and Echo’s filings with SEC.

Then earlier this year DOJ opened up its investigation.

Defenses

The issuers, borrowers and MAs are pushing back against DOJ on several fronts. First, they don't think they did anything wrong. They had opinions from bond counsel, special tax counsel, SLGS counsel and financial advisors that the SLGS transactions did not violate SLGS rules. They say they relied on these opinions.

"When it comes to dealing with the Justice Department, if you have an opinion that was written in good faith, there is no basis to go after the person relying on that opinion for any kind of fraud or improper conduct," Schwartz said.

The issuers, borrowers and MAs also say they openly bought and sold the SLGS over many years and Treasury never questioned the purchases and sales.

In addition, they said that, when informed by Treasury that their transactions violated SLGS rules, they stopped doing them and that Treasury sanctioned them with the suspensions. They thought this meant the case was closed.

"When we received word back from the Department of the Treasury that we shouldn't be doing that, we said, 'OK, we'll stop immediately,'" said Eddy.

In letters sent to them regarding the suspensions, Treasury said, "This constitutes the FINAL AGENCY ACTION in this matter. The decision will not be reconsidered and may not be appealed to any other officials in the department of the Treasury." It said, however, that the issuers and borrowers could seek judicial review of Treasury's findings and actions.

The issuers and MAs said they didn't agree with Treasury but didn't contest the suspensions.

But sources said federal officials contend Treasury had no way to impose penalties or recoup ill-gotten gains for the SLGS violations under the SLGS rules. The 2005 rules list the remedies available to Treasury for abuses. They include rejections of SLGS subscriptions and suspension or revocation from the SLGS program. The rules don't permit Treasury to seek penalties, sources said.

"You've got to remember that this is a Treasury borrowing program," said one source who did not want to be identified.

Some lawyers representing the issuers and borrowers argue that DOJ will never be able to file charges against the issuers and borrowers under the FCA because it bars tax claims. They said the SLGS program involves tax rules because it is designed to help issuers comply with arbitrage and yield restriction rules.

They point to Michael Lissack's False Claims Act suit against Sakura Global Capital Markets, which was shot down by the U.S. Court of Appeals for the Second Circuit in New York City because it involved tax claims.

Lissack accused Sakura of yield burning, which means selling issuers open-market Treasuries at inflated prices to "burn" down their investment yields. Appeals court judges dismissed the suit because the FCA contains a "tax bar" that excludes coverage of all "claims, records, or statements made under the Internal Revenue Code of 1986."

But Lissack was successful in filing FCA charges against broker-dealers for yield burning and his charges involved SLGS. Lissack argued that by getting issuers to invest in open-market Treasuries, the broker-dealers deprived Treasury of SLGs subscriptions and the revenue from that program that it normally would have had.

In April 2000, 17 regional and national broker-dealers and investment advisors agreed to a total of $140 million to settle the charges. Lissack made millions of dollars from the settlements.

In this latest SLGS controversy, Schwartz said, "We are fully cooperating with the Department of Justice and expect that when it thoroughly reviews all of the evidence it will determine that there is no basis to believe that Enhanced Financial did anything improper."

The issuers and borrowers are also hoping DOJ will decide not to take any action against them.

The Bond Buyer

By Lynn Hume and Shelly Sigo

November 15, 2016

Trump and State and Local Governments: The Known Unknowns.

Any set of ideas can be separated into known knowns, known unknowns, and unknown unknowns. Leaving the last set aside, one known known that appears virtually certain: that state and local governments are going to have to fight hard for their share of the "policy pie" under the new Trump Administration. Let's now take a look at some of the key "known unknowns"—factors that are likely to affect valuations and creditworthiness and functioning in the state and local finance sector as the new Administration and Congress sort them out.

1) ARE INTEREST RATES INEVITABLY HEADED HIGHER?

That is the first structural response to the Trump win. But is the inflation that would trigger that trend an inevitable outcome?

Certainly, a much more fiscally stimulative Federal Budget would likely lead to that, but isn't inevitable—see below. In the meantime, there are a number of potential patterns that could offset the potential for higher inflation or higher long-term rates. These include energy policy that would drive energy costs lower, and more restrictive trade policies that could dampen global demand, and a push toward more rapid increases in Fed short-term rates that could actually slow growth.

Of course, some potential policies could be inflationary – e.g., gutting trade deals and increasing tariffs, and an aggressive push toward more infrastructure spending – but the outcome is far from clear. To assume that any new set of trade policies is inflationary, one also has to assume that they aren't substantially damaging to global economic activity. We'll see.

By the way, just as we finished this, the muni market was getting beat up pretty badly on Monday. Is that a response to Trump's victory, or merely a response to recent heavy supply combined with a down Treasury market and a limited aggregate risk appetite? We vote for the latter.

2) IS A DRAMATICALLY MORE STIMULATIVE FISCAL POLICY INEVITABLE?

Well, maybe, maybe not. It seems that many observers are assuming that a Republican-led House and Senate will automatically accede to Trump's campaign promises of a combination of lower taxes and aggressive infrastructure spending, and thus a sharply higher Federal deficit.

Color us dubious. Are Republicans all of a sudden ready to enact a combination of significantly lower tax revenues and new spending that isn't paid for? Are they going to tell their base that all of a sudden, fiscally responsible budgets no longer matter? The answers to this question are, we think, key, because they will strongly help determine the extent to which Trump can spend more (military, infrastructure) and tax less (corporate and individual).

3) WILL THE JOINT COMMITTEE ON TAXATION BE MOVING TO DYNAMIC SCORING?

This is another key in terms of what Trump promises are possible to keep. Under dynamic scoring, the purported economic benefits of a tax law change in terms of stronger economic activity are included in estimating the net cost of any change in the tax code. It is not a given that the Joint Committee on Taxation will move to dynamic scoring, but with Republicans in both houses of Congress functioning as their "bosses," it's at least possibility. In terms of a large portion of what Trump has promised and what many Republicans want, this is a very big deal.

4) IS THE TAX EXEMPTION AT RISK?

Some observers seem to be very concerned that the tax exemption is at risk under a Trump Administration. We aren't so sure.

For any infrastructure expansion program to be successful, it needs to be additive to what already exists, and a move toward tax credits for incremental infrastructure spending will fail if it simply replaces the strongly successful program that already exists through the tax-exempt market.

That said, with Joint Tax staff and other key players likely to have something of a free rein to affect policy over coming months, supporters of the tax exemption will have to be extremely vigilant and involved.

5) WHAT WILL THE STRATEGIES FOR ADDITIONAL INFRASTRUCTURE SPENDING BE?

We already have some idea of what this might look like based upon work by Wilbur Ross and Raymond Navarro, who are apparently advising Trump. Their plan calls for heavy use of public/private partnerships with heavy private sector equity, with a large portion of the cost of that equity offset by tax credits that would sharply reduce the equity exposure and the cost of that exposure.

Theirs is a dynamic scoring framework, which assumes that a large proportion of the cost of the tax credits is offset by increased income taxes resulting from the new economic activity. (Important note: Under fair dynamic scoring, the cost of the tax exemption would be netted this way as well, as would decreased market values if the tax exemption were to be gutted.)

We also note that these two advisors include a heavy dose of energy exploration and development in their definition of new infrastructure.

What will be left out? Probably environmentally-related projects, among others. The selection process for projects that "make the cut" is an issue, as it was under the prior Administration's plan. The muni market—and Build America Bonds—allowed governments to self-select. The mechanism here isn't clear. There is much, much more to consider, of course.

6) HOW WOULD SHARPLY LOWER CORPORATE TAX RATES AFFECT THE VALUE OF EXISTING MUNIS?

The format of any such tax cuts matters a lot, but there is the potential for a substantial cut in value. We note that from 2005-2015, according to Fed data, household sector direct holdings of munis are about unchanged, fund holdings are up $263 billion, and bank holdings are up $333 billion (plus direct bank purchases).

Property and casualty insurers' holdings are only up $17 billion over the period but they would become net sellers at current yield relationships. In our view, a very large cut in corporate tax rates would cause yields relative to taxable to move higher. This is a real risk, we think, because support for lower corporate taxes crosses party lines.

7) HOW WOULD CUTS IN INDIVIDUAL TAX RATES AFFECT THE VALUE OF EXISTING MUNIS?

We are less concerned here, if the top rate were to move to 33%. A large number of current individual owners of munis would still find them attractive at a 33% rate, and the 33% rate, as proposed, kicks in fairly low – ($112,500 for an individual, $225,000 for a couple.) A key variable here is that if the lower corporate rate were not well insulated from use by so-called pass-through corporations, then large numbers of wealthy individuals might get the big cuts in rates.

This will likely be "fixed," though, because if it isn't the drop in income tax revenues would explode.

8) HOW WILL HOSPITALS FARE IF THE ACA IS GUTTED?

This could be the biggest near-term question for the muni market, of course, because many hospitals—and the states and cities they reside in—would face vast cuts in revenues from insured individuals if some fraction of 20 million individuals were removed from the rolls.

Alternatively, what would "repeal and replace" look like? We haven't a clue, but we know we need to watch.

9) WHAT REGULATORY CHANGES COULD ACTUALLY SUPPORT THE FUNCTIONING OF THE MUNI MARKET?

It is very early for this, but changes to regulation, especially including Dodd-Frank, bear close watch.

10) COULD FEDERAL SUPPORT FOR STATE AND LOCAL GOVERNMENT PROGRAMS BE HIT?

It's certainly possible, given the revenue erosion that would result from tax cuts and potentially more spending on the military and (ironically) infrastructure.

11) WHAT KINDS OF POLICY "GLITCHES" WILL THERE BE AND COULD A FIRED-UP POPULACE INCENTED TOWARD MORE ACTIVISM GENERATE ECONOMIC DISRUPTIONS?

As a the new Administration, a fiscally conservative Republican majority in Congress, and a fired-up Democratic minority wielding the filibuster struggle to assert themselves, we believe there is that possibility.

Of course, the above is only a start, but we believe that we have laid out a number of the very important issues that market participants and policymakers will need to track as the new Administration takes hold. Comments welcome.

The Bond Buyer

By George Friedlander

November 15, 2016

George Friedlander is a municipal market strategist with over 41 years of experience following market trends, credit trends and policy issues in the municipal sector.

Mississippi Tightens Bond Rules for Long-Term Debt.

JACKSON — Don't take on long-term debt to cover day-to-day expenses. Don't use credit to buy stuff that will wear out before it's paid off.

It's advice many parents give their soon-to-be adult children. And, in a nutshell, it's what the Mississippi Bond Commission says in rules it recently adopted.

The rules were written partly in response to a $308 million bond bill that legislators passed during the 2016 session.

"Nearly every year, the Mississippi Legislature passes a bond bill, authorizing debt on behalf of the state to fund projects over the long-term," state Treasurer Lynn Fitch said last week. "Typically, those bills include infrastructure projects for economic development, capital improvements for our universities and colleges, and upgrades to our health care system. This year's bill included over four dozen other projects that were far more local in their benefit and questionably appropriate for funding with the taxpayer credit card."

The new rules prohibit Mississippi from issuing bonds to pay for salaries or other recurring expenses. They say any bond project must have a life at least as long as the life of the debt. They require that specific information be submitted about each project. They also say that the Bond Commission must have "clear and convincing evidence of economic use and benefit" for any project funded with tax-exempt bonds.

The Legislature must approve bond projects. Then, the Bond Commission must vote to issue the long-term debt.

This year's bond package, House Bill 1729, included nearly $62 million for improvements on most university campuses; $25 million for community colleges; $45 million for improvements at Ingalls Shipyard in Pascagoula; $20 million for bridge replacement; and $16.6 million for the Mississippi history and civil rights museums opening in Jackson in 2017.

Among the local projects were $5 million for the Mississippi Arts and Entertainment Center in Meridian; $1.6 million for seawall replacement at the Ross Barnett Reservoir; and $1.1 million for walking and bike trails, hunting and firing ranges at Columbus Air Force Base. The bill also authorized bonds for zoos in Jackson and Hattiesburg; museums in Pascagoula, Kosciusko and Leland; tourism projects in Vicksburg; a beautification project in New Albany; a welcome center in Okolona; street repairs in Laurel and Heidelberg; and baseball field lights for the Alcorn County School District.

At their October meeting, the Bond Commission members — Republican Gov. Phil Bryant, Republican Fitch and Democratic Attorney General Jim Hood — ratified bonds for all but eight of the projects authorized by legislators.

Fitch's chief of staff, Michelle Williams, said the projects they skipped were for dams on private property in DeSoto County; a Science Exploration Center in Hattiesburg, for several reasons; a recreation center in McComb, because local officials didn't pass a resolution supporting it; a park in Mount Olive because of questions about the project's details; a seminary in Natchez, because of constitutional questions about spending public money on a religious group; for projects in Terry and Saltillo, because leaders in each town wanted to use money for items different than the ones in the bond bill; and a Tishomingo County equine center because county officials didn't know how they'd fund the local share.

Fitch said the Bond Commission's new rules, which affect future projects, are based on suggestions from financial officers' organizations and on best practices in other states. Paying off the principal and interest on bonds typically takes 20 years.

"With every man, woman, and child in the state already on the hook for over $1,700 in state debt," Fitch said, "we need to think long and hard about what we put on the taxpayer credit card."

Emily Wagster Pettus, Associated Press 5:44 p.m. CST November 13, 2016

Emily Wagster Pettus has covered Mississippi government and politics since 1994. Follow her on Twitter: http://twitter.com/EWagsterPettus.

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2 Takes on Trump's Impact on Muni Bonds.

President-elect Donald Trump's proposed policies could partially change the landscape of the municipal bond market for investors in two primary ways.

First, his election could put Build America Bonds (BABs) — or a program like it — back on the table for government issuers. BABs were introduced in 2009 and 2010 by the Obama administration as a way to stimulate the economy and create jobs. Republicans on Capitol Hill killed the program, but Trump has spoken favorably about it. He's interested in stimulating more investment in infrastructure.

Unlike regular municipal bonds, BABs aren't tax exempt, making them more appealing to investors such as international bondholders or institutional investors who aren't eligible to claim an exemption. Thus, they broaden the municipal bond market.

Second, an analysis by the Court Street Group Research (CSGR) says Trump's income tax plan could affect the municipal market because it would eliminate or reduce the tax exemption for municipal bondholders. "The CSGR approaches the reality of a Trump administration with some trepidation as it applies to municipal bonds," the analysis said.

The Takeaway: Taking all these proposals into account, and given that many are now expecting federal tax reform to roll forward in some form in 2017, these policies could reshape to some extent who buys municipal bonds.

Research by Brandeis University's Daniel Bergstresser and MIT's Randolph Cohen has shown that municipal debt is being increasingly held by America's wealthiest households. If the tax exemption on income earned from that investment is eliminated for the wealthy, it provides little motivation for these bondholders to buy more municipal debt.

Who will take their place? The BAB experiment would seem to suggest that having more taxable debt in the municipal bond market will attract different kinds of investors. Stay tuned.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 18, 2016

Dallas Stares Down a Texas-Size Threat of Bankruptcy.

DALLAS — Picture the next major American city to go bankrupt. What springs to mind? Probably not the swagger and sprawl of Dallas.

But there was Dallas’s mayor, Michael S. Rawlings, testifying this month to a state oversight board that his city appeared to be “walking into the fan blades” of municipal bankruptcy.

“It is horribly ironic,” he said.

Indeed. Dallas has the fastest economic growth of the nation’s 13 largest cities. Its streets hum with supersize cars and its skyline bristles with cranes. Its mayor is a former chief executive of Pizza Hut. Hundreds of multinational corporations have chosen Dallas for their headquarters, most recently Jacobs Engineering, which is moving to low-tax Texas from pricey Pasadena, Calif.

But under its glittering surface, Dallas has a problem that could bring it to its knees, and that could be an early test of America’s postelection commitment to safe streets and tax relief: The city’s pension fund for its police officers and firefighters is near collapse and seeking an immense bailout.

Over six recent weeks, panicked Dallas retirees have pulled $220 million out of the fund. What set off the run was a recommendation in July that the retirees no longer be allowed to take out big blocks of money. Even before that, though, there were reports that the fund’s investments — some placed in highly risky and speculative ventures — were worth less than previously stated.

What is happening in Dallas is an extreme example of what’s happening in many other places around the country. Elected officials promised workers solid pensions years ago, on the basis of wishful thinking rather than realistic expectations. Dallas’s troubles have become more urgent because its plan rules let some retirees take big withdrawals.

Now, the Dallas Police and Fire Pension System has asked the city for a one-time infusion of $1.1 billion, an amount roughly equal to Dallas’s entire general fund budget but not even close to what the pension fund needs to be fully funded. Nothing would be left for fighting endemic poverty south of the Trinity River, for public libraries, or for giving current police officers and firefighters a raise.

“It’s a ridiculous request,” Mr. Rawlings, a Democrat, said in testimony this month to the Texas Pension Review Board, whose seven members are appointed by Texas governors, all Republicans for the last 20 years.

The mayor — who defeated a former Dallas police chief to win his office in 2011 — added that he had nothing but respect for the city’s uniformed safety workers, five of whom were gunned down by a deranged sniper during a protest against police shootings in July.

But that does not change the awful numbers. This month, Moody's reported that Dallas was struggling with more pension debt, relative to its resources, than any major American city except Chicago.

"The City of Dallas has no way to pay this," said Lee Kleinman, a City Council member who served as a pension trustee from 2013 until this year. "If the city had to pay the whole thing, we would declare bankruptcy."

Other ideas being considered include raising property taxes, borrowing money for the pension fund, delaying long-awaited public works or even taking back money from retirees. But property taxes in Dallas are already capped, the city's borrowing capacity is limited, and retirees would surely litigate any clawback.

This month, the city's more than 10,000 current and retired safety workers started voting on voluntary pension trims, but then five people sued, halting the balloting for now.

The city is expected to call for an overhaul in December. But it has no power to make the changes, because the fund is controlled by state lawmakers in Austin. The Texas Legislature convenes only every other year, and Dallas is preparing to ask the state for help when the next session starts in January.

One state senator, John Whitmire, stopped by the pension building this month and urged the 12 trustees to join the city in asking Austin to scale back their plan.

"It's not going to be pleasant," said Senator Whitmire, a Democrat in the statehouse since 1973. But without some cuts, "this whole thing will come crashing down, and we'll play right into the hands of those who would like 401(k)s or defined contribution plans."

To many in Dallas, the hole in the pension fund seems to have blown open overnight. But in fact, the fuse was lit back in 1993, when state lawmakers sweetened police and firefighter pensions beyond the wildest dreams of the typical Dallas resident. They added individual savings accounts, paying 8.5 percent interest per year, when workers reached the normal retirement age, then 50. The goal was to keep seasoned veterans on the force longer.

Guaranteed 8.5 percent interest, on tap indefinitely for thousands of people, would of course cost a fortune. But state lawmakers made it look "cost neutral," records show, by fixing Dallas's annual pension contributions at 36 percent of the police and firefighters' payroll. It would all work as long as the payroll grew by 5 percent every year — which it did not — and if the pension fund earned 9 percent annually on its investments.

Buck Consultants, the plan's actuarial firm, warned that those assumptions were shaky, and that the changes did not comply with the rules of the state Pension Review Board.

"The Legislature clearly ignored that," Mr. Kleinman said. The plan's current actuary, Segal Consulting, reported in July that 23 years of unmet goals had left Dallas with a hidden pension debt of almost $7 billion.

Back in Dallas, the pension trustees set about trying to capture the 9 percent annual investment returns. They opted for splashy and exotic land deals — villas in Hawaii, a luxury resort in Napa County, Calif., timberland in Uruguay and farmland in Australia, among others.

The projects called for frequent on-site inspections by the trustees and their plan administrator, Richard Tettamant. The Dallas Morning News reported that officials were spending millions on global investment tours, with stop-offs in places like Zurich and Pisa, Italy. Pension officials argued that their travel was appropriate and their investments were successes.

It was an investment right in Dallas that led to the pension fund's undoing: Museum Tower, a luxury condominium high rise. It went up across the street from the Nasher Sculpture Center, a collection housed in a Renzo Piano building surrounded by manicured gardens. The Nasher, opened in 2003, was integral to a city campaign to revitalize its downtown.

Museum Tower started out modestly, with a $20 million investment from the pension fund. But as the downtown Arts District flourished, the pension fund raised its stake, then doubled the height of the building, and finally took over the whole development for $200 million. Mr. Tettamant became the general manager.

As Museum Tower soared to 42 stories, its glass cladding acted as a huge reflector, sending the sun's intensified rays down into the sculpture center. Mr. Piano had installed a filtered glass roof, designed to bathe the masterpieces in soft, natural light. The glare from the tower ruined the effect, killed plants in the garden and threatened to damage the sculptures. The center called on the pension fund to reduce the glare. Mr. Tettamant said nothing could be done and suggested the center change its roof.

Mr. Rawlings, the mayor, brought in a former official of the George W. Bush administration, Tom Luce, for confidential mediation. But Mr. Luce resigned after five months, saying Mr. Tettamant had failed to adhere to "the conditions and spirit under which I agreed to serve."

Before long, The Dallas Morning News published a long exposé of the fund's real-estate holdings, raising serious questions about its claimed investment success. Some retirees began to clamor for a criminal investigation. The mayor demanded a full audit.

When the audit was done, it showed that the investments were indeed overvalued, and that the fund was in deep trouble.

Mr. Tettamant, who was dismissed in 2014, said he believed he was being blamed for problems he did not cause.

"The Dallas mayor has a vendetta against me," he said in an interview. "I never made any real estate investments. The board made all the investment decisions, and I was not a board member."

In April, the Federal Bureau of Investigation raided the offices of CDK Realty Advisors, a firm that helped the pension fund identify and manage many of its investment properties. A spokesman for CDK declined to discuss the raid, but said the firm was working to resolve its differences with the pension fund.

In his meeting with the trustees, Senator Whitmire recalled that in 1993 he had voted enthusiastically for the plan that sent the pension fund on its ill-fated quest for 9 percent investment returns.

"We all know some of the benefits, guaranteed, were just probably never realistic," he said. "It was good while it lasted, but we've got some serious financial problems because of it."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

NOV. 20, 2016

Municipal Securities Investors to Gain Access to Dealer Compensation Information.

Washington, DC – Ushering in an historic change for transparency of the municipal market, the Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to require municipal securities dealers to disclose their compensation when transacting with retail investors. The MSRB has worked in coordination with the Financial Industry Regulatory Authority (FINRA), and the SEC also approved a similar rule proposed by FINRA for the corporate and agency debt markets, which harmonizes the new requirements across these fixed-income markets.

“The municipal bond market will gain an unprecedented level of transparency when this new rule is put in place,” said Colleen Woodell, Chair of the MSRB Board of Directors. “We have been working tirelessly to improve transparency for municipal bond investors and the changes set in motion today will allow them to assess their municipal bond transaction costs in a way similar to other markets.”

Retail investors in municipal securities receive less information on their written transaction confirmations about the cost of their transactions than investors in, for example, equities. The rule approved by the SEC will provide municipal retail investors with meaningful and useful pricing information to help them better evaluate the overall cost of their municipal securities transactions. The new MSRB rule will go into effect in 18 months.

When the rule is in place, municipal securities dealers will be required to provide retail investors information about dealer compensation, in the form of a mark-up or mark-down, for certain transactions. The MSRB expects the disclosure to affect an estimated 8,000 retail investor municipal securities transactions each day. “Disclosure of dealer compensation to investors will go a long way to helping municipal securities investors better understand the cost of buying or selling a bond,” Chair Woodell said.

The specifics of the MSRB’s rule focus on when a dealer in a principal capacity (for the dealer’s own account) purchases from or sells to a retail customer and on the same day has an offsetting sale or purchase of the same security to or from a third party. The rule requires that a dealer disclose on the customer’s confirmation the dealer’s compensation, in the form of a “mark-up” or “mark-down” from the “prevailing market price” of the security. In addition to providing the dollar amount and percentage of the dealer’s compensation on a trade, the confirmation would include the investor’s time of the trade and a link to trade price data about the security on the MSRB’s Electronic Municipal Market Access (EMMA®) website.

The rule changes include guidance for dealers on establishing the prevailing market price of a security, from which a dealer’s mark-up or mark-down is determined. The guidance builds on existing guidance under the MSRB’s fair pricing rules, which requires dealers to use reasonable diligence in establishing the prevailing market price of a municipal security, and is also generally harmonized with prevailing market price guidance previously adopted by FINRA and applicable to other fixed income securities.

The MSRB’s detailed explanations in its rulemaking materials are designed to assist dealers in understanding the MSRB’s regulatory intent for the application of the mark-up disclosure rule and prevailing market price guidance to different trading situations and the unique characteristics of the municipal market, which has more than one million individual bonds, most of which do not trade frequently. For example, the MSRB’s materials specifically address establishing the prevailing market price by reference to contemporaneous customer transactions; the ability of dealers to calculate their compensation at the time of disclosure to a customer; the frequent absence of pricing information for sufficiently comparable municipal securities; and the implications of transactions with affiliated dealers.

Date: November 18, 2016

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MSRB Files Amendment to Mark-up Disclosure Proposal.

The Municipal Securities Rulemaking Board (MSRB) has filed with the Securities and Exchange Commission (SEC) an amendment to its rule proposal to require the disclosure of mark-ups and mark-downs to retail customers on certain principal transactions and to provide guidance on prevailing market price. The original proposed rule change, filed on September 2, 2016, consisted of proposed changes to MSRB Rule G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, and MSRB Rule G-30, on prices and commissions.

The amendment addresses comments received by the SEC on the original proposal. The amendment extends the proposed implementation period from one year to 18 months and makes several minor technical changes and clarifications as follows:

- Clarifies that the proposed rule change requires disclosure only in cases where the retail customer trade has an offsetting same-day principal trade;
- Replaces the requirement that dealers disclose a link to a specific existing page on EMMA (i.e., the “Security Details” page) with a more generic requirement to disclose a link in a format specified by the MSRB to a webpage on EMMA that contains trading data for the security;
- Requires dealers to disclose the time of execution only for retail customer confirmations, rather than for both retail and institutional customer confirmations; and
- Clarifies that a dealer, when considering relevant factors to determine the degree to which a municipal security is similar to another, may look to the spread over U.S. Treasury securities of a similar duration or over an “applicable index,” to account for the guidance’s applicability to both taxable and tax-exempt municipal securities.

View the full amendment.

MSRB Announces February 27, 2017 Effective Date of Academic Historical Data Product.

The Municipal Securities Rulemaking Board (MSRB) announced today that its Academic Historical Transaction Data product, comprised of post-trade municipal securities transaction data collected through the Real-Time Transaction Reporting System (RTRS), will be effective February 27, 2017. As of that date, the RTRS Academic Data Product will be available to academic institutions for a fee and will improve their ability to perform research by enabling them to distinguish transactions executed by different dealers through the use of anonymized identifiers. [Read the full regulatory notice.]

The MSRB currently makes municipal securities trade data available to academics through a partnership with [Wharton Research Data Services]. RTRS data is made available to the public at no charge on the [Electronic Municipal Market Access (EMMA®) website.]

MSRB Academic Trade Data Product Available Feb. 27.

WASHINGTON – The Municipal Securities Rulemaking Board announced on Thursday that starting Feb. 27, academic institutions will be able to request one-year data sets from a new data product that will identify dealers in some way without naming them.

The data in the product will come from post-trade municipal securities transaction information collected through the Real-time Transaction Reporting System (RTRS) and will be three years old at the time it is provided. Academic institutions will be able to request the data sets on a rolling basis for a fee of $500 for each year of data, with a one-time initial set-up fee of $500.

The MSRB said last month in an SEC filing announcing the fee that while it usually waives fees associated with MSRB subscription services or historical data products for nonprofit organizations, it feels the fees for the new product are appropriate and not overly burdensome given the additional legal and operational effort that establishing the new product required.

“The establishment of the RTRS Academic Data Product adds to the MSRB’s current offering of data products and furthers the MSRB’s mission to improve the transparency of the municipal securities market by facilitating access to municipal market data for academic institutions,” the MSRB said in its regulatory notice announcing the effective date.

The data product is the result of changes to MSRB Rule G-14 on reports of sales and purchases, which requires dealers to report municipal security trade information to the MSRB’s RTRS within 15 minutes of the time of trade. The SEC approved the rule change in September.

The MSRB already makes much of the data reported to RTRS publicly available through its EMMA system as well as through subscription services or historical data sets, but none of the currently available data differentiates between dealers. The lack of dealer identifiers limits a researcher’s ability to fully understand secondary market trading, according to the MSRB.

The self-regulator said the new data, which will not include information about list offering prices and takedown transactions, is the result of requests certain academics have made for an enhanced version of RTRS trade data that includes dealer identifiers.

Academics showed their support for the new product in comment letters sent to the MSRB after the self-regulator first announced the idea in July 2015. However, Bond Dealers of America and the Securities Industry and Financial Markets Association said they were concerned that the identifiers would open their members up to harmful reverse engineering.

The MSRB responded to those concerns by strengthening the conditions that would apply to academics who use the product. Any academic institution that wants access to the data product will have to agree: not to attempt to reverse engineer the identity of any dealer; not to redistribute the data in the product; to disclose each intended use of the data; to ensure that any data presented in work products be sufficiently aggregated to prevent reverse engineering of any dealer or transaction; and to return or destroy the data if the agreement is terminated.

The data will also only be available to academics associated with institutions of higher education.

Lynnette Kelly, the MSRB's executive director, has said the self-regulator took measures to make the data "as rich as possible for researchers while guarding against the potential for reverse engineering to identify the dealers in a particular transaction."

However, SIFMA and BDA, in their last comment letters to the SEC before the rule changes to create the product received approval, said they still had concerns.

SIFMA appreciated the MSRB's changes to strengthen the protections against reverse engineering, but Leslie Norwood, SIFMA managing director and co-head of municipal securities, said the group felt its concerns "were largely dismissed in the adoption of the changes" and did not believe the suggested MSRB's limitations in the user agreement are sufficient to prevent potential misuse of data.

BDA said that it still thinks it is very likely that private and non-educational entities will end up getting the full trade history, including dealer names, for every trade released through the product. John Vahey, managing director for federal policy with BDA, urged regulators to be vigilant in protecting the integrity of the marketplace in the future.

The Bond Buyer

By Jack Casey

November 17, 2016

MSRB Extends Effective Date, Clarifies Provisions in Markup Filing.

WASHINGTON – The Municipal Securities Rulemaking Board wants to amend its proposal to require dealers to disclose their markups and markdowns in certain transactions by lengthening its implementation timeline and clarifying provisions that market participants have criticized.

The MSRB filed its proposed amendments, which also made two changes in what a dealer would have to disclose on the confirmations, with the Securities and Exchange Commission late Monday.

The MSRB's original proposal, filed with the SEC for approval on Sept. 2, would modify MSRB Rules G-15 on confirmation and G-30 on prices and commissions. The modifications would require a dealer, which buys or sells munis for or from its own account to a retail customer and engages in one or more offsetting transactions on the same trading day in the same security, to disclose its markups and markdowns in the confirmation it sends the customer.

They also would establish a waterfall of factors for determining prevailing market price, which dealers would then use to calculate their compensation. Dealers would initially look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. They would then make a series of other successive considerations if that data is not available. They can look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms.

Further down the waterfall, firms could look at contemporaneous trades of similar securities. The MSRB included a list of "non-exclusive factors" like credit quality, size of the issue, and comparable yield that could be used to determine if securities are similar.

The bottom of the waterfall allows dealers to use prices or yields derived from economic models.

Dealers had said in past comment letters that the one-year implementation timeline the MSRB had proposed would not give them adequate opportunity to address the complex changes that would be needed to automate compliance with the waterfall. They also pointed out that they will be dealing with other large market changes like the shift to a two-day settlement cycle at the same time.

The MSRB is now proposing to extend that timeline by six months in an effort to "assist dealers in meeting the requirements of the proposed rule change and mitigate the costs of implementations," according to the self-regulator.

John Vahey, managing director of federal policy for Bond Dealers of America, said that BDA is "happy to get an additional six months," but said dealers "could have used a longer time in light of all the rules that are out there."

Leslie Norwood, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said SIFMA appreciates the extended implementation period to deal with the "monumental set of operational changes for dealers" under the rule.

The MSRB's amendments would also make two changes to the information dealers would have to include on their customers' confirmations. Dealers would only have to include the time of execution on confirmations to retail investors and not on confirmations for institutional customers as they would have been required to do before. The MSRB said it concluded that the likely costs of requiring dealers to give the information on institutional confirmations may exceed the benefits of the disclosure.

Dealers would also now be required to disclose, in a format specified by the MSRB, a reference and, if the confirmation is electronic, a hyperlink, to a webpage on EMMA that contains publicly available trading data for the specific security that was traded. That language is more generic than the original filing, which would have required dealers to disclose a link to a specific existing page on EMMA.

The MSRB said that using the slightly more general language would allow it to continue trying to make the landing page for investors that access EMMA more retail investor-friendly.

Two other changes the MSRB proposed would serve to clarify provisions of the rule. One would make clear that the rule would be triggered only when a customer trade for a non-institutional account has an offsetting principal trade. Another would modify the inclusion of spread in the non-exclusive list of relevant factors a dealer could use to determine whether a security is similar for purposes of calculating prevailing market price.

The original filing used the example of a spread between munis and U.S. Treasury securities of a similar duration for a prevailing market price determination, but market participants noted that

Treasuries are most relevant to taxable munis, not tax-exempt bonds. In response, the MSRB is clarifying that dealers can consider the extent to which the spread over an “applicable index” at which the similar municipal security trades is comparable to the spread at which the subject security trades.

The Bond Buyer

By Jack Casey

November 15, 2016

N.Y. Audit Firm Settles SEC Charges Of Issuing Fraudulent Reports.

A New York audit firm agreed to settle SEC charges that it had issued fraudulent audit reports in connection with municipal bond offerings by the town of Ramapo, N.Y. and its local development corporation.

The SEC found that the firm and its senior partner:

- allowed Ramapo to record a $3.08 million receivable in its general fund for a property sale that the senior partner knew had not occurred;
- ignored red flags and relied upon what turned out to be false representations by Ramapo officials about certain other receivables, interfund transfers and liabilities; and
- failed to take appropriate steps to mitigate the risk of material misstatements even after senior management became aware that Ramapo’s financial statements were the subject of multiple law enforcement investigations and the senior partner received complaints about possible fraud.

The firm agreed to: (i) forfeit approximately $380,000 in audit fees and interest and pay a $100,000 penalty; and (ii) engage an independent consultant. In addition, the senior partner agreed to pay a $75,000 penalty and be suspended from practicing public company accounting. Further, he is prohibited from acting as the engagement partner or engagement quality control reviewer on any municipal audit for five years.

Commentary

While one cannot say that there has been a flood of enforcement actions in which the activities of municipal officials have been scrutinized, there is enough to make it clear that the SEC is paying attention.

Last Updated: November 10 2016

Article by Steven D. Lofchie

Cadwalader, Wickersham & Taft 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.

[Arizona Court Of Appeals Permits Utility To Seek Preemption Of State Property Taxes On Power Plant Located On Tribal Land.]()

On November 3, 2016, the Arizona Court of Appeals allowed South Point Energy Center, LLC ("South Point") to pursue challenges to the assessment of property taxes for tax years 2010 and 2011 and for 2012 and 2013 on its power plant on the Fort Mojave Indian Reservation. The appeals court reversed the decision of the Arizona Tax Court that granted summary judgment to the Arizona Department of Revenue and Mohave County. The Tax Court held that a prior unsuccessful challenge to property tax assessments levied against the plant for 2003 and 2004 barred South Point from pursuing the current challenges. The opinion, *South Point Energy Center, LLC v. ADOR/Mohave County*, Case Nos. 1 CA-TX 15-0005, 1 CA-TX 15-0006 (Consolidated), can be accessed on the Arizona Court of Appeals at the website [here]().

South Point filed its actions arguing that federal law preempted the assessments, making the assessments at issue erroneously assessed taxes (A.R.S. § 42-16524(G)), and that, under A.R.S. § 42-11005, it could lawfully seek to recover illegally collected taxes. The defendants argued that, because the plant's prior owner, Calpine, had unsuccessfully challenged assessments against the plant, South Point was precluded from seeking relief for the later tax years. Calpine had argued that, for Arizona property tax purposes, the plant should have been deemed to be owned by the Tribe and, therefore, not subject to Arizona property taxation. The tax court denied Calpine's challenge, ruling that, because Calpine owned the improvements on the land, the improvements were subject to taxation. *Calpine Constr. Fin. Co. v. Ariz. Dep't of Revenue*, 221 Ariz. 244, 246, 248-49, ¶¶ 1, 17-22 (App. 2009). The Arizona Supreme Court denied Calpine's petition for review.

In view of this history of challenges to property tax assessments against the plant, the Defendants argued that, because Calpine could have raised the preemption argument in the prior proceedings, South Point was collaterally estopped from raising the preemption and illegal tax arguments for later tax years. The Tax Court accepted this argument and entered summary judgment for the defendants. On appeal, South Point argued that collateral estoppel did not bar its pursuit of legal theories neither raised nor adjudicated in the prior litigation. The Court of Appeals accepted South Point's arguments. It held that, because Calpine did not litigate the question of preemption, "the fact that it could have been litigated is of no consequence here." South Point at ¶11 (emphasis in original). The Court further held that South Point could challenge whether the assessment was erroneous under the "error" correction statute, reasoning that, "[i]f the correct property tax rate is zero because of preemption, the imposition of any other tax rate is necessarily an illegal tax rate, and constitutes 'error' under the statute." South Point at ¶14. The court remanded the proceedings to Tax Court to resolve the preemption issues.

In sustaining South Point's appeal, the Court of Appeals did not resolve South Point's preemption argument. The court stated that "[w]e offer no opinion as to the merits of South Point's preemption theory. But because the issue was not previously litigated, issue preclusion cannot bar it." Id. at ¶11.

On remand, South Point will have the ability to litigate the preemption question. The owners of power plants – and their successors in interest – will be well-served to be precise in the issues raised before the tax court and thus certain that Arizona law permits plant owners to bring later challenges on new legal theories that were both not raised and not resolved on the merits in earlier proceedings.

Last Updated: November 10 2016

Article by Gregory Y. Harris

Lewis Roca Rothgerber Christie 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.

Groups Want MSRB to Focus on EMMA, Market Costs as Strategic Goals.

WASHINGTON – The Municipal Securities Rulemaking Board should focus its future strategic priorities on improving EMMA, increasing transparency of board operations and costs, and doing more cost-benefit analyses of its rulemaking, municipal market groups and participants told the MSRB.

The groups made their recommendations in response to the self-regulator's call for input about where it should direct its long-term strategic plan.

Mike Nicholas, Bond Dealers of America's chief executive officer, said that BDA believes the MSRB is entering into a new regulatory phase and that "this is the time for the MSRB to focus on ways to improve the municipal securities market that do not involve the types of sweeping and burdensome rulemakings that the MSRB has worked to adopt in recent years."

He said that future MSRB technological changes should focus on narrowing the gap between the corporate and muni markets.

"For all the rhetoric of the need of the municipal securities market to parallel the corporate securities market, the most obvious difference between the two … remains the antiquated technological infrastructure" of the muni market, Nicholas said.

BDA pointed out that issues in the corporate market are organized along industry categories while munis are almost exclusively organized by CUSIP number.

"This provides no organization to the types of issuers within the market and reduces the value of pricing disclosures for investors," Nicholas said. He added that while EMMA currently has issuers post their disclosures to EMMA using relevant CUSIP numbers and allows investors to receive notice of those filings based on CUSIPs, it does not allow an issuer-based disclosure system. The lack of such a system prevents an investor from being notified when for example the issuer of bonds the investor owns publishes a preliminary official statement relating to the same credit as the bonds the investor holds, BDA said.

The National Federation of Municipal Analysts also suggested changes be made to EMMA that could be useful to both its members and the market generally. NFMA recommended that the MSRB: improve EMMA's search function to allow for more narrow searches; provide more descriptive information in alerts; connect remarketing of securities to the original issue; and provide more transparency about issuers' compliance with parts of their continuing disclosure agreements like the timeframe for filing.

NFMA asked that the MSRB provide procedures to reduce errors on EMMA and correct already existing errors like misfiled or mislabeled postings.

The Government Finance Officers Association similarly asked the MSRB to make it easier for issuers to correct or modify the data it has already submitted to the system.

"Changing or correcting data is often unreasonably difficult or sometimes impossible for issuers attempting to provide timely, relevant and accurate disclosure of information," said Emily Brock, director of GFOA's federal liaison center.

NFMA also recommended the MSRB change EMMA to: link bonds not only by the issuer but by the ultimate borrower and project; encourage more uniform electronic submissions of data; and provide a mechanism to identify active material events and those that have been resolved.

The Securities Industry and Financial Markets Association said that one of the MSRB's focuses should be on ensuring that a "robust cost-benefit analysis" is a key factor in evaluating the application of regulatory actions. Michael Decker, managing director and co-head of munis with SIFMA who wrote the group's letter, asked that the self-regulator report the data, assumptions, and models from which it derives its cost-benefit conclusions when describing its rulemaking proposals.

BDA similarly said that there needs to be a deeper review of the cost-benefit analysis of the MSRB's rulemakings, specifically through a retrospective regulatory cost-benefit analysis that "would improve the quality of the regulatory process and ensure that competition is not necessarily harmed by new regulations."

Nicholas recommended that the MSRB "conduct a study to consider how the cumulative regulatory changes have resulted in increased costs, burdens, and inefficiencies" and suggest needed changes.

Decker and SIFMA also asked that the MSRB both review its fee structure and budgeting process to make sure that costs are properly allocated across regulated entities and implement a longer-term outlook in its budget process.

"While we appreciate MSRB fee rebates, it would be better for the MSRB to set fees at a level that does not result in excessive surpluses, necessitating the need for rebates," Decker said.

Additionally, SIFMA asked for guidance on how MSRB Rule G-34 on CUSIPs applies to bank transactions and how MSRB rules apply in accounts where investment advisers have full discretion. It also asked that the MSRB make a stronger commitment to harmonizing rules with other regulators and revise its approach to informal guidance to be more responsive to firms' questions about MSRB rules.

GFOA asked for more transparency around MSRB operations, including making sure board meeting agendas and minutes are posted and that issuers have equal representation on the board with other market participants, such as dealers, investors and MAs.

The Bond Buyer

By Jack Casey

November 14, 2016

Short-Term Muni Bonds to Ride Out Trump-Induced Volatility: UBS

U.S. municipal debt investors putting fresh capital to work should look to short duration bonds while President-elect Donald Trump's new administration works out new tax and fiscal policies, UBS Wealth Management said on Tuesday.

"To the extent that you're … placing more capital into this market, you probably want to stay shorter on the curve until we have more clarity by the end of 2017 as to exactly what the tax environment is going to be like," said Thomas McLoughlin, head of municipal research at UBS Wealth Management.

Muni bonds, whose yields are exempt from federal income taxes, have long been attractive to wealthy Americans who fall into higher tax brackets.

However, Trump's proposed lowering of tax rates could reduce the appeal of tax-exempt bonds, a major vehicle for states and cities to finance infrastructure, hospitals and schools.

Speaking at the Reuters Global Investment Outlook Summit, McLoughlin said tax reform would be the story for 2017, given how Trump and the Republican party control the White House and held onto majorities in the Senate and House of Representatives.

"The absence of specificity is something that I think the market is struggling with right now," McLoughlin said.

"The municipal market is certainly trying to adjust to determine how real the threat may be to tax exemption and whether or not that threat is overblown; whether or not that threat constitutes complete elimination; or the third option, which is a curtailment in the limitation as to the value of that exemption," he said.

McLoughlin, however, believes the threat to the municipal market's tax exemption status is lower than before as public interest groups have actively lobbied to show the importance of state and local governments in providing infrastructure.

During the election campaign, both Trump and his Democratic opponent Hillary Clinton advocated spending to rebuild U.S. infrastructure.

U.S. voters on Tuesday also approved 562 of 698 state, school and local government bond measures on ballots, clearing the way for the issuance of $60.23 billion of municipal debt, data company Ipreo reported. The amount requested on ballots, $70.1 billion, was the largest par, or face amount, since 2006.

In part, the requested borrowing for big projects was spurred by growing competition for money within municipalities.

"Pay-as-you-go infrastructure is going to be more difficult as pension liabilities rise and occupy a larger share of the budget, and in the case of states, Medicaid funding as well," McLoughlin said.

Reuters

By Daniel Bases and Hilary Russ

Tue Nov 15, 2016 | 4:47pm EST

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(Reporting by Daniel Bases and Hilary Russ; Editing by Richard Chang)

[Municipal Bond Analysts Seek Greater Transparency from Charter Schools.]

We are well aware that charter schools open and close, sometimes for academic reasons, sometimes for financial reasons. Unfortunately, some of these schools are financed with municipal bonds, which makes them a risky endeavor. The story below is behind a pay wall. I subscribed to The Bond Buyer so I could read it in full. It shows why the NAACP and other organizations are calling for charter school accountability and transparency. It is not good for either municipal finance or for children to have schools that close in the middle of the year without warning.

Recently, the National Federation of Municipal Analysts [urged charter schools] "to provide detailed financial, academic, and staffing information in primary and secondary disclosure documents." This is the first time that the NFMA has made disclosure recommendations for charter schools.

"The charter school sector has been very active in the last … four to five years [and] it traditionally has not had a lot of public rating coverage," said Gilbert Southwell, vice president at Wells Capital Management and co-chair of the NFMA disclosure subcommittee that drafted the paper. "[The RBP] is both educational for our membership but also helps to establish our disclosure expectations when we're looking at these deals."

Dean Lewallen, vice president and senior analyst at AllianceBernstein L.P. and co-chair of the subcommittee with Southwell, said the RBP is the product of a year-long vetting process with a variety of market participants and thus reflects "an industry consensus."

The document's recommendations begin with key information that should be included in a primary offering statement (POS). According to the RBP, a charter school's POS should disclose all material financial agreements, including the proposed indenture, loan agreement, capital leases, management agreements, and tax regulatory agreements. It should also include information from twelve other broader topics, like descriptions of facilities and their financing, pledged revenues, and projected cash flows. NFMA also wants descriptions of debt service, repair and replacement, operating and deficit, as well as insurance and property tax reserve funds.

The RBP lists disclosures in a successful charter school POS related to academic performance as well as school management and operations.

"A charter school's academic performance has been identified as an especially important factor in charter school long-term stability and success," NFMA said in its RBP. "Consequently, the POS should disclose all relevant aspects of the charter school academic performance."

Such disclosures should include information covering regulatory authorities that have jurisdiction over the charter school, along with the school's curriculum and education programs at varying grade levels and how those programs satisfy applicable educational standards, the RBP says. Information on how the school tests students to measure academic growth as well as how recent school data stacks up against historic measurements should be presented in an easily accessible way for investors, NFMA said.

In terms of school staff and management, an effective POS should provide detailed information in eight key areas, according to NFMA, including: charter board membership, compensation, and tenure; information available on the school's website; management qualification, experience, and compensation; third-party manager control, compensation, and replacement; and charter school teaching faculty, classroom ratios, and teachers' union affiliation. Additionally, the POS should have information regarding teacher and staff compensation, including retirement benefits, any complaints and claims the school is facing, as well as operating and funding information related to extracurricular activities.

Another important area for disclosure has to do with the school's facilities, NFMA said. A POS should contain information about the size, capacity, and condition of facilities, including equipment, along with descriptions of future capital improvement needs, insurance support, and transportation and parking capabilities for students and staff, respectively.

On the financial side, charter schools should be taking seven areas of potential funding into account when creating their primary disclosures. Any POS should include discussion of audited financial statements and interim financials, current budgetary processes, financial covenant compliance and projections, and existing banking relationships, according to the RBP. State aid and other governmental support should also be listed along with information about planned future debt and reliance on endowments, fund drives, contributions, and gifts.

Disclosures that describe a school's location, enrollment, potential competition from other schools in the area, and future projections on such topics are also important, NFMA said.

The organization included separate but related suggestions to consider credit risks and continuing disclosure.

"Credit risks involved in charter school acquisition financing are numerous and often the source of significant concerns," the group said in the RBP.

Several credit risk areas the group recommended a school disclose in a POS are the: suitability and condition of a new facility and equipment; facility acquisition price; and facility construction costs.

NFMA said in its RBP that until fairly recently, most continuing disclosure agreements (CDAs) for charter school financings did not provide much more investor disclosure than a year-end audit.

"The NFMA believes that charter school continuing disclosure needs to be far more complete, robust, and timely to reflect credit characteristics and risks specific to the sector," the group said….

NFMA also recommended what schools should disclose in its quarterly reports, which it said should be filed between 45 and 60 days after the end of each quarter. The group listed examples of special events and information that may not be produced on a routine schedule but should be made known "promptly" when available, such as mid-year cuts in state or local funding.

NFMA urges charter schools to hold at least one live conference call per year to discuss data and the school's current status. It also lists a number of instances, like a charter non-renewal, that may not be considered material events under the Securities and Exchange Commission's Rule 15c2-12 on disclosure, but should be promptly reported to the Municipal Securities Rulemaking Board's EMMA system anyway.

The RBP makes five additional recommendations, such as that charter schools be aware that borrowers need to be educated on the importance of continuing disclosure and that all disclosure should be posted to EMMA.

Diane Ravitch

Nov 16, 2016

U.S. High-Yield Muni Bond Fund Outflows Set Record.

U.S. municipal high-yield bond fund outflows set a record during the week ending Nov. 16, with investors dumping the tax-exempt sector as U.S. Treasuries plummeted after the stunning victory by President-elect Donald Trump on Nov. 8, data on Thursday showed.

Investors pulled $1.59 billion out of high-yield muni bond funds, the most ever in a single week since Thomson Reuters' Lipper service began reporting such data in 1992.

Overall, investors took $3 billion out of all muni bond funds, the largest outflows since late June 2013, the data showed.

Trump's win in the U.S. presidential election has spurred a rally in U.S. stocks and a rout in fixed-income markets on the expectation of more fiscal stimulus leading to rising inflation, which undermines bond market investment returns.

The junk muni bond sector had been riding high this year as investors seeking yields in what is an otherwise low interest rate environment sought fatter returns in new places, even moving down the credit quality scale to get it.

With the supply of new muni bonds low and demand high all year, prices rose and provided a sweet spot in the global financial markets.

But U.S. states, cities and other issuers returned to the market en masse in the back half of 2016. They sold a record level of debt in October, which widened spreads, dampened munis and prompted small outflows even before the Nov. 8 presidential election.

High-yield munis were first to feel the strain, with tobacco bonds, the most liquid in the speculative arena, losing ground in heavy trading before Trump won the election.

Then, after Nov. 8, Treasury yields rocketed higher. Muni yields followed, gaining 50 basis points in the week since then on 10-year benchmark tax-exempt debt, according to Municipal Market Data, a Thomson Reuters unit. Yields move inversely to prices.

"When rates move that far that quickly, it does unnerve investors," said Jim Colby, manager of VanEck Vectors High-Yield Municipal Index ETF.

Columbia Threadneedle Investments portfolio manager Chad Farrington said the firm's high yield muni fund started to see outflows over the last three weeks.

Most of the price weakening was because munis tracked Treasuries. But some may have been due to concerns about whether Trump's proposed income tax cuts and other policies might dampen appetite for muni bonds or limit their tax exemption, Farrington said.

High-yield outflows "are also driven by sticker shock over the [net asset values] of the high yield funds, which have declined precipitously since early November," said Chris Mauro of RBC Capital Markets.

"The concern is that we're seeing a familiar pattern develop in which the high yield outflows are starting to bleed into the long investment grade funds," Mauro said.

Nuveen's High Yield Municipal Bond Fund topped all outflows this week. Since the beginning of the month its net asset value has dropped about 4.4 percent.

The biggest fund in its peer group, Nuveen's high-yield muni fund "on an absolute basis… would expect to have the largest outflows," said Nuveen's head of tax-exempt fixed income John Miller.

"We have been through selloffs that involve outflows numerous times in the past, so we are using this period to benefit fund shareholders, given the higher yields and wider credit spreads available in the marketplace," he said.

"Fundamentals have trended favorably over the course of the year as a whole, and nothing in this period changes these fundamentals."

Reuters

By Hilary Russ

Nov 17, 2016 | 7:41pm EST

(Reporting by Hilary Russ; Editing by Daniel Bases and Diane Craft)

SEC Approves FINRA Plan to Disclose Mark Ups in Bond Prices.

The Financial Industry Regulatory Authority (FINRA) said the U.S. Securities and Exchange Commission had approved a plan that would require brokerage firms to disclose how much they mark up the price of most bonds they sell to retail customers.

The SEC also approved a similar plan by the Municipal Securities Rulemaking Board, which regulates municipal advisers and bond dealers, the Wall Street watchdog said on Friday.

The two controversial plans aim to help the public assess the fairness of prices charged by brokers for corporate and municipal bonds.

The securities industry had balked at the plan saying it would be expensive to implement, unnecessary and potentially confusing to investors.

Individual dealers determine the price at which they sell or buy bonds, unlike stocks that have a price publicly available on an exchange.

FINRA said on Friday it would announce when the new rule would be implemented in an upcoming regulatory notice.

Reuters

Fri Nov 18, 2016 | 11:13am EST

(Reporting by Sruthi Shankar in Bengaluru; Editing by Shounak Dasgupta)

Banker's Roles with Issuer-Related Charitable Groups Raise Questions.

LOS ANGELES – A Wells Fargo Securities banker may not violate municipal bond rules by serving on the boards of school district charitable foundations and then obtaining the schools' underwriting business, but some securities lawyers say there is a perceived conflict of interest that should be disclosed.

The banker, Craig Brast, serves on the boards of two Houston-area charities, the Spring Independent School District Education Foundation and the Aldine Education Foundation. Brast doesn't live within school district areas, although he is a resident of Houston and he went to Westfield High School in Spring ISD.

The foundations are nonprofits that raise money for the Spring ISD and Aldine ISD through events such as golf tournaments as well as direct donations. The foundations are distinct entities governed by volunteer boards of directors that are separate from the school district. The school districts, however, publicly encourage support of the foundations.

Brast was a founding member of the Aldine foundation when it was created in 2012 and has served as a volunteer member of the board on the Spring foundation for about five years. He continues to serve on both boards.

Brast has personally given money to the foundations. Neither Wells Fargo nor the foundations would disclose the amounts. A Wells Fargo spokesman said the bank gave about $4,000 to the Spring Foundation and $1,250 for the Aldine Foundation's golf tournament fundraiser last year.

Since 2012, when the Aldine foundation was created, the Aldine ISD has done two negotiated transactions and Wells Fargo was the lead underwriter on both, according to Thomson Reuters data.

The most recent was $266.84 million of school building and refunding bonds that the Aldine ISD issued in January of this year. In the other deal the school district issued $45.6 million of school building and refunding bonds in October of 2013.

Wells Fargo was involved in Spring ISD's most recent transactions as well. It was lead underwriter for $80 unlimited tax refunding bonds issued in June 2016 and a member of the underwriting syndicate for $136.9 million of unlimited tax refunding bonds issued in December 2015. The bank was not involved in five earlier negotiated transactions Spring ISD did dating back to July 2011.

Wells Fargo doesn't believe the contributions or Brast's involvement with the foundations and donations represent any conflicts of interest.

Municipal Securities Rulemaking Board rules do not bar bankers from giving to issuers' charitable groups.

Its Rule G-20 on gifts and gratuities prohibits dealers from giving, directly or indirectly, anything or service of value in excess of $100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer.

The MSRB's Rule G-37 on political contributions bars dealers and their municipal finance professionals from underwriting transactions with issuers for two years if they contribute to issuer officials who can influence the award of negotiated muni business. The rule states that dealers cannot do indirectly what they are prohibited from doing directly. But it only covers contributions to issuer officials.

The board's Rule G-17 on fair dealing requires that underwriters disclose to issuers with whom they do business any "potential or actual material conflicts of interest" inherent in the relationship.

Underwriters send issuers disclosure letters when they are engaged to do business, commonly called "G-17 disclosure letters" because they are designed to satisfy that rule's requirement that conflicts of interest or potential conflicts be disclosed.

Neither of the G-17 letters that Brast sent to the two school districts, which were obtained by The Bond Buyer through Freedom of Information Act requests, mentioned his involvement or contributions to the charitable foundations. The letter sent to Aldine ISD was dated Jan. 6, 2016 and the letter sent to Spring ISD was dated Nov. 30, 2015.

Securities lawyers who declined to be named in order to offer analysis of the circumstances said that pay-to-play rules such as the MSRB rules do not cover contributions to charitable foundations, even in cases where the gifts were at the request of, or to curry favor, with public officials.

But one of them said that such a banker's relationship with both an issuer and the issuer's money-raising foundation could be a problem.

"Even if it's not explicitly against G-37 or G-20, you still have to consider whether it's a conflict of interest," that attorney said.

That attorney said the situation in Houston is not unlike others around the country where charitable organizations serve as middlemen between issuers and dealers who obtain their negotiated municipal underwriting or advisory business.

He said that it was quite possible the Securities and Exchange Commission might find such relationships to be something that should be disclosed, because it could at least raise a question for investors about whether a firm is getting business because it also has another relationship with that issuer that is financially beneficial to the issuer.

"People should be weighing it," the lawyer said. "If you're not even thinking about it, that's a problem."

Wells Fargo spokesman Gabriel Boehmer said that the bank gives generously to non-profit organizations in Texas and nationwide, and gave about $9.4 million to Texas charities last year including the donations to the Spring and Aldine foundations.

Boehmer confirmed that Brast gives a small donation to both foundations annually, declining to specify the amounts. He added that Wells Fargo has business relationships with hundreds of Texas school districts and that Brast's work covers issuers throughout the Southwest.

Boehmer said that Wells Fargo employees serve on the boards of many charitable organizations, and that Brast's work to raise money for Spring and Aldine ISDs does not create a conflict of interest requiring a disclosure.

"In our view the education foundations, which are nonprofits, and the school districts are totally separate entities," he said. "It might appear to the casual observer that the school district and the foundation have a relationship, but they do not have a business relationship at all."

The Bond Buyer

By Kyle Glazier

November 18, 2016

P3 Digest for Week of November 14, 2016

Powered by P3 INGENIUM, The most comprehensive source for P3 project updates in North America.

Read the Digest.

S&P: The Post-Election Landscape For Municipal Bonds.

With the presidential election over, S&P Global Ratings offers a focus on the post-election landscape and what will be the key drivers related to credit across the broad and diverse U.S. municipal market.

Continue reading.

Nov. 14, 2016

S&P's Public Finance Podcast: Post-Presidential Election Impact on Munis & Rating Actions on New Mexico and New Jersey.

Robin Prunty discusses our November 14th commentary outline the post-Presidential election outlook across all municipal sectors and David Hitchcock outlines the credit drivers to our recent rating actions on the states of New Mexico and New Jersey.

Listen to the podcast.

Nov. 16, 2016

S&P: Public Policy Helps Water Industry Ride the Tide, Conference Panelists Say.

Public policy and the water industry work like a two-way street. Yes, the former helps improve quality, funding, and infrastructure. But often distressed conditions in the industry are needed to affect policy change, which was proven at a “Financing In The U.S. Water Industry” conference panel on Sept. 8, 2016, in New York.

Continue reading.

Oct. 11, 2016

[S&P: Trump's Election Is Unlikely To Affect U.S. Public Power And Electric Cooperative Utilities' Credit Stability.]

Although U.S. President-elect Donald Trump might alter the regulatory landscape governing power plant emissions that public power and electric cooperative utilities face, S&P Global Ratings does not see his administration affecting the ratings on public power and electric cooperative utilities.

Continue reading.

Nov. 14, 2016

Pension Battle Pushes Precedent in Distressed California Town.

Letters sent by certified mail usually aren't how state and local governments signal they're about to breach the promise that public workers consider ironclad when it comes to retirement benefits.

But that's how Patsy Jardin, 71, of Loyalton, California, found out that she may lose much of her $48,000 annual pension because the town government failed to fund its long-term liabilities. Reading the letter delivered to her rural home made the former clerk "sick," she said in an interview. "It's my livelihood."

The board of the California Public Employees' Retirement System on Wednesday voted to cut the retirement benefits of Jardin and four others who worked for the former sawmill town of about 700 people in the Sierra Valley that quit the program. It may be the first time the largest U.S. public pension has taken such a step. Recent California municipal bankruptcies kept pensioners whole, underscoring the sanctity assigned to benefits earned by workers.

However, mounting retirement costs give many municipalities little choice, especially if they must make up for lackluster investment returns that were supposed to pay for the lifetime checks, said State Assemblyman Brian Dahle, a Republican who represents Loyalton.

"They can't bail everybody out in the same situation," Dahle said of Calpers before the decision. "There's a lot of municipalities in California, counties and cities, that are putting out a lot of their income to pensions."

Across the country, local governments are short about $2 trillion what they need to cover retirement benefits granted in boom times. Investment losses during the recession that ended in 2009, benefit increases, years of governments failing to make adequate contributions, rising retirements and fewer current workers paying into the systems have exacerbated the gap.

Sawmill Closing

Loyalton, like many other municipalities, extended retirement benefits decades ago — in 1985 — and then struggled to pay for them. The city's economic base dwindled with the 2001 closing of the Sierra Pacific sawmill and the waning of the regional timber industry.

At the most, the community employed three full-time staffers. Currently it has one full-time worker and four part-timers, said Brooks Mitchell, a councilman first elected in 2009. The City Council decided to leave Calpers because continuing to pay the same level of benefits and salaries would bankrupt the town, said Mitchell, who was picked by fellow council members to serve as mayor at that time.

In March 2013, city officially exited the retirement system. The next year, Calpers sent Loyalton a bill to cover the cost of the benefits and the unfunded liability: $1.6 million.

That's money Loyalton doesn't have. A spreadsheet from the city shows it projects ending November in the red by $2,700 as expenses exceed its cash flow of $50,600.

Calpers Notifications

"I didn't realize we would be billed right off the bat for the $1.6 million," Mitchell said. "Looking back we probably should have done a little more research."

Calpers staffers told the agency's board members that they tried to compel Loyalton to pay through 50 telephone calls and 10 collection notices, without success. Finally, on Aug. 31, they sent letters to the city saying it has 30 days or it will be in default. They also sent notices to the five former employees, four of whom had been receiving pensions, that their benefits would be reduced.

The three-paragraph missives came as a shock to Jardin and Jim Cussins, who retired in 2011 as a maintenance foreman. The council had told them pulling out of Calpers wouldn't affect them, they said.

While they blame the city's leaders, they also said the public pension system should have acted more quickly.

Benefit Reductions

"They let this go for three years and they don't contact us until the last minute?" said Cussins, 55, who relies on his $36,000 annual pension. Cussins, who filled an open council seat in 2015, didn't run for election last week and is departing the board in January.

Under the law, the pensioners could see their checks cut by 60 percent since the city is falling short by that rate to make the benefits fully funded.

In less than five minutes, the Calpers board dispatched with the Loyalton matter. It's municipal employers who make the promise of benefits, said board member JJ Jelincic.

"If they won't fund it, there's not much we can do about it," he said.

Possible Recovery

There's a chance the retirees may recoup some of their lost money. Calpers' Chief Financial Officer Cheryl Eason told board members the city pledged to cover what the pension system is cutting. But Cussins said after the meeting there was no council vote to do that, and he's considering a lawyer to sue Loyalton.

Mitchell, the councilman and former mayor, said before the vote that the pension system is playing hardball because of its financial troubles. The system has about 68 percent of the assets it needs to meet obligations, and its staff has warned returns may lag the 7.5 percent target for a third year. Lower income from investments means higher payments from taxpayers to bridge the gap.

"They're going to make an example out of the little city of Loyalton," Mitchell said.
Wayne Davis, a Calpers spokesman, said the agency can't categorically say it would be the first time it cut benefits in its 84-year history, Eason characterized the situation as "uncharted territory" during a September board meeting.

The pension system "would be basically stealing money from somebody else to pay somebody who wasn't their employee" if they let the Loyalton checks continue because of the "really bad decision" by the municipal government, said Dave Low, chairman of Californians for Retirement Security, a group representing public workers.

"If it can happen here, it can happen someplace else," he said.

Bloomberg

by Romy Varghese

November 16, 2016 — 2:00 AM PST Updated on November 16, 2016 — 12:15 PM PST

Sanctuary-City Mayors Gird for Fight as Trump Threatens Budgets.

Municipalities that protect undocumented immigrants from deportation stand to lose billions in federal aid if President-elect Donald Trump fulfills promises to starve them financially.

More than 200 U.S. 'sanctuary cities' won't turn over people to federal officers seeking to deport them nor share information about them, saying that would rend the social fabric and impede policing. Since Trump's election last week, mayors including San Francisco's Ed Lee, New York's Bill de Blasio and Chicago's Rahm Emanuel have vowed not to back down.

"This city and so many cities around the country will do all we can to protect our residents and to make sure that families are not torn apart," de Blasio said Wednesday after meeting with Trump at Trump Tower.

Many cities have calculated that dwindling populations and labor shortages can be ameliorated by immigrants, undocumented or not. The mayors must calculate the point at which resistance harms the communities they're fighting to protect. The evolving confrontation exposes states' and cities' vulnerability to losing some of the $650 billion in federal funds they receive for everything from police to sidewalks as they confront pension obligations and shrinking budgets.

"There's an economic benefit from being a sanctuary city, but it doesn't appear to warrant giving up 5 to 10 percent of the city's funding," said Dan White, senior economist at Moody's Analytics, in West Chester, Pennsylvania.

Congressional Republicans have been trying for years to use federal dollars as leverage.

A bill this year by Senator Pat Toomey of Pennsylvania defines a "sanctuary jurisdiction" as any that restricts local officials from exchanging information about an individual's immigration status or complying with Homeland Security requests. The measure would cut off funds including Economic Development Administration Grants, which totaled $238 million last year, and Community Development Block Grants, which amounted to $3 billion last year. Ten of the largest sanctuary jurisdictions were awarded a collective $700 million in block grants in 2016.

Chicago, the nation’s third-largest city after New York and Los Angeles, is particularly vulnerable. Public-employee retirement funds face a $34 billion shortfall, and Emanuel last month proposed a $9.3 billion budget for 2017 that would increase spending to hire and train more police. The spending plan anticipates $1.3 billion in federal grants this year.

“If Chicago were to lose all of its federal funding, that’s a game-changer,” White said.

Deep-Sixing Documents

In Los Angeles, the police chief said that he would continue a policy of not aiding federal deportation efforts, according to the Los Angeles Times. In New York, de Blasio said last week that he would consider destroying a database of undocumented immigrants with city identification cards before handing such records over to the Trump administration.

“We are not going to sacrifice a half-million people who live amongst us,” de Blasio said. “We will do everything we know how to do to resist that.”

New York City will receive $7.7 billion in federal grants in fiscal 2017, just under 10 percent of the city’s $82 billion budget.

In New Haven, Connecticut, the city of 130,000 that’s home to Yale University receives about a quarter of its $523 million budget from various federal grants, said Mayor Toni Harp.

“That would be really very difficult,” Harp said. “We would be willing to take that as far as it needed to go in our judicial system.”

Trump made attacks on sanctuary cities a campaign staple, often invoking the shooting death of Kathryn Steinle by an undocumented immigrant in San Francisco. The shooter had been released from a county jail even though federal officials had asked him to be held until they could deport him.

The incoming president has said he would deport more than 11 million people, beginning with gang members, drug dealers and other criminals. He’s also said he would create a special deportation task force within Immigration and Customs and Enforcement. If that’s the case, local jurisdictions might see even more requests for cooperation.

Many cities say that immigration is a federal responsibility and they should be left out of it. Others say that they simply don’t have the time or resources to address it.

Stretched Force

In New Orleans, which doesn’t consider itself a sanctuary city but whose officers don’t ask about immigration status, the specter of losing federal funds is daunting. Some money the city receives is enough to fund nine police officers, said Zach Butterworth, executive counsel for Mayor Mitch Landrieu and director of federal relations.

”The federal government’s support for local law enforcement has really been slashed significantly already,” Butterworth said. “For them to come down here and say you also need to be doing our job on immigration is a tough sell.”

Others say that singling out undocumented immigrants impedes law enforcement because large populations will shun any interaction with the authorities.

“Essentially, for the police, you’ve got a significant number of undocumented illegals in the country and they’re afraid of the police,” said Darrel Stephens, executive director of the Major Cities Chiefs Association.

Lena Graber, special projects attorney at the San Francisco-based Immigrant Legal Resource Center believes Trump will run into legal challenges if he threatens municipal funding.

“The federal government can’t force state and local law enforcement to use their resources to enforce federal regulatory programs like immigration law,” she said. “He can try to offer incentives, but the more that those incentives look like coercion, the more it won’t be legal.”

In Denver, which has a policy of refusing to hold detainees solely on a request by immigration officials, Mayor Michael Hancock said he won’t be cowed.

“This is all legal what we are doing here,” he said. “The president doesn’t have the authority to unilaterally decide how we move forward.”

In Oakland, California, Mayor Libby Schaaf says she is proud to run a sanctuary city, and is planning to recruit even more towns for the movement.

“The best defense is offense,” she said. “There is strength in numbers.”

Bloomberg Politics

by Lauren Etter and Tim Jones

November 16, 2016 — 2:00 AM PST Updated on November 16, 2016 — 12:30 PM PST

Municipal Market Braces for Wave of Debt Amid Trump Selloff.

The global bond rout couldn’t have come at a worse time for the U.S. municipal market.

State and local government bonds dropped by the most in more than three years since the Nov. 8 election amid speculation that President-elect Donald Trump’s plan to slash taxes and unleash a new wave of spending will spur inflation and weaken demand for the tax-exempt securities. That’s coming just as municipalities are forecast to keep selling new debt at a swift pace after voters approved at least $55 billion of borrowing at the polls, threatening to put further pressure on prices.

“You have all these factors in play at a time when more supply is going to be trying to come to the market,” said Peter Hayes, who oversees $120 billion as BlackRock Inc.’s head of munis. “That typically is not very good,” he said. “I suspect demand next year is not going to be as strong.”

The election fallout is threatening to wipe out gains posted in the municipal market this year as the Federal Reserve held off on raising interest rates. Since last week’s election results, the securities have lost 2 percent, cutting this year’s return to 1.1 percent, according to Bloomberg Barclays municipal index. The yields on benchmark 10-year debt soared Monday by 0.2 percentage point to 2.13 percent, the highest since December, before steadying early Tuesday. It was the biggest one day jump since June 2013.

Trump’s tax plans pose a unique risk to the $3.8 trillion municipal market, which is dominated by investors seeking returns that are exempt from federal income taxes. That benefit makes the securities less valuable when levies are lowered.

With Congress also in Republican control, Trump has made reducing taxes one of his first priorities. He has backed cutting rates across the board, including on wealthy households that are key buyers of municipal bonds.

“Any or all of these tax policy changes, if implemented, would likely raise issuers’ borrowing costs and depress market prices of existing coupon munis as investors no longer seek out the exemptions offered by munis,” Peter Block, managing director for credit strategy at Ramirez & Co., wrote in a note last week.

Any sweeping overhaul could also result in the elimination — or reduction — of the tax-exemption on municipal bonds, if lawmakers close loopholes to offset cuts elsewhere. The leaders of President Barack Obama’s deficit-reduction commission recommended taxing the income on municipal bonds in 2010, though the proposal never made headway in Congress.

“It may find itself in jeopardy if and when loopholes start to close,” Vikram Rai, head of municipal strategy at Citigroup Inc., said in a note last week.

Besides, more bonds may be on the way if Trump follows through on proposals to pump as much as $1 trillion into crumbling roads and bridges. While the construction would give a boost to local economies, it’s not clear how much — if any — of that would come from borrowing by states and localities, as was done under part of Obama’s stimulus program.

“It remains to be seen if states primarily are going to have to pick up some of the tab for infrastructure, or it’s going to be a partnership or it’s going to be more private sector involvement,” said Block of Ramirez. “The details are too thin.”

Some of the pressure on the municipal market could be eased if rising interest rates cause local governments to put the brakes on borrowing. This week, for example, Chicago’s school district postponed a $426 million sale due to market conditions, with plans to potentially revive it next year.

The selloff in the bond market “could be a buying opportunity,” said Dawn Mangerson, a managing director at McDonnell Investment Management, which oversees about $7.6 billion of tax-exempt debt. “Even if they put through some type of reform, the attractiveness of munis is still going to be there.”

As the growing economy lifts their tax collections, localities have been moving forward with plans to improve their fraying infrastructure, with many rushing to borrow before the Fed raises interest rates as soon as next month.

Issuers have sold about $390 billion in bonds this year, marking the fastest pace since 2010. Citigroup forecasts that sales may reach $430 billion, while Ramirez projects about $450 billion.

“It looked like based on this year, next year was certainly setting up to be another big year of issuance,” said BlackRock’s Hayes. “The offset to that is when interest rates go up, you’ll actually see less issuance. Borrowers are more averse, they may wait.”

Bloomberg Markets

by Tatiana Darie

November 15, 2016 — 2:00 AM PST Updated on November 15, 2016 — 6:30 AM PST

Bloomberg Brief Weekly Video - 11/17

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

Watch video.

November 17, 2016

Moody's: Unfunded Pension Liabilities Eclipse Capital-Related Debt at US Public Universities.

New York, November 18, 2016 — Unfunded pension liabilities now exceed debt used to fund campus facilities and other capital investment at Moody's-rated public universities, the rating agency says in a new report. While annual pension expenses are currently manageable for universities at only 3% of operating expenses in FY 2015, they will rise as investment earnings lag discount rates and some states shift pension payment obligations to their universities.

"Based on investment results and discount rates used by state pension plans in fiscal 2015 and 2016, we project that aggregate Adjusted Net Pension Liabilities (ANPL) will increase about 40% between now and fiscal year end 2017," Edie Behr, a Moody's Vice President — Senior Credit Officer says in "Higher Education — US: Pension Liabilities Exceed Capital-Related Debt at US Public Universities."

Across the public university sector, unfunded pension liabilities of more than $183 billion exceeds aggregate capital-related debt and will represent over 60% of total adjusted debt by fiscal year end 2017. Meanwhile, debt issuance for new capital–related projects will continue to be moderate.

Moody's says while pension-related expenses are presently low for public universities, they are expected to increase as actual investment returns lag discount rates and net liabilities continue growing.

A few states currently make some or all of the employer contributions to pension plans on behalf of their public universities, but there is a growing risk that states will begin shifting this burden due to ongoing fiscal strain. Illinois (Baa2 negative) and New Jersey (A2 negative) have significant unfunded pension liabilities and budget imbalances, and Oklahoma (Aa2 negative) and West Virginia (Aa1 negative) are encountering budget pressure from low energy prices.

"Pension challenges are typically similar for public universities within the same state because they participate in the same state-sponsored, cost-sharing, pension plan," Behr says.

The larger and higher-rated public universities also have more than enough liquidity and reserves to cushion short-term revenue disruptions. These reserves can be used for pension contributions and debt payments if needed.

The report is available to Moody's subscribers at https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_1038438.

Fitch: Recent Events Underscore Vital Role of Technical Advisors in P3s.

Recent delays and cost overruns among some US public private partnerships are bringing to light the importance of having an experienced, insightful, and independent technical advisor be part of the process.

Read the report.

As Donald Trump Plans Building Boom, Cities and States Rush to Borrow.

Voters authorize $55.7 billion in debt on Election Day, the most approved since 2008

President-elect Donald Trump is promising an infrastructure boom once he is sworn in. In some parts of the country, a burst of new construction spending by states and cities is already under way.

State and local governments around the U.S. have issued $149 billion in bonds for new infrastructure projects thus far this year, putting 2016 municipal borrowing on track to surpass each of the past five years, according to Thomson Reuters data.

Much of the new bond issuance happened in the second and third quarters, after a long stretch of low borrowing. Total bond issuance, including refinancing, has reached $388 billion, also a five-year record.

On Tuesday, voters across the country authorized state and local governments to borrow another $55.7 billion for similar projects, according to Ipreo. It was by far the most borrowing approved since 2008.

"I think there's a lot of momentum, not only at the political level but also by the general public, to start spending more on infrastructure," said Dan Heckman, senior fixed-income strategist at U.S. Bank Wealth Management.

Mr. Trump made a $1 trillion infrastructure investment over the next decade one of his first priorities as president, promising in his victory speech Wednesday to "rebuild our highways, bridges, tunnels, airports, schools, hospitals." The proposal relies on private financing. Experts and industry officials say it is unlikely the nation's aging infrastructure can be updated without public support.

In the short term, however, costs could go up for government borrowers. Municipal-bond prices have dropped along with Treasurys in days after the election, with interest rates for an A-rated 20-year general obligation bond at 3.2% on Thursday, compared with 2.94% on Monday, according to Thomson Reuters. Analysts cited concerns that inflation under a Trump administration could increase borrowing costs.

"In an era where the range has been pretty tight, that's a pretty dramatic move in such a short period of time and he hasn't even taken office yet," said Howard Cure, director of municipal research at Evercore Wealth Management.

Florida bond finance director Ben Watkins is relieved to have refinanced more than $1 billion in mostly state general obligation bonds since June. His only regret, he said, is that he didn't also push through a planned $250 million bond to improve Florida's turnpike and another deal to refinance school construction borrowing.

“With this change in [municipal bond] rates, I wish I had been smart enough to go ahead and sell regardless of what the market felt like,” Mr. Watkins said.

Local infrastructure projects have languished for years as cities and states struggled to balance their budgets in the aftermath of the recession. Long-term borrowing for new projects by major U.S. cities hit a 24-year low in 2014, according to an analysis by The Pew Charitable Trusts.

But with expectations of a federal rate increase in December, local officials were eager to get in on historically low interest rates, many analysts said. Municipalities issued $108 billion in bonds in the third quarter of this year, compared with $86 billion in the third quarter of 2015, according to Thomson Reuters data. They also asked voters Tuesday to approve nearly 700 ballot measures seeking to issue bonds and won approval for more than 70% of them, according to Ipreo.

“The low interest rates are very attractive to us and the idea of waiting any longer means the cost will drive up,” said Alicia Trost, spokeswoman for San Francisco’s Bay Area Rapid Transit, or BART. The transportation system won voters’ approval Tuesday to issue $3.5 billion in bonds, its first referendum since 2004. The money will be used to replace 90 miles of rail and fix leaky tunnels and other infrastructure improvements.

Voters in Texas’ El Paso Independent School District approved $668.7 million in new borrowing in what was the school system’s first successful bond referendum since 2007, said spokeswoman Melissa Martinez. The money will pay for a consolidation of school campuses to accommodate declining enrollment, 81 new school buses and laptops for middle-school students in the 60,000-student district.

A citizens committee working on the referendum chose not to limit the borrowing to $500 million after learning that the additional money would add only $2.39 to the tax bill for a $100,000 home.

That type of deal will likely still be available to them. Despite the postelection volatility, “borrowing costs are still relatively and historically low,” U.S. Bank’s Mr. Heckman said.

THE WALL STREET JOURNAL

By HEATHER GILLERS

Nov. 12, 2016 7:00 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Competition Aims to Spur Local Government Consolidation.

ALBANY, N.Y. — The Cuomo administration is offering a $20 million award for local governments that come up with the best plan for saving money and cutting property taxes by sharing municipal services.

Under the Municipal Consolidation and Efficiency Competition, teams of two or more local governments will submit plans for sharing services and reducing property taxes. The prize money will support the municipal actions. A winner will be announced in August.

Gov. Andrew Cuomo announced the competition on Thursday. He said the goal is to get local governments to band together and streamline their bureaucracies to deliver real relief to taxpayers.

The Democrat first proposed the competition in his State of the State and budget proposal last January.

Updated Nov. 13, 2016 9:49 a.m. ET

Associated Press

Judge Directs San Bernardino, Insurers to Negotiate Bankruptcy Resolution.

The city filed for bankruptcy protection in 2012, suffering from unemployment and low tax revenue

A federal judge told San Bernardino, Calif., officials to negotiate with an insurer to gain access to money that would have gone to families who have filed lawsuits claiming police brutality, an issue that's again delayed the exit of the city of 200,000 from bankruptcy.

Judge Meredith Jury said Tuesday that another bankruptcy judge will mediate a dispute between city leaders and insurance administrators over coverage for major lawsuits, including the police litigation.

She set a Dec. 6 hearing to determine whether the city can leave bankruptcy protection after more than four years.

"I wish I ruled this afternoon because I pretty much knew what I was going to do," she told lawyers in her Riverside, Calif., courtroom. Judge Jury was originally expected to rule on the city's exit from bankruptcy last month, but the insurance issue prevented her from doing so.

The city had filed for bankruptcy on Aug. 1, 2012, saying it suffered from double-digit unemployment and lower tax revenue from fallen property values.

City lawyers have proposed a 76-page plan that would pay 1% of $209.3 million owed to retirees, families who have won police brutality lawsuits and other unsecured debts. Under that plan, which Judge Jury must approve, a European bank owed $51 million in bond debt would be paid 40% of its claim over 30 years, according to documents filed in U.S. Bankruptcy Court in Riverside.

At Tuesday's hearing, Judge Jury rejected the idea that the city may be able to pay off a greater portion of its debts because of California's recent vote to legalize marijuana. The suggestion that the legalization would boost the city's sale tax revenue came from lawyers who represent a municipal entity that handles San Bernardino's solid waste disposal and hasn't been paid for that work.

"I agree it would be a nice tax source, but there are so many unmet needs," Judge Jury said, ending her remarks with "nice try."

Throughout the bankruptcy, the city found ways to save money, including reduction of staff from 600 people from 1,140. It began using county-employed firefighters instead of its own and contracted out solid waste disposal, recycling and sweeping services.

City leaders stopped paying retiree health benefits, though they will continue making full payments into the pension fund run by California Public Employees' Retirement System, also known as Calpers. The system distributes payments to thousands of retired city workers—often their lone source of income, court papers said.

The city decided to make pension payments even though federal judges in charge of Detroit and Stockton's bankruptcy cases ruled that pensions could indeed be cut.

But despite the money-saving changes and the debt elimination, city leaders concede that the plan will pay only a portion of the $56.5 million requested by the police department for the next five years. By its own financial projections, the city will pay about 40% of what is necessary to fund the city's police needs amid a crime wave, according to court papers.

San Bernardino's bankruptcy-exit plan doesn't call for any immediate tax increases on its residents.

Creditors who had the power to vote on the plan largely agreed to approve it. A total of 983 creditors who are owed $154.1 million voted to accept the plan, while 43 creditors owed $2.8 million rejected it, according to court papers.

San Bernardino, about 60 miles east of Los Angeles, was the scene of a terrorist attack nearly a year ago that left 14 people dead.

THE WALL STREET JOURNAL

By KATY STECH

Nov. 15, 2016 7:21 p.m. ET

Write to Katy Stech at katherine.stech@wsj.com

Post-Implementation Review Concludes GASB Standard On Fund Balance Reporting Achieves Its Purpose.

Norwalk, CT—November 16, 2016 — The accounting and financial reporting standard for state and local governments that addresses fund balance reporting and governmental fund type definitions achieves its purpose, according to a report issued today by the Financial Accounting Foundation (FAF). The Post-Implementation Review (PIR) Report on Governmental Accounting Standards Board (GASB) Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, addresses technical, operational, and cost-effectiveness aspects of the Statement.

GASB Statement 54 was issued in 2009 to improve the usefulness of information provided to financial report users about fund balance by providing clearer, more structured fund balance classifications, and by clarifying the definitions of existing governmental fund types.

"The PIR process has provided some important stakeholder feedback on the benefits and costs of Statement 54 in light of actual experience in using and preparing the information," said GASB Chairman David A. Vaudt in the Board's response to the PIR report. "On behalf of the GASB, I would like to thank the Foundation for undertaking this important process and all of the individuals and organizations who gave their time to share their insights and experiences with the PIR staff."

The PIR team received broad-based input from GASB stakeholders including auditors, preparers, financial statement users, and academics. Based on its research, the review team concluded that:

- Overall, Statement 54 resolved the primary issues underlying its stated need—it introduced fund balance classifications that are easier to understand and clarified fund type definitions. Although some stakeholders have indicated that it is difficult to distinguish between committed and assigned fund balances, the Statement was an improvement over prior literature.
- Statement 54 provides users of financial statements with decision-useful information.
- Overall, Statement 54 is operational because it is understandable, can be applied as intended, and enables fund balance and governmental fund type information to be reported reliably.
- The changes made to financial and operating practices as a result of Statement 54 were not significant or unexpected.
- There were no significant unanticipated consequences as a result of the adoption of Statement 54.
- Overall, implementation and continuing application costs associated with Statement 54 were not significant and were consistent with the GASB's expectations.
- Overall, Statement 54 achieved its expected benefits.
- The PIR team's review did not result in any standard-setting process recommendations for the GASB.

The review of Statement 54 was undertaken by an independent team of the FAF, the parent organization of the GASB and the Financial Accounting Standards Board (FASB). The team's formal report is available here. The GASB's response letter to the report is available here.

The next PIR of a GASB standard will not be conducted for a few years, as the PIR team has completed all the reviews of significant GASB standards that have been effective for at least two years.

NFMA Responds to MSRB's Request for Comment.

The National Federation of Municipal Analysts has submitted a response to the MSRB's request for public input on its long-term priorities "to help guide the strategic direction of the organization". The NFMA's comment letter, dated November 10, 2016, can be found by clicking here.

- U.S. Municipal Credit Report, Third Quarter 2016
- S&P Reassessing, Deferring Some Ratings Due to Errors in Sector Models.
- This Government Bond Insures Against Failure.
- An Inconvenience of Qualified Equity: Squire Patton Boggs
- Trump's Tax, Infrastructure Plans Jeopardize Exemption for Munis.
- GFOA Webinar: Current Issues in Debt Management.
- *Regional Convention and Sports Complex Authority v. City of St. Louis* – Appeals court holds that status as a registered voter and signatory to a referendum petition is not an interest of adequate directness or immediacy as required to intervene as a matter of right in case concerning public financing of sports complex.
- *City of Bakersfield v. West Park Home Owners Association and Friends* – Court of Appeal holds that certificates to be issued by Public Benefit Corporation under an installment sale agreement entered into with city constituted "bonds" under article XIX, section 6 and Streets and Highways Code section 2107.4, and thus City could not pledge gas tax revenues in non-voter approved

financing. Worth reading this opinion for its analysis of Public Benefit Corporations and pledged revenues.
- And finally, this week's BCB Travel Alert is brought to you by *Ex Parte Sedigas*, in which the court upheld the constitutionality of the Waco city ordinance prohibiting any employee who appears nude in a sexually oriented business from knowingly or intentionally touching a customer or the clothing of a customer on the premises. (Wait, what about employees appearing nude while working the McDonald's drive-thru?) Jeez, talk about taking the party out of parte.

MUNICIPAL FINANCE - CALIFORNIA

City of Bakersfield v. West Park Home Owners Association and Friends

Court of Appeal, Fifth District, California - October 31, 2016 - Cal.Rptr.3d - 2016 WL 6408001

The City of Bakersfield proposed to finance road improvement projects through a public benefit corporation (Corporation) and pay the debt from revenues held in special funds. The City filed an action seeking validation of this finance plan. West Park Home Owners Association and Friends (West Park) opposed the finance plan.

The Superior Court entered judgment for City. West Park appealed.

The Court of Appeal held that:

- Funding sources for road improvement projects – the gas tax revenues fund, the transportation impact fees fund, and the restricted utility franchise and surcharge fees fund – qualified as "special funds" under state constitution's debt limitation provision;
- A provision of city's contract purporting to make City's payment obligation "absolute and unconditional" did not require payment from sources other than special funds;
- the three sources of revenue pledged by the City to make the installment payments satisfied the nexus requirement under the special fund exception;
- City did not violate the state constitution's limitation on the permissible uses of gas tax revenues;
- The term "bonds" as used in article XIX, section 6 and Streets and Highways Code section 2107.4 includes installment payments under an installment sale agreement;
- The City' use of gas tax revenues violated article XIX, section 6 and Streets and Highways Code section 2107.4 in that the City intended to use gas tax revenues on non-voter approved financing; and
- The Corporation had a separate existence from the City.

City's gas tax revenues fund, which contained all amounts received by the city related to the purchase of motor vehicle fuels, qualified as a "special fund," as required for obligations payable from the fund not to violate the state constitution's debt limitation provision.

City's transportation impact fees fund, which contained fees paid to the city by developers to mitigate the regional traffic impacts of development projects, qualified as a "special fund," as required for obligations payable from the fund not to violate the state constitution's debt limitation provision.

City's "restricted utility franchise and surcharge fees" fund, which contained proceeds of a surcharge on the franchise fees imposed on utility companies related to their use of city streets for transmitting and distributing electricity and gas, qualified as a "special fund," as required for obligations payable from the fund not to violate the state constitution's debt limitation provision, where the city adopted an ordinance providing that the fund was to be segregated from all other revenues and general funds and not maintained from the general funds.

Under a contract providing that city's obligation to pay for construction services was "absolute and unconditional," but that "notwithstanding" that provision the city's obligation to pay for the services was limited to three special funds, the city had no obligation to pay for the services if the special funds were insufficient, and thus the contract did not violate the state constitution's debt limitation provision.

City's gas tax revenues fund, which contained all amounts received by the city related to the purchase of motor vehicle fuels, had an adequate nexus to city's road improvement finance plan to fall within the special fund exception from the state constitution's debt limitation provision, since the gas tax revenues were generated by the public's use of the streets and highways.

City's transportation impact fees fund, which contained fees paid to the city by developers to mitigate the regional traffic impacts of development projects, had an adequate nexus to city's road improvement finance plan to fall within the special fund exception from the state constitution's debt limitation provision, since the fees were imposed so as to assure that new development bore a proportionate share of the cost of capital expenditures necessary to provide a regional transportation system.

City's "restricted utility franchise and surcharge fees" fund, which contained proceeds of a surcharge on the franchise fees imposed on utility companies related to their use of the city streets for transmitting and distributing electricity and gas, had an adequate nexus to city's road improvement finance plan to fall within the special fund exception from the state constitution's debt limitation provision, since the fees were imposed to compensate the city for the use of its streets to transmit and distribute electricity and gas.

City did not violate the state constitution's limitation on the uses of gas tax revenues, in making payments to a nonprofit corporation that was obligated to "cause the design, acquisition and construction" of the street improvements for, and sell those improvements to, the city, since the gas tax revenues were being used to pay for street improvements as required by the state constitution.

City's use of gas tax revenues to make payments to a nonprofit corporation that was obligated to "cause the design, acquisition and construction" of the street improvements violated the state constitution's prohibition against non-voter approved financing, since the payments were to be made under a certificate purchase agreement that amounted to "bonds," where the certificates included a maturity date, principal amount, interest rate, price, and yield.

State constitutional provision requiring two-thirds vote of qualified electors before city incurs indebtedness in excess of annual income and revenue did not apply to nonprofit corporation formed by city to implement a road improvement finance plan, since the corporation had a genuine separate existence from the city, where the corporation signed an agreement with the city to "cause the design, acquisition and construction" of the projects, and the corporation's bond purchase agreement did not make the city responsible for the corporation's debt.

SPECIAL DISTRICTS - COLORADO

Bill Barrett Corporation v. Sand Hills Metropolitan District

Colorado Court of Appeals, Div. VI - October 6, 2016 - P.3d - 2016 WL 6087897 - 2016 COA 144

Taxpayers, along with an involuntarily plaintiff, brought action under Special District Act challenging the taxing authority of a special district that originally had geographic boundaries located entirely within town and a local focus on providing necessities for construction of a residential and commercial development but then shifted its boundaries to encompass land in both in town and county and then land only in county, and also shifted its focus to regional water infrastructure.

The District Court granted in part taxpayers' motion for summary judgment and granted in part special district's motion for summary judgment. Special district appealed and taxpayers cross-appealed.

The Court of Appeals held that:

- Special district's shift in purpose from local to regional was a material modification of its original service plan;
- Special district's shift of boundaries to eliminate all land in town was a material modification of service plan;
- Special district did not provide adequate notice under Act of material modifications of service plan;
- Special district's shift in boundaries to include land in county in addition to land in town was a material modification of service plan; and
- Involuntary plaintiff was entitled to relief that was similar to what taxpayers received.

Special district's shift in purpose, from a local focus on providing necessities for construction of a residential and commercial development in town to a focus on regional water infrastructure upon its change in geographic boundaries to encompass land only in county, was a material modification of its original service plan requiring approval of county board of commissioners under Special District Act.

Special district's shift in its geographic boundaries, to eliminate all land in town and include only land in county, was a material modification of its original service plan requiring approval of county board of commissioners under Special District Act.

Special district did not provide adequate notice under Special District Act of material modifications of its original service plan consisting of shift in focus from local development services to regional water infrastructure and a shift in its geographic boundaries from land in town, to land in town and county, and then to land only in county, where district's published notice was in a newspaper in another county, that publication did not advise that a material departure from service plan was proposed or that the operative objection timeline would begin to run, and district did not provide county board of commissioners with notices of departures from service plan.

Special district's shift in geographic boundaries, to include land in county in addition to land in town, was a material modification of its original service plan requiring approval of county board of commissioners under Special District Act, where 13,000 acres of land in county was proposed for district services.

Trial court did not abuse its discretion in ordering a stay of judgment pending appeal that required special district to preserve funds collected from taxpayers who were challenging the taxing authority of district, which shifted its geographic boundaries from land in town to land only in county; order was not manifestly arbitrary, unreasonable, unfair, or contrary to law.

Involuntary plaintiff was entitled to relief that was similar to what plaintiff taxpayers received in litigation challenging the taxing authority of special district that shifted its geographic boundaries from land in town to land only in county, even though the trial court's judgment only mentioned taxpayers and not involuntary plaintiff, where involuntary plaintiff held itself out as being similarly situated to taxpayers from the beginning of litigation and paid taxes on land at issue in the case.

TORT CLAIMS - IDAHO

CNW, LLC v. New Sweden Irrigation District

Supreme Court of Idaho, Idaho Falls, September 2016 Term - November 3, 2016 - P.3d - 2016 WL 6520152

After a sinkhole developed on landowner's property, landowner brought action against irrigation district and city, alleging that their actions relating to a canal caused the sinkhole.

Irrigation district moved for summary judgment, arguing that landowner failed to comply with notice requirements of Idaho Tort Claims Act (ITCA).

The District Court granted the motion. Landowner appealed.

The Supreme Court of Idaho held that landowner satisfied presentment requirement of ITCA by delivering notice of its tort claim to district's attorney.

Section of Idaho Tort Claims Act (ITCA) requires presentment of claims to the secretary of a political subdivision but does not require formal service.

Presentment requirement of Idaho Tort Claims Act (ITCA) is satisfied when the notice of tort claim is delivered to an employee or agent of the governmental entity who then delivers the notice to the clerk or secretary.

IMMUNITY - ILLINOIS

Salvi v. Village of Lake Zurich

Appellate Court of Illinois, Second District - October 31, 2016 - N.E.3d - 2016 IL App (2d) 150249 - 2016 WL 6461540

Owner of property that was contiguous to lot containing pond filed suit against village and others, arising out of damages from flooding of owner's building.

After claims against other parties were dismissed under settlement agreement, the Circuit Court dismissed claims as barred under Tort Immunity Act, and property owner appealed.

The Appellate Court held that:

- Tort Immunity Act was not defense to property owner's claim for breach of easement agreement and mandamus relief;

- Village owed common law duty of care to property owner with respect to development and maintenance of pond in manner designed to prevent increase in natural flow of surface water onto owner's property;
- Watershed ordinance disclaiming liability for liability resulting from certified community's reliance on ordinance did not immunize village from liability for alleged noncompliance with ordinance; Immunity granted to governmental entity under Tort Immunity Act for failure to enforce any law did not apply;
- Immunity granted to governing entities and their employees under Tort Immunity Act for injuries caused by issuance of permits for improvements to property did not apply;
- Immunity granted to government entities and their employees for injury caused by effect of weather on use of public places did not apply;
- Owner was not third-party beneficiary of easement agreement between village and owners of other lots adjoining pond; and
- Mandamus would not issue to compel village's compliance with agreement.

LIABILITY - ILLINOIS

Mulvey v. Carl Sandburg High School

Appellate Court of Illinois, First District, Sixth Division - October 28, 2016 - N.E.3d - 2016 IL App (1st) 151615 - 2016 WL 6461677

Parents of minor high school student brought action, on behalf of themselves and student, against high school, school district, and district officials and coaches, for injuries student allegedly sustained as result of school bullying, asserting claims for breach of contract and willful and wanton conduct. Student's older sister, a former student, brought similar claims.

The Circuit Court dismissed all claims. Plaintiffs appealed.

The Appellate Court held that:

- Bullying prevention provisions in student and athletic handbooks were not legal offers sufficient to support valid contract between plaintiffs and defendants;
- Neither students' attendance at school, nor parents' payment of property taxes, created sufficient consideration needed to establish contract with school; and
- Individual defendants were entitled to discretionary immunity under Local Governmental and Governmental Employees Tort Immunity Act.

Bullying prevention provisions in student and athletic handbooks, providing that public school district's progressive discipline policy was consistently and fairly applied and that superintendent or designee would develop and maintain an anti-bullying program, were not legal offers sufficient to support a valid contract between students and school, needed to support breach of contract action premised on students' alleged bullying. State law required creation, implementation, and enforcement of policy prohibiting bullying, and provisions did not include any specific promise to prevent or eliminate bullying, with handbooks instead indicating that preventing students from engaging in disruptive behaviors was an important district goal.

Neither students' attendance at public high school, nor parents' payment of property taxes, created sufficient consideration needed to establish contract with school which would support breach of contract action premised on students' bullying, in alleged violation of student and athletic handbooks. School attendance could not be considered a legal detriment or disadvantage to students, in that students were required to attend school until age 17 unless already graduated, and students' attendance did not benefit school, in that public school was required to provide free education to any students living within district.

High school administrators, coaches, and guidance counselors were performing discretionary, rather than ministerial, acts in responding to student's allegations of bullying and, thus, such defendants were entitled to discretionary immunity under Local Governmental and Governmental Employees Tort Immunity Act in action by parents, individually and on behalf of student, for willful and wanton conduct premised on bullying in alleged violation of student and athletic handbooks. Anti-bullying policy adopted by the district did not mandate a particular response to certain situations, but instead allowed school district personnel to determine whether bullying had occurred and what remedial action was appropriate.

EMINENT DOMAIN - MINNESOTA

Yarmon v. Minnesota Dept. of Transp.

Court of Appeals of Minnesota - October 17, 2016 - Not Reported in N.W.2d - 2016 WL 6077143

Property owners brought inverse-condemnation action after road construction increased travel time to their business from highway.

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

The Court of Appeals held that:

- Owners did not have right to direct and immediate access to highway, and
- No taking of property occurred.

Owners of property abutting right-of-way to highway did not have right to direct and immediate access to highway following road construction, where owners had never enjoyed direct and immediate access to highway.

Evidence supported finding that access to property abutting right-of-way to highway was still reasonably convenient and suitable after road construction, and thus no unconstitutional taking occurred, even though travel distance from highway to business had increased by 2,600 feet and 3,600 feet and grade elevation may have obstructed visibility of business from highway. Increased distances did not render access unreasonable, and no land was taken.

PUBLIC FINANCE - MISSOURI

Regional Convention and Sports Complex Authority v. City of St. Louis

Missouri Court of Appeals, Eastern District, Division One - September 27, 2016 - S.W.3d - 2016 WL 5377882

The Regional Convention and Sports Complex Authority ("the RSA") brought suit against the City of St. Louis ("the City") seeking a declaration that Ordinance 66509 was unconstitutional and void. The Ordinance was enacted in 2002 via initiative petition and was designed to bar the City from providing financial assistance to the development of a professional sports facility without first: (1) preparing a fiscal note and making it available to the public for at least twenty days prior to action;

(2) holding a public hearing allowing opportunity for proponents and opponents to be heard; and (3) obtaining voter approval for financial assistance by a majority vote of City of St Louis voters.

Appellants – residents, registered voters, and taxpayers in the City of St. Louis – filed a Motion for Leave to Intervene in the case as defendants, seeking a public hearing and public vote on whether financial assistance would be provided for the construction of a new professional sports facility pursuant to their rights as set forth in the Ordinance.

The trial court held that Appellants did not meet the burden to intervene of right, nor did they meet the requirements for permissive intervention, and therefore denied Appellants' Motion to Intervene. The Court also entered a judgment in favor of the RSA invalidating the ordinance.

"The trial court found that status as a registered voter and signatory to a referendum petition is not an interest of adequate directness or immediacy as required to intervene as a matter of right. We agree."

"The record clearly demonstrates that Appellants failed to show an adequate interest in the subject matter and failed to show that their ability to protect that interest would be impeded absent intervention."

The Court declined to rule on the merits of the trial court's decision on the validity of the ordinance, as Appellants had been denied intervention.

ANNEXATION - MISSOURI

Village of Agency v. City of St. Joseph

Missouri Court of Appeals, Western District - October 25, 2016 - S.W.3d - 2016 WL 6208433

Village petitioned for a declaratory judgment authorizing its involuntary annexation of 347 acres of unincorporated land, 238 acres of which were owned by city that operated landfill near the annexed territory.

The Circuit Court denied petition. Village appealed.

Holdings: The Court of Appeals, Cynthia L. Martin, J., held that:

- The circuit court imposed on village the proper burden of proceeding with the evidence, as opposed to a burden of persuasion, and
- Village's proposed involuntary annexation to prevent expansion of city's landfill was not reasonable and necessary.

The standard of review applicable to a municipality's decision to involuntarily annex adjacent unincorporated land is whether there is substantial evidence showing that the reasonableness and necessity of the annexation is at least fairly debatable.

The extent of the court's inquiry as to whether the reasonableness and necessity of a municipality's involuntary annexation of adjacent unincorporated land is at least fairly debatable is whether substantial evidence has been presented by municipality to support the determination of its governing body such that reasonable men could differ as to the necessity of the extension.

Factors for determining whether an involuntary annexation is reasonable include need for residential or industrial sites; city's inability to meet its needs without expansion; consideration only of needs which are reasonably foreseeable; past growth relied on to show future necessity; extent to which past growth has caused city to spill into proposed area; beneficial effect of uniform application and enforcement of zoning ordinances; need for or beneficial effect of uniform application and enforcement of municipal building codes; need for or beneficial effect of extending police protection area; need for or beneficial effect of uniform application and enforcement of health ordinances or regulations; need for and ability of city to extend essential municipal services into area; enhancement in value by reason of adaptability of land for prospective city uses; and regularity of boundaries.

Circuit court imposed the proper burden of proceeding with the evidence, as opposed to a burden of persuasion, on village seeking a declaratory judgment approving an involuntary annexation of adjacent unincorporated land, despite the court's finding that village failed to produce substantial evidence that the reasonableness and necessity of the proposed annexation was fairly debatable; that finding only reflected the court's determination that village failed to sustain its burden to proceed with the evidence.

The "burden of proof" applicable in an involuntary annexation proceeding by a municipality is a burden of proceeding with the evidence and not a burden of persuasion by the preponderance of the evidence.

Village's proposed involuntary annexation of adjacent unincorporated land was not reasonable and necessary, where village based its annexation decision exclusively on concerns about, and a desire to prevent, city's efforts to expand a nearby landfill.

When the sole evidence justifying a proposed involuntary annexation of adjacent unincorporated land is the municipal annexing authority's defensive desire to prevent uses on annexed land, no benefit to the annexed land is demonstrated, negating any ability to find the annexation reasonable and necessary to both the annexing authority and the annexed area.

ZONING - NORTH DAKOTA

[Dakota Outdoor Advertising, LLC v. City of Bismarck]

Supreme Court of North Dakota - November 9, 2016 - N.W.2d - 2016 WL 6611238 - 2016 ND 210

Applicant for special use permit to erect a digital billboard appealed decision of city's board of commissioners that affirmed decision of city's planning and zoning commission denying the permit.

The District Court affirmed. Applicant appealed.

The Supreme Court of North Dakota held that:

- Applicant's appeal from district court order was not moot; and
- Decision of city's board of commissioners to deny application for special use permit to erect digital billboard less than 300 feet from a residential area was not arbitrary, capricious, or unreasonable.

Applicant's appeal from district court order affirming decision of city's board of commissioners that denied special use permit to erect digital billboard less than 300 feet from a residential property was not moot, though applicable city ordinance was changed shortly after district court's decision so as not to allow for special use permits for digital billboards less than 300 feet from residential properties, where new ordinance was not expressly written to be applied retroactively.

Decision of city's board of commissioners to deny application for special use permit to erect digital billboard less than 300 feet from a residential area was not arbitrary, capricious, or unreasonable. Board had authority to grant special use permit if proposed use would not adversely affect health and safety of public and workers and residents in the area, and board found a high incidence of accidents on street running next to proposed site, found that the North Dakota Department of Transportation Urban High Crash Locations report showed the subject intersection was the seventh most dangerous in the state and the second most dangerous in city, and found that applicant's evidence was inconclusive as to whether digital billboards increased driver distraction.

MUNICIPAL ORDINANCE - TEXAS

Ex Parte Sedigas

Court of Appeals of Texas, Waco - October 12, 2016 - Not Reported in S.W.3d - 2016 WL 5944788

Defendants who were charged with misdemeanor violation of city's "no touch" ordinance for sexually-oriented businesses filed pretrial applications for writ of habeas corpus, challenging ordinance's constitutionality.

The County Court at Law denied applications and certified defendants' right of appeal. Defendants appealed.

The Court of Appeals held that:

- Ordinance was not facially overbroad; and
- Possible punishment of one year in prison and a $4,000 fine was not grossly disproportionate to the offense so as to violate Eighth Amendment.

City ordinance was not facially overbroad in violation of First Amendment's protection of free expression in prohibiting any employee who appeared nude or semi-nude in a sexually oriented business from knowingly or intentionally touching a customer or the clothing of a customer on the premises of a sexually oriented business. Ordinance only applied at the time that the employee was nude or semi-nude on the premises of a sexually-oriented business and touched a customer.

Possible punishment of one year in prison and a $4,000 fine was not grossly disproportionate, so as to violate Eighth Amendment prohibition against cruel and unusual punishment, to city ordinance making it a class A misdemeanor offense for any employee who appeared nude or semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

SPECIAL ASSESSMENT LIENS - VIRGINIA

Cygnus Newport-Phase 1B, LLC v. City of Portsmouth

Supreme Court of Virginia - September 22, 2016 - 790 S.E.2d 623

Property owner brought action against city and community development authority, alleging that a special assessment lien, recorded after a deed of trust, was extinguished by the foreclosure sale and that the special assessments were void.

The Circuit Court granted the pleas in bar and dismissed the complaint. Owner appealed.

The Supreme Court of Virginia held that:

- Special assessment liens have priority over previously recorded deeds of trust;
- Special assessment lien was enforceable against property owner; and
- Owner's belated challenge to special assessments was foreclosed.

Special assessment lien was enforceable against property owner after foreclosure sale on deed of trust, even though deed of trust was recorded before lien, where city filed in deed book of circuit court clerk's office an abstract of ordinance authorizing improvements, which made lien enforceable against any person deemed to have had notice of assessment, and owner had notice of assessment and lien when it acquired deed of trust and property at foreclosure.

State constitution and code foreclosed property owner's belated challenge to special assessments on property that owner acquired following foreclosure sale on deed of trust. Owner acquired its interest long after assessment agreement with former owner had been finalized and recorded, assessments approved and recorded, and bonds issued, owner filed suit approximately nine years after special assessments were imposed and bonds issued, and state constitution and code did not contemplate endless challenges from subsequent purchasers who bought property with notice of existence of assessment, notice of agreement with former owner, and notice of what infrastructure had been constructed.

EMINENT DOMAIN - WASHINGTON

Tapio Investment Company I v. State by and through the Department of Transportation

Court of Appeals of Washington, Division 3 - October 27, 2016 - P.3d - 2016 WL 6301605

Property owner brought inverse condemnation action against Department of Transportation alleged taking of office park during construction of a freeway project.

The Superior Court granted Department's motion for judgment as a matter of law, and property owner appealed.

The Court of Appeals held that:

- Court would not undertake an independent analysis of state constitution's taking provision;
- Order entitled "Final Limited Access Order" was not an administrative regulation warranting a regulatory takings analysis;
- Construction in the neighborhood of owner's property was not a taking; and
- Property owner could not establish that property manager had sufficient personal knowledge of e-mails to establish exhibit's relevance.

"Action" undertaken by Department of Transportation in which Department began freeway construction in the neighborhood of owner's office park, did not constitute a taking. Businesses in the vicinity of freeway project did not suffer a harm that was compensable in an inverse condemnation proceeding, and just because a portion of owner's property was expected to be taken in the future did not make it different from its neighbors in that respect.

TAX - WISCONSIN

Medical College of Wisconsin Affiliate Hospitals, Inc. v. United States

United States District Court, E.D. Wisconsin - September 14, 2016 - Slip Copy - 2016 WL 4916811 - 118 A.F.T.R.2d 2016-5798 - 2016-2 USTC P 50, 409

The Medical College of Wisconsin Affiliated Hospitals, Inc. overpaid its Federal Insurance Contributions Act (FICA) tax and received a tax refund with interest calculated at the rate for corporations. It filed this lawsuit to recover additional interest at the higher, noncorporate rate. IRC § 6621(a)(1)

"Under § 6621(a)(1) noncorporate taxpayers receive interest on tax refunds at a higher rate than corporate taxpayers receive. Hence, the question here is whether for purposes of IRC § 6621(a)(1) a § 501(c)(3) nonprofit is considered to be a corporation. When the pending summary judgment motions were briefed initially, the identical legal issue had been decided in the government's favor by district courts in New York and Michigan and presented on appeal to the Second and Sixth Circuits. Both circuit courts have since issued their decisions affirming the judgments in the government's favor."

"This court has fully considered the parties' arguments here, the statutory and regulatory language cited, the opinions of the two district courts, the Second Circuit's Maimonides Medical Center v. United States, 809 F.3d 85 (2d Cir. 2015), the Sixth Circuit's United States v. Detroit Medical Center, No. 15-1279, --- F.3d ----, 2016 WL 4376431 (6th Cir. Aug. 17, 2016), the Court of Federal Claims' Eaglehawk Carbon, Inc. v. United States, 122 Fed. Cl. 209 (2015), and the Tax Court's Garwood Irrigation Co. v. Commissioner of Internal Revenue, 126 T.C. 233 (2006). Because this court's determination is in accord with the decisions of the Second and Sixth Circuit, there is no need to add a lengthy opinion to the mix. In short, this court rejects the Hospital's argument that the parenthetical in the "flush language" of § 66211 incorporates the "C corporation" limitation of (c)(3)(A), notwithstanding that the flush language cites only "(c)(3)." The flush-language parenthetical more naturally refers only to the definition of "taxable period" in (c)(3)(B), especially as the flush language does not use the defined term "large corporate underpayment" (or, as possibly adjusted, "large corporate overpayment"). And this court is unpersuaded that perfect symmetry between the overpayment and underpayment provisions was intended by Congress. Instead, it appears that where Congress intended to use "C corporation" in § 6621 it did so and where it used only "corporation" it included all corporations—C, S, and § 501(c)(3) together. Although the Hospital's policy arguments for a higher interest rate for refunds to nonprofits have merit, those arguments are better aimed at Congress. Here the text of the statute expresses Congress's intent. For these reasons and the reasons discussed by the Second Circuit and Sixth Circuit in Maimonides and Detroit Medical College."

S&P Reassessing, Deferring Some Ratings Due to Errors in Sector Models.

WASHINGTON – Standard & Poor's is reassessing some of its existing ratings and deferring some new ones in certain sectors because of errors in credit scoring models.

The sectors include higher education, social housing (which is the rating agency's name for public housing), and water and sewer.

S&P released notices on the sectors with the model errors between Sept. 29 through Oct. 28 and has assigned a few ratings “with developing implications,” resolving one of them since then.

However, some issuers in the higher education sector who wanted to remain anonymous recently reported having trouble getting ratings.

Credit scoring models are tools used by analysts to apply rating criteria, said Adom Rosengarten, lead analytical manager for S&P’s enterprise group.

“We’ve identified those three models that have errors,” he said in a interview. “We’re working to correct those errors … and to assess the rating impacts, if any, that may be related to the correction of the models’ errors.”

“We’re working with issuers as they come in and are discussing how we can rate deals on a transaction by transaction basis,” he added.

The errors were discovered by analysts, according to Rosengarten. He declined to specify them beyond the disclosures made by S&P in the recent notices.

“On the water and sewer side, what it led to was a single CreditWatch that we’ve already resolved,” he said. “On the social housing side, it led to two CreditWatch development ratings total.”

In the higher education sector “we continue to assess if there will be any rating changes,” he added.

The most recent S&P notices, on higher education, were released on Oct. 28 and Oct 21. The earlier one said that S&P had found errors in its credit scoring model for higher education.

“We do not know the likelihood at this time of rating changes following the correction of this error although it is possible that such changes will be required,” S&P said. “We will continue working to correct the error and provide additional information as appropriate.”

In the Oct. 28 notice, S&P said, “We have discovered additional errors in the higher education credit scoring model. We do not know the likelihood at this time of rating changes following the correction of the errors although it is possible that such changes will be required.”

In an Oct. 18 notice, S&P said an error had been found in the social housing provider credit scoring model.

The credit rating agency later issued a notice on Oct. 27 that said it has placed its A-minus ratings on Fall River Housing Authority in Massachusetts and the authority’s 2012 general obligation lease revenue bonds on CreditWatch “with developing implications.”

S&P announced at the same time that it has issued an A-plus rating on Credit Watch “with developing implications” for the Wisconsin Housing Preservation Corp.

“The CreditWatch Developing status reflects our view that we could raise, affirm, or lower our ratings following correction of the model error,” the rating agency said, adding, “At the same time, we will review the … transactions based on the latest audited financials, which we anticipate completing within the next 90 days.”

In a Sept. 30 notice, S&P said it found an error in its water/sewer credit rating model. “We do not know the likelihood at this time of rating changes following the correction of this error with the exception of Clackamas County Service District No. 1, Ore., whose ratings have been place on CreditWatch."

The day before, S&P placed its double-A rating on the Clackamas County issuer on CreditWatch "with positive implications."

"This action reflects the recent discovery of an error in the water/sewer credit scoring model as it relates to our assessment of the enterprise profile, specifically the economic fundamentals assessment," S&P said. It added, "We believe that there is at least a one-in-two likelihood the rating will be raised following the completion of our review."

After the rating agency corrected the credit scoring model, it issued a notice on Oct. 21 raising Clackamas County issuer's long-term and underlying rating for its sewer revenue and refunding bonds to double A-plus from double A and removed the rating from CreditWatch. It said the outlook is stable for the bonds.

The rating contained a lengthy rationale for the rating, detailing the enterprise risk profile and financial risk profile for the bonds.

The Bond Buyer

By Lynn Hume

November 7, 2016

U.S. Voters Say Yes to Big Bond Issues, Mixed Message on Taxes.

U.S. voters on Tuesday favored a surge in borrowing for public projects, approving some of the biggest bond measures on ballots, while support for new taxes was mixed, according to election results on Wednesday.

Final voting tallies were not immediately available for all of the 682 state, school and local government bond measures, according to data company Ipreo.

At $70.3 billion, the amount of bond issuance requested to fund the building and repairing schools, mass transit, roads, and other projects was the largest in a decade. To view the historical amount of bond ballot measures, click on tmsnrt.rs/2e9Z5bb.

Some of the largest bond requests won approval, including the biggest bond proposal in Tuesday's election: $9 billion of California general obligation debt in the state's so-called Proposition 51. This will finance new construction and modernization for K-12 and charter schools and community colleges, according to semi-official election results on the California Secretary of State's website.

"Passage of Proposition 51 is credit positive for school districts with approved, but unfunded capital projects under the state School Facility Program, which is depleted," Lori Trevino, an analyst at Moody's Investors Service, wrote in a research note on Wednesday.

With 195 bond measures totaling $41.7 billion, California issuers accounted for nearly 60 percent of the total par amount of debt on ballots nationwide.

California’s voters rejected Proposition 53, a proposal to rein in debt by requiring statewide voter approval for revenue bonds exceeding $2 billion for projects financed, owned or managed by the state.

The rejection removes a hurdle standing in the way of projects such as the $14.9 billion California Water Fix project for upgrading its water infrastructure.

“It assures that the state’s water policymakers will have the tools necessary to implement the California Water Fix, although they still face an uphill battle to secure the full approval and financial backing necessary to implement the plan,” Shannon Groff, Fitch Ratings director of U.S. Public Finance, said in a statement.

As for tax measures, California voters passed a 12-year extension of a temporary state personal income tax increase on earnings of $250,000 or more and a cigarette tax hike.

Voters in 35 states weighed 154 state-wide measures, including bonds and taxes, according to the National Conference of State Legislatures, which posted results on its website.

Montana voters said no to creating a biomedical research authority funded by $200 million of bonds over 10 years.

PUBLIC HEALTHCARE INSURANCE OPTION FAILS

In Colorado, voters turned down a proposed constitutional amendment calling for a public option universal healthcare payment system, funded by a new 10 percent state payroll tax. They also rejected a cigarette tax hike.

Arkansas voters agreed to lift a cap on state bond issuance for economic development projects. Illinois will have to earmark money generated from transportation-related fees and taxes exclusively for transportation uses, under a new constitutional amendment approved by voters.

New Jersey voters approved the use of gasoline taxes solely to fund road, bridge and mass transit projects, and to allow $12 billion of transportation borrowing over eight years. Governor Chris Christie signed a 23-cent gas tax hike into law in October.

In Missouri, voters amended the state constitution to prohibit any new tax on services or transactions. Oklahoma voters turned down a sales tax hike for public education. A corporate tax hike to fund education in Oregon also failed.

Washington state voters rejected the nation’s first tax on carbon emissions.

At the local level, San Diego voters rejected a measure to raise hotel taxes and direct hundreds of millions of public dollars toward building a new National Football League stadium in downtown San Diego for the Chargers team.

Reuters

Wed Nov 9, 2016 | 7:20pm EST

(Reporting By Karen Pierog and Dave McKinney in Chicago, Robin Respaut in San Francisco, and Hilary Russ in New York; Editing by Daniel Bases and Richard Chang)

California Voters Approve Record Number of Local Tax and Bond Measures.

The results of Tuesday's election indicate a continuing confidence in local government in California and the importance of the services provided by cities, counties, special districts and schools. California considered over 650 local measures on Nov. 8 and approved a record number of local taxes and bonds. They approved over $32 billion facility bonds including $23 billion in school construction bonds and $7.2 billion in transit and other local public facility improvements. The full preliminary report is available online. It will be updated as new results become available.

Among the 224 non-school local revenue measures were 12 measures asking for a total of $7.266 billion in bonds including the $3.5 billion Bay Area Rapid Transit (BART) Measure RR covering three San Francisco Bay area counties, the $1.2 billion Los Angeles homeless housing and services Measure HHH and Santa Clara County's $950 million affordable housing Measure A.

There were 88 measures to increase or extend Transactions and Use Tax (Sales Tax) rates. Thirty of these were special (earmarked) taxes requiring two-thirds voter approval. These include 13 countywide measures for transportation improvements. There were 58 city and county majority vote general purpose tax proposals ranging from 0.25 percent to 1 percent.

There were 39 city, county and special district parcel taxes requiring two-thirds voter approval, including five street/road improvement measures, eight for parks/recreation/open space, 14 for fire /emergency medical response, four for hospitals, and four for police.

Coinciding with the statewide Proposition 64 that legalizes recreational marijuana in California, there were 63 local measures related to cannabis including 39 to impose local taxes on marijuana. There were also three measures to tax sugary beverages (in Albany, Oakland and San Francisco).

League of California Cities

November 10, 2016

Moves to Make as the Bond Market Sinks.

As stocks rose after Trump's election victory, bonds tumbled. But the worst may soon be over.

While the stock market held an election celebration last week, the bond market threw a Trump tantrum. Yields rose sharply, especially those on long-term Treasuries. The 30-year bond climbed 0.3 percentage point to 2.94%, resulting in a 6.3% decline in price. (Bond prices move inversely to yields.) The 10-year Treasury yield climbed almost as much, to 2.15%, the first time since January it has topped the 2% mark.

It wasn't just Treasuries. Municipal bonds, corporate bonds, and preferred securities all fell. Bloomberg estimates $1 trillion in the value of bonds evaporated last week after the election. Stocks bought for yield, like utilities and real estate investment trusts, suffered too.

The main reason for the rate surge is the expectation that inflation will rise. Thanks to the Republican sweep, investors are betting Donald J. Trump will be able to implement tax cuts, increase infrastructure spending, and ease regulations, stimulating economic growth. Trade restrictions, a key pillar of the Trump platform, would also spur inflation, even while impeding growth.

Rate strategists believe yields could rise further when markets reopen Monday after the Veterans Day holiday Friday. But there are reasons to expect the spike to end fairly soon. Yields may rise another 0.2 to 0.3 percentage point this year, says Raman Srivastava, deputy chief investment officer at Standish Mellon. But he doesn't expect anything like the spike in yields in 2013 that took the 10-year Treasury to 3%.

For starters, the Federal Reserve remains likely to raise short-term rates in mid-December, which should act to dampen inflation expectations. Even if all goes as planned for Trump, the economic growth the market is forecasting will take time to materialize. For example, it will take at least until the end of next year before growth from infrastructure spending could emerge, says Srivastava. Longer term, demographic and global macroeconomic trends are going to restrain inflation. "Structurally, I don't see a shift," he says.

And the president-elect may face more hurdles implementing his policies than many expect. "Investors shouldn't take this past week too much to heart," says Dan Heckman, fixed-income strategist at U.S. Bank Wealth Management. "There has been a lot of anticipation of certain things happening, but the reality is that we don't know if they are going to come to fruition or not."

A FEW TRUMP MISSTEPS, and the stock market could get less optimistic. "I expect volatility in the markets over the next few months going into the first 100 days," says Michael Arone, chief investment strategist at State Street Global Advisors.

Owning bonds as a buffer against that volatility makes sense, but investors need to "pivot" for a rising-rate environment, he says. Stay in government bonds, but shorten maturities and add some Treasury Inflation-Protected Securities, Arone suggests. He is overweighting corporate credit—both high-yield and investment-grade—and adding some floating-rate securities, like senior loans.

Consider a barbell approach, balancing longer-term, higher-yielding bonds with short-term debt that can be reinvested at higher yields as rates rise, suggests Heckman. Srivastava encourages diversifying—including globally—as some bond markets may have overshot to the downside.

Munis may already be an opportunity, argues John Miller, head of Nuveen's municipal-bond group. Yields jumped 0.25 percentage point last week. "If one can get over the shock of how fast that move was, I would say this does look like a good opportunity to put money to work for the long run," he says.

To be sure, it's still early to buy more bonds; no one wants to catch a falling knife. But selling off high-quality issues in your portfolio now doesn't seem like the right move either.

BARRON'S

By AMEY STONE

November 12, 2016

Bond Funds Lost $18 Billion in Value During this Week's Trump-Inspired

Selloff.

Mutual funds and exchange-traded funds benchmarked to the Bloomberg Barclays Aggregate U.S. Bond Index lost about $17.7 billion in value this week, according to a MarketWatch analysis of data provided by Morningstar.

As of last Friday, the roughly 1,700 exchange-traded and mutual funds benchmarked to the index collectively managed about $1.2 trillion. By the close of trading on Thursday, the Bloomberg index registered a total return of minus 1.487 percentage points. Funds benchmarked to an index are supposed to reflect its holdings as accurately as possible, but occasionally there are slight discrepancies.

Because many mutual funds report their holdings only once a month, the total AUM figure used as the basis for these calc£ulations doesn't reflect changes in valuation due to market movements between Oct. 31 and Nov. 4. It also doesn't reflect changes due to investor withdrawals between Oct. 31 and Thursday.

The index, which is weighted by market capitalization, comprises a broad range of U.S. dollar-denominated bonds, including Treasurys, asset-backed securities and corporate debt. Only fully taxable bond issues are eligible, which excludes most municipal bonds and inflation-linked government bonds.

Republican President-elect Donald Trump's unexpected victory over Democrat Hillary Clinton in Tuesday's election triggered an explosive bond-market selloff—the biggest since the "taper tantrum," which occurred in the summer of 2013.

Former Federal Reserve Chairman Ben Bernanke unwittingly sparked the taper tantrum when he told Congress that the Fed would "gradually reduce the flow of [bond] purchases" as the U.S. economic outlook improves. The comment led to a prolonged selloff that saw the 10-year yield rise from about 1.6% to nearly 3% between late May and early September 2013.

Many, including a team of macro strategists at Bank of America Merrill Lynch led by David Woo, expect bonds to continue falling as Trump and the Republican-controlled Congress cut taxes and fund infrastructure projects. That will increase the budget deficit and increase the supply of Treasurys as government borrowing rises.

"We believe the outcome of a Republican clean sweep means fiscal loosening is now a foregone conclusion. We believe this will lead to both higher rates and a higher [dollar]," Woo said, in a note.

On Wednesday alone, the yield on the 10-year Treasury note TMUBMUSD10Y, +5.22% rose 20.3 basis points on Wednesday, its largest-one day gain since July 5, 2013. Bond yields move inversely to prices.

Treasury yields have risen steadily in recent months, after plunging to historic lows following the U.K.'s late-June vote to leave the European Union. Treasurys represent a plurality of the index's holdings.

MarketWatch

by Joseph Adinolfi

Published: Nov 12, 2016 11:59 a.m. ET

Trump Proposals Could Dent U.S. Muni Bonds, Pressure States.

* Tax rate reductions make muni bond tax-exemption less attractive unless yields rise

* Medicaid funding plan could squeeze state budgets

* Unraveling trade deals may hurt Southeastern states

* Negatives could be offset by big infrastructure boost, repatriating corporate profits

U.S. municipal bonds could lose favor with investors under President-elect Donald Trump's proposals to cut personal income tax rates, thereby reducing the benefit of the bonds' tax exemption, analysts said.

Muni bonds have long been attractive to wealthy Americans who fall into higher tax brackets because income earned on the bonds is exempt from federal income taxes.

"Tax reform is a key risk for munis – and one not reflected in current pricing," Morgan Stanley analysts said in a note after Trump was elected president and Republicans took control of Congress in Tuesday's election.

Muni bonds "could become less attractive from a portfolio perspective given lower tax value and the potential for yields to move higher to compensate for this loss," the note said.

Trump has proposed reducing the top marginal tax rate to 33 percent from the current 39.6 percent.

Under that lower rate, muni bond yields would have to be higher to make their tax exemption as attractive as it is today – by 20 basis points on 10-year debt and 29 basis points on 30-year paper, all else being equal, according to Citi analyst Jack Muller.

That, in turn, would increase the cost of borrowing for the states and cities that issue muni bonds to finance everything from school construction to sewer systems.

Trump's presidency, coupled with Republican control of Congress, could smooth the implementation of an agenda that will have broad ramifications on investor behavior and the public sector.

Many of Trump's proposals are unclear but are expected to solidify in the coming months as he assembles his Cabinet and prepares to take office in January.

In addition to repealing the Affordable Care Act, Trump has called for using federal block grants – instead of the current cost-sharing system with states – to send money to the states for Medicaid, the nation's healthcare program for the poor.

Under that idea, federal funding could drop between 4 and 23 percent over 10 years, Fitch Ratings said on Thursday, citing a Congressional Budget Office review of previous Medicaid block grant proposals.

"Reduced federal Medicaid aid could lead states to tighten overall spending and reduce transfers to local governments," the credit rating agency said.

However, states could also benefit from the autonomy and flexibility of the block grant structure, Fitch said.

Other pressures could come from Trump's proposals to withdraw from and renegotiate trade agreements with foreign countries.

"Trump's trade policy proposals would have significant adverse implications for U.S. investment and growth and push up prices, particularly in the event of foreign counter measures or 'currency wars,'" Fitch said.

In turn, that could disrupt American manufacturers' supply chains, which would be challenging for businesses especially in Southeastern states that have recently had job growth in automotive and aerospace industries, Fitch said.

INFRASTRUCTURE, CORPORATE PROFITS COULD HELP

Trump's proposal to boost infrastructure spending, which he reiterated during his acceptance speech early Wednesday morning, could offset negative implications from other proposals.

His plan calls for $1 trillion of infrastructure investment over 10 years through public-private partnerships and private investments, to be incentivized by $137 billion of tax credits.

The need for spending is certainly acute. The American Society of Civil Engineers estimates the country requires $1.4 trillion of infrastructure spending by 2025.

Issuance of municipal transportation bonds could grow dramatically if Trump's administration directed federal money through state and local grants or loans, according to Citi. But if the federal government bears the full cost, municipalities would not need to issue debt for the projects.

Institutional investors are also increasingly interested in infrastructure as confidence in the equity markets wanes and investors seek stable, cash-generating investments in the current low interest-rate environment.

Offsetting a possible drop in revenue from infrastructure tax credits is another Trump proposal to let companies repatriate foreign profits at a one-time reduced tax rate of 10 percent, down from the current 35 percent corporate tax rate.

All that money flowing back into the United States "could be a huge tax windfall for states, which would realize one-time tax revenues from any money entering that state, a significant boon for California, New Jersey, New York and Illinois," Eaton Vance portfolio managers said in a note.

Reuters

By Hilary Russ and Robin Respaut

Fri Nov 11, 2016 | 12:00am EST

(Reporting by Hilary Russ in New York and Robin Respaut in San Francisco; Additional reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Matthew Lewis)

State and City Budget Blues: Pressures Keep Piling Up.

NEW YORK – It's not just Detroit and Puerto Rico with financial problems.

The pressure is rising on local governments around the country that are struggling with big pension obligations and other debts. Five states need to put aside more than 25 percent of their annual tax revenues just to pay pensions and other debts, an untenable amount, according to a recent study by the nonprofit Center for Retirement Research. For major cities, debt costs above 40 percent of revenue are typically an unmanageable burden, and the report counts eight of them.

Overall, U.S. state pension plans are underfunded by at least $1 trillion, various experts and credit rating agencies say. And that funding hole will almost certainly hurt taxpayers, government workers and bondholders.

“It’s getting harder to sweep these problems under the rug,” says Tracy Gordon, a senior fellow with the Urban-Brookings Tax Policy Center.

After taking into account health care and other debt obligations, states like Hawaii, Kentucky and Massachusetts and cities like Houston and San Jose, California, are all above thresholds that the Center for Retirement Research considers worrisome.

For many years, politicians hoped to make up for the funding gaps by getting strong returns from investments in stocks, bonds and hedge funds, says Gordon. But the typical public pension plan had a return of just 0.5 percent for the fiscal year that ended in June, according to credit-rating agency Moody’s.

That has increased the risk for a major crisis at municipalities with outsize debt payment, says Lisa Washburn, a managing director for Municipal Market Analytics, a municipal bond research firm. “This is a liability that they are going to have to come to terms with eventually, and the longer they delay coming to terms with it, the worse it’s going to be.”

How you might be affected depends on your relationship to the location in question:

— You’re a bond holder.

For muni bond investors, the chief worry is a default. But despite the dramatic headlines, investors who hold state-issued bonds until they mature have little to fear. “You can expect to be repaid,” says Washburn. If your state’s debt rating is downgraded, however, you may find that your bond is worth less if you need to sell it before maturity.

Those who hold the bonds of struggling cities overburdened with debt, however, have cause for concern. “States have sovereign ability to do just about anything they want, so they have a very wide array of options to pursue,” says Alan Schankel, a municipal bond strategist at Janney Capital Markets. “Depending on the level of oversight, cities and counties have much less flexibility. And many of them are dependent on state aid.”

When a city files for bankruptcy, judges sometimes allow payments to be curtailed to muni bondholders. That’s what happened in Detroit and Stockton, California. Moreover, severe budget problems at the state government level can also have a trickle-down effect leading to less support for schools and hospitals supported by the state, which also issue municipal bonds.

— You’re an employee.

The good news for public service workers is that, in some states, pension payments are guaranteed by law. And even in places where they may not be, legislators tend to be sympathetic to pension holders.

Now for the bad news: If things get really bad, you still might find your benefits thwacked. Detroit workers, for example, had their pensions cut when the city filed for bankruptcy. A more likely situation is that you'll be the victim of pension "reform," which could involve an increase to your annual contribution rate or fewer cost-of-living salary bumps. You may also see cutbacks in other benefits, such as health care, which are easier for states and cities to enact. Rhode Island suspended cost-of-living adjustments for retirees in 2011 and introduced a 401(k)-like funding system for current state workers, for example.

— You're a taxpayer.

A simple way for states to boost their sagging budgets is to increase taxes. A sales tax increase along with an income tax increase on wealthy residents helped California pull out of its massive budget hole from the Great Recession, for example. Simple, though, doesn't mean easy. Politicians are often reluctant to increases taxes on their watch. "Politically, that's just very hard to do," says Washburn.

Other places have tried different tactics to boost revenues. A few years ago, Kansas tried cutting taxes in hopes that it would boost its economy and lead to eventual gains in income tax revenue, for example. Unfortunately, the state still recently had a projected $290 billion shortfall.

Instead of raising taxes, states sometimes cut back services in order to save money. "Maybe the Department of Motor Vehicles is open five days a week instead of six," says Schankel. The challenge is that if too many services are cut, residents will become disenchanted with the community and move elsewhere. That only exacerbates the revenue problem.

It all shows how no single approach will lift local governments out of their troubles. One thing, however, is clear, says Gordon: "Someone has to be left holding the bag."

Fox Business

Published November 07, 2016

[Trends And Tips – Tax Equity For Mid-Market Energy Projects: Mintz, Levin]()

Last week's "Financing Renewable Energy" tax credit conference, by Novogradac and Company, affirmed some market trends that we have seen in recent project finance deals. Perhaps most striking was the slow expansion of small and mid-market tax equity investors, compared to their counterparts upmarket. The result is that developers of projects and project portfolios under $50 million may need to look harder to find the right partner to monetize their tax credits.

Looking back even a couple of years, we saw a tax equity market that was dominated by a small handful of large players, most of whom were focused on big investments investing large amounts of capital into utility-scale projects. Today, the number of investors has increased (JPMorgan Chase reports at least 20 wind investors and 28 solar investors in 2015), as has the amount of tax equity investment (up 14% between 2014 and 2015, according to JPMorgan Chase). Our anecdotal experience, affirmed by investors and developers we have spoken with, is that the bulk of that expansion has been among large banks, insurers and Fortune 500-sized corporate investors, which have grown increasingly comfortable with the risk profile of renewable energy projects and the diligence required to evaluate a prospective investment.

A similar trend has been lagging among smaller investors. Smaller tax equity investments are not necessarily simpler to diligence, negotiate or document than large deals, and renewable energy continues to be seen as a "new" industry to many banks, insurance companies and other potential investors. Despite this friction slowing the entry of new investors into the marketplace, there are some encouraging signs. First, we see evidence of increasing cross-over from investors in other tax credit-driven spaces (new market, low income housing, etc.). Second, when they do enter the market, smaller investors are often more nimble at the investment-stage and can be better at building ongoing relationships that can ease future investor interactions (e.g., when seeking consent to refinance project debt).

These trends suggest some actionable advice for mid-market project sponsors:

1. Don't be afraid to look outside the usual pool of energy tax credit investors. Cross-over investors have existing experience with some of the same structures used in Section 45 and Section 48 investments, but there is an educational process to help them become comfortable with the diligence process and risk profile for energy projects. A willingness to work through that learning curve may open the door to new investor relationships.
2. Look for opportunities to build long-term relationship that can support multiple deals. It is an unfortunate reality that doing an $8 million tax equity deal is not one tenth as complicated and costly as doing an $80 million deal. Working with an investor that can be a longer-term partner creates potential economies of scale as the parties replicate and recycle investment terms, documents and diligence standards across multiple deals.
3. Consider who will be a strong partner after closing. A typical tax equity investor will have consent rights over material events in a project's life, such as a debt refinancing. Demands for hefty consent fees, lengthy diligence reviews and other requirements can strain the relationship between a project sponsor and the tax equity investor. If the parties have a relationship that extends beyond the immediate project (see #2 above), then motivations will be better aligned at these important milestones.

Last Updated: November 9 2016

Article by Eric Macaux

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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.

Management Contracts For Projects Financed With Tax-Exempt Bonds: Faegre

Government and nonprofit borrowers recently received some favorable new rules from the IRS regarding management contracts for projects financed with tax-exempt bonds. Rev. Proc. 2016-44 provides flexible guidance to determine when management contracts and similar service agreements involve problematic private use. It establishes a new safe harbor for identifying whether such contracts exceed the private business use limitation applicable to governmental bonds and tax-exempt bonds issued on behalf of 501(c)(3) organizations.

The new safe harbor is effective for agreements entered into on or after August 22, but issuers can apply it to any management contract entered into before that date.

Rev. Proc. 2016-44 replaces Rev. Proc. 97-13 which established separate safe harbors for management contracts based on the term of the contract. For longer-term contracts it required that a minimum percentage of the manager's compensation be based on a fixed fee depending on the length of the contract. These formulaic tests are replaced with a flexible safe harbor for contracts up to 30 years based on such things as control, risk of loss, economic levies of managed projects and consistency of tax positions taken by the service provider. The general principle that compensation may not be based on a share of the net profits from the managed property is retained.

The other features of a safe-harbor management contract are as follows:

- Compensation may be fixed or variable, but must be reasonable compensation for the service provided. Incentive compensation based on the service provider's performance in meeting one or more standards that measure quality of services, performance or productivity is expressly permitted.
- The contract must not require the service provider to share the burden of net losses from operation of the managed property.
- The term of the contract, including renewal options, may not exceed the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the managed property.
- The service recipient must exercise significant control over the use of the managed property.
- The service recipient must bear the risk of loss upon damage or destruction of the managed property.
- The service provider must not take a tax position inconsistent with being a service provider, such as taking depreciation, investment tax credits or rent deductions.
- The service provider must not have a role or relationship with the service recipient that limits the service recipient's ability to exercise its rights under the contract. A safe harbor is provided if (a) no more than 20% of the voting power of the governing body of the service recipient is vested in the directors, officers, shareholders, partners, members and employees of the service provider; (b) the governing body of the service recipient does not include the chief executive officer of the service provider or the chair of the service provider's governing body; and (c) the chief executive officer of the service provider is not the chief executive officer of the service recipient or any of its related parties.

The economic life restriction in the new safe harbor applies to the "managed property" under both long-term and short-term contracts, while the economic life restriction in Rev. Proc. 97-13 applied to "financed property" under only long-term contracts. Managed property is defined as the portion of a project (as defined in the regulations) with respect to which the services are provided. These wording changes may have unexpected substantive consequences, including possibly requiring issuers to determine the scope of the project being financed and the useful life of property other than financed property and regardless of the term of the contract.

While the new safe harbor can be applied to existing contracts, the safe harbors of Rev. Proc. 97-13 may be applied to a contract entered into before August 18, 2017, and that is not materially modified or extended on or after August 18, 2017, other than pursuant to a renewal option.

Last Updated: November 8 2016

Article by Stephen C. Rosholt and Stefanie N. Galey

Faegre Baker Daniels LLP

[MSRB Reminds Municipal Securities Dealers of the November 16, 2016 Effective Date of Amendments to Rule G-12 on Close-out Procedures.]

The Municipal Securities Rulemaking Board (MSRB) reminds municipal securities dealers that the amendments to MSRB Rule G-12 on uniform practice, regarding close-out procedures for municipal securities, will become effective on November 16, 2016. Among other changes, the amendments require that inter-dealer failed transactions be closed out within 10 calendar days with an allowance for an additional 10-calendar day extension at the buyer's discretion. The changes seek to reduce the risk and cost associated with inter-dealer fails.

Read the regulatory notice.

View the approval order.

Trump Dismantling of DoddFrank, Halt on New Rules Could Affect Munis.

WASHINGTON – Donald Trump's plans to dismantle the DoddFrank Act and impose a moratorium on new regulations could affect the municipal bond market.

The president-elect's transition team said on Trump's webpage: "The DoddFrank economy does not work for working people. Bureaucratic red tape and Washington mandates are not the answer. The Financial Services Policy Implementation team will be working to dismantle the DoddFrank Act and replace it with new policies to encourage economic growth and job creation."

At the same time, Kroll Bond Rating Agency said in a release that it is betting the House will modify and pass the Financial Choice Act (H.R. 5983), which House Financial Services Committee chairman Jeb Hensarling, RTexas, introduced last September to roll back DoddFrank Act and other requirements.

The bill would divert to Treasury funding that the Municipal Securities Rulemaking Board gets from Securities and Exchange Commission and Financial Industry Regulatory Authority sanctions against violators of muni rules. The funding arrangement was set up under DoddFrank.

The Act also made non-dealer municipal advisors subject to federal oversight and regulation and extended the MSRB's reach to protecting municipal issuers.

Former SEC Commissioner and DoddFrank critic Paul Atkins has been tapped by Trump to lead the transition team's review of independent financial agencies. Nominated by thenPresident George W. Bush, Atkins was at the SEC from August 2002 to August 2008. He is currently CEO of Patomak Global Partners, which provide consulting and other services in the financial arena.

David Malpass, former chief economist at Bear Stearns and founder and president of Encima Global LLC, an economic, research and consulting firm who sits on the board of UBS Funds, is heading Trump's transition team of economic issues along with Bill Walton, who chairs Rappahannock Ventures, a private equity firm.

A moratorium on new rules could thwart the Municipal Securities Rulemaking Board initiatives on markup disclosure, pretrade price transparency, and syndicate practices. Dealers have complained about nonstop rules coming out of the MSRB in response to DoddFrank and the SEC's 2012 Report on the Municipal Securities Market.

"As of right now, if you look at the types of things that have been impacting the muni market, especially on the retail and regulatory side, they're all born out of the 2012 [report]," said John Vahey, managing director of federal policy for Bond Dealers of America. The report came out of the SEC with bipartisan support, but the expected changeover in the administration raises questions about whether that kind of support will continue, he added.

Vahey said dealers have a bit of regulatory fatigue from the past five years. "Could dealers use a breather from reg compliance changes and time to adapt to a new environment? Yes," Vahey said. "Is there at the same time some potential negatives out there to a regulatory moratorium across the entire economy Potentially, yeah."

Trump will also have the chance to choose the new SEC chair as well as fill two vacant commission slots. SEC chair Mary Jo White has said she will step down and Congress never confirmed Obama's nominees: Hester Peirce, a senior research fellow and director of the financial markets working group at the Mercatus Center at George Mason University, and Lisa Fairfax, a professor of law at George Washington University.

Matt Fabian, a partner with Municipal Market Analytics, said that it is easy to imagine Trump would appoint industry-friendly individuals to fill the chair and vacant commissioner slots at the SEC.

"It's a very volatile situation right now in terms of myriad policy outcomes from the commission," Vahey said.

Trump's promised moratorium on new regulations comes as the Treasury Department has been hoping to finalize rules on issue price and also press forward with rules on political subdivisions, which have been very controversial in the muni market.

A list of potential cabinet members from Trump's transition team obtained by BuzzFeedNews on Thursday included three names for Treasury Secretary: Hensarling, businessman Carl Icahn and banker and political fundraiser Steven Mnuchin.

Fitch Ratings on Thursday warned: "Trump's Medicaid and trade policy proposals would significantly lower federal transfers to state budgets and could negatively affect economic growth and revenues if they are implemented."

Trump would convert Medicaid funding into a block grant program that would "lead to much lower federal funding to states," the rating agency said.

Uncertainty

There are still many uncertainties surrounding Trump and his proposals and policies. Fitch Ratings said Trump's policies would be "negative for U.S. public finances" because of uncertainties about the detail of his proposals, the degree to which he'll promote them, and his ability to implement them. Senate Democrats will still be able to filibuster Republican legislation they don't like, the rating agency pointed out.

"The election of a polarizing figure like Trump may put institutional relationships under strain, although his victory will give him some significant political capital," Fitch said.

Earlier this year, Trump suggested he would try to negotiate down the national debt of the U.S., setting the financial markets on edge.

Trump's proposals would contribute $5.3 trillion to the national debt, according to an analysis by the Committee for a Responsible Federal Budget.

A key test for him will be whether to continue to fund the federal government and raise or suspend the federal debt limit, which has been lifted until March 2017.

The Bond Buyer

By Lynn Hume and Jack Casey

November 10, 2016

Kentucky Rolls Out its P3 Law in Lexington: Nossaman

The National Council for Public Private Partnerships (NCPPP) and the Kentucky Chamber of Commerce recently concluded on October 28 a very well-attended two day conference in Lexington, Kentucky on the Commonwealth's new public-private partnership (P3) enabling legislation, the so-called "HB-309." HB-309's chief drafter, Rep. Leslie Combs, was on-hand, participating in nearly every panel discussion, either as a panelist or from the audience. Rep. Combs reflected on HB-309 "as if she were a proud mama," and her and fellow Kentuckians' enthusiasm for its flexibility and broad applicability was evident. Secretary Don Parkinson, of the Kentucky Tourism, Arts and heritage Cabinet, noted in lunchtime remarks that Kentucky's border states each had enabling legislation for P3s, and that the time had come for Kentucky to consider this procurement tool as a means by which to grow Kentucky's economy and solve some of Kentucky's challenges.

The conference, subtitled "Opportunities and Obstacles," indeed identified and discussed both. At once a primer on P3s and collection of government decision-makers revealing their plans, the conference gathered people from all over the country to learn about P3 opportunities in the Commonwealth. With over 200 participants, representatives from the architects/engineers, construction, development, banking, university, legal and municipal/county communities engaged in active discussions about P3s, what they are, how they work and most critically, how a P3 comes to be in Kentucky. Active social media participation during the conference (#kyp3) recounts many discussions, insights and perspectives relevant to Kentucky.

HB-309 affords state and local governments in the Commonwealth both to initiate P3 procurements and to entertain unsolicited proposals for P3 projects. A series of processes within the legislation are drafted to support transparency in the process. The Kentucky Finance and Administration Cabinet recently promulgated amended proposed regulations to implement the law. On a notable panel, the general counsels from the Kentucky Finance and Administration Cabinet, the Kentucky Tourism, Arts and Heritage Cabinet and the Kentucky Transportation Cabinet discussed candidly their respective Cabinet's efforts to create internal infrastructure capable of handling unsolicited P3 proposals and organizing for possible P3 procurements.

The Kentucky Chamber and NCPPP anticipate working together to continue to educate interested parties and citizens in the Commonwealth about P3s.

USA November 2 2016

Nossaman LLP – John P. Smolen

An Inconvenience of Qualified Equity: Squire Patton Boggs

Like me, at some point in your childhood, you were probably told not to "look the gift horse in the mouth." After reading this blog post, the same could be said to me. We have written in great detail (see here, here, and here) about the increased flexibility afforded issuers by the recently promulgated Final Treasury Regulations governing, among other things, allocating proceeds of tax-exempt bonds and other sources to projects that involve both qualified and private uses (the "Allocation and Accounting Regulations"). The Allocation and Accounting Regulations permit "qualified equity" to be allocated first to private business use and then to governmental use. As discussed in the prior posts, "qualified equity" is essentially defined as amounts other than tax-exempt proceeds. However, there are timing and other restrictions on what is eligible to be considered "qualified equity."[1] These restrictions have led to an inconvenience that is the topic of this blog.

The reimbursement window is larger than the qualified equity window

Qualified equity includes amounts other than proceeds of tax-exempt bonds that are spent on the same eligible mixed-use project as the proceeds of the applicable bonds. To be spent on the same eligible mixed-use project, the qualified equity must be spent pursuant to the "same plan of financing."

The preamble to the Allocation and Accounting Regulations says that qualified equity is spent under the same plan of financing if

> "the qualified equity is spent on capital expenditures of the project no earlier than the earliest date on which the expenditure would be eligible for reimbursement were the bonds from which the proceeds are derived issued as reimbursement bonds . . . ."

The rule, as enunciated in the preamble, makes perfect sense. However, the actual language of the rule in the Allocation and the Accounting Regulations says that qualified equity is spent under the same "same plan of financing" if

> "the qualified equity pays for capital expenditures of the project on a date that is no earlier than a date on which such expenditures would be eligible for reimbursement by proceeds of the applicable bonds under [Regulations] 1.150-2(d)(2) . . . ."

Regulations 1.150-2(d)(2) says that a reimbursement allocation must be made not later than 18 months after the later of (a) the date of the original expenditure or (b) the date the project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid (collectively, the "Reimbursement Period").

If you are reading this blog, you may know that there are certain expenditures that are eligible to be reimbursed even though they were paid before the Reimbursement Period began. Specifically, a de minimis amount of pre-Reimbursement Period expenditures may be reimbursed as well as a certain amount of preliminary expenditures. Therefore, the window of time during which qualified equity can be used to finance a project begins after the period of time that expenditures would be eligible to be reimbursed under the reimbursement rules!

In reality, this discrepancy is less significant than it may initially seem. As discussed in the previous paragraph, the pre-Reimbursement Period expenditures are eligible for reimbursement even though the amounts paid to finance such expenditures are not eligible to be qualified equity. Therefore, a reimbursement allocation could be made on or after the issue date and the issuer could be reimbursed for the amount of equity that it used to finance the pre-Reimbursement Period expenditures. The issuer could then contribute the equity made available by the reimbursement allocation to finance a portion of the mixed-use project. Because the equity contribution occurs within the Reimbursement Period (assuming the mixed-use project has not yet been placed in service), it is contributed pursuant to the same plan of financing.

[1] As a technical matter, the restrictions do not preclude amounts other than tax-exempt bond proceeds from being qualified equity; rather, the restrictions prohibit the qualified equity from financing a project under the same plan of financing.

By Joel Swearingen on November 11, 2016

Squire Patton Boggs

SEC Investor Advocate Recommends Approval of FINRA and MRSB Proposals on Mark-up Disclosure.

Earlier this week, the Investor Advocate of the U.S. Securities and Exchange Commission recommended to the SEC that they approve the proposals from the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB) to require disclosure of mark-ups and mark-downs from prevailing market price on retail customer confirmations, relating to certain transactions in fixed income securities and municipal securities.

Comment Letter from the Investor Advocate

SEC Filing Published in Federal Register

SIFMA's Recent Comments to SEC on Proposed Rule Changes

P3 Digest - Week of November 7, 2016

Powered by P3 INGENIUM: The most comprehensive source for P3 project updates in North America.

Read the Digest.

November 7, 2016

TAX - OHIO

New York Frozen Foods, Inc. v. Bedford Hts. Income Tax Bd. of Rev.

Supreme Court of Ohio - November 3, 2016 - N.E.3d - 2016 WL 6519128 - 2016 -Ohio- 7582

Municipal income taxpayer sought judicial review of decision of the Board of Tax Appeals (BTA) affirming decisions of the Regional Income Tax Agency (RITA) and municipal income tax board of review denying taxpayer's refund claim.

The Supreme Court of Ohio held that:

- Change from filing separate return to filing consolidated return was prohibited change in method of accounting, and
- State statute did not preempt city ordinance placing limitation on refund claims.

Municipal income taxpayer's change from filing a separate return to filing a consolidated return was a change in method of accounting prohibited by city ordinance in pursuing a refund claim. Amended return took broadly different approach to basic computation of taxable income, and term "method of accounting" was not limited to only cash versus accrual accounting under federal law.

State statute governing municipal income taxes did not preempt municipal ordinance placing limitation on refund claims to prohibit amendment of returns to change method of accounting. Plain language of the state law did not expressly override city's power to bar a change of accounting or apportionment method when filing an amended return, and preemption of local tax law could not be accomplished impliedly.

Trump's Infrastructure Plan Draws Support, But Could Hurt Munis.

President-elect Donald Trump's promise to rebuild the nation's infrastructure is resonating with Republican and Democratic lawmakers, but could spell trouble for municipal bonds.

Trump has proposed a $1 trillion, 10year infrastructure plan, which he touted during his victory speech.

"We are going to fix our inner cities and rebuild our highways, bridges, tunnels, airports, schools, hospitals," he said. "We're going to rebuild our infrastructure, which will become, by the way, second to none. And we will put millions of our people to work as we rebuild it."

House Minority Leader Nancy Pelosi said Wednesday that infrastructure is one area on which she and Trump can agree.

But Trump's plan relies on $137 billion of tax credits that he would ask Congress to authorize and that has drawn concerns from some muni market participants.

"The little we know about Trump's plan is that it focuses on tax credits," said Jessica Giroux, BDA's general counsel. "Our concern is that it says nothing about munis."

Trump advisors Wilbur Ross, a billionaire private-equity investor, and Peter Navarro, a professor at the University of California at Irvine, said the infrastructure plan's tax credits could be used by investors to leverage $167 billion in private funds.

Companies taking advantage of the tax credits would be able to borrow money on the private market at low interest rates to finance $1 trillion of projects without the need for any new taxes, they said.

"Trump's plan will harness market forces to help raise construction funds by incentivizing private sector investors through tax credits, thereby revolutionizing American infrastructure finance," Navarro said.

Trump wants to pay for infrastructure through repatriation pf companies' overseas earnings. Companies would be able to bring overseas earnings back to the U.S. at Trump's proposed reduced tax rate of 10% rather than the current 35%. With the credits, companies could avoid any tax liability by investing $122 million of the repatriated profits in infrastructure projects, Ross and Navarro said.

Repatriation would take away a significant amount of tax revenue available for tax reform, thereby increasing the pressure on Congress to look even harder at cutting tax deductions and exemptions.

The Joint Committee on Taxation has estimated that American companies hold a total of $2.6 trillion of foreign income in overseas banks.

Transportation groups also have some concerns about Trump's infrastructure plan. Bud Wright, executive director of the American Association of State Highway and Transportation Officials, said tax credits are not a longterm solution.

"We're sort of agnostic about the tax credits," Wright said. "We're not opposed to the idea, but it is not the longterm funding solution that we need to repair the deficit in the Highway Trust Fund."

Federal tax credits are not transportation user fees, he said.

"A one-off, short-term type of program like that would be useful but it does not do anything for the long term sustainability of federal transportation funding," Wright said. "Corporate tax reform is not really a transportation issue either, but in some circles it has been linked to infrastructure funding as well. Again, it's not something we oppose but it is not a solution."

However, Wright concedes that Increases in the federal gasoline tax are not likely. "The fuel tax is the best understood and most administratively effective revenue source there is but it is about as politically volatile as any issue I've seen in Washington," he said. "That goes for Democrats as well as Republicans. There's just a knee-jerk reaction to oppose it."

Jim Tymon, chief operating officer and director of policy at AASHTO, said, "I think we'll see an infrastructure package coming out of Congress, probably not quickly but certainly within the first year."

As always, the sticking point will be how to pay for increased infrastructure spending, he said.

"We'll have to see what sort of pay-fors and offsets are available and acceptable," Tymon said.

The Bond Buyer

By Jim Watts and Lynn Hume

November 10, 2016

Trump's Tax, Infrastructure Plans Jeopardize Exemption for Munis.

WASHINGTON — Donald Trump's presidency and the Republican-controlled Congress set the stage for historic tax reform and increased spending on infrastructure next year, which has the potential to jeopardize the tax exemption for municipal bonds, according to market participants.

Both Trump and House Republicans are pushing for tax reform plans that would lower individual and corporate tax rates and broaden the tax base, repealing or restricting tax deductions and exemptions.

"The win, because it means that the GOP will control the executive office and both houses of Congress, almost surely means the next Congress will act on major tax legislation focused on cutting rates," said Frank Shafroth, director of the Center for State and Local Government Leadership at George Mason University. "I would guess it will be the most significant, early bill signed into law by the new president."

"They're going to strike while the iron is hot," agreed Chuck Samuels, a partner at Mintz Levin.

They could propose tax reform legislation that would be the most significant since the 1986 Tax Reform Act, which contained major restrictions for municipal bonds, said Shafroth.

The Trump and House Republican plans do not contain many details and do not specify what deductions might be repealed. Market participants worry that the exclusion on interest for tax-exempt bonds could be capped or eliminated to raise revenue for other tax reforms or increased infrastructure spending.

"In the last 24 hours, tax exemption under possible tax reform in 2017 or 2018 has gone from a concern/priority to 'hair on fire,'" said John Vahey, managing director of federal policy for Bond Dealers of America.

Charlie Henck, a partner with Ballard Spahr here, said it's a given that the tax exemption for municipal bonds will be on the table during the tax reform debate. "In the years I've been watching Congress and all of the new administrations, you can take it as a given that the economic folks at the Treasury Department and the Joint Committee on Taxation will put the tax exemption for munis on their hit list," Henck said. "It's generally thought by those folks to be an inefficient incentive."

Henck said he expects state and local groups to rally together to maintain the tax-exemption for muni bond interest, which is currently excluded from taxes.

Infrastructure

Trump's victory speech placed heavy emphasis on his plans to shore up the nation's infrastructure. "We are going to fix our inner cities and rebuild our highways, bridges, tunnels, airports, schools, hospitals," he said. "We're going to rebuild our infrastructure, which will become, by the way, second to none. And we will put millions of our people to work as we rebuild it."

Trump has proposed a $1 trillion, 10-year infrastructure plan. While that would normally be strongly supported by state and local governments and bankers, there is some uncertainty about the plan's reliance on $137 billion of tax credits that Trump would ask Congress to authorize.

"The little we know about Trump's plan is that it focuses on tax credits," said Jessica Giroux, BDA's general counsel. “Our concern is that it says nothing about munis. But with lowering individual rates under tax reform we wonder if munis are going to be as attractive anymore.”

Trump’s lack of detail in how he would raise revenue for his proposed infrastructure spending as well as other unspecified changes to deductions is concerning, said Vahey.

“This is going to be a very big item for the muni market in the coming years,” he added. “With a unified executive branch and legislative branch, it’s a whole new ballgame.”

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As always, the sticking point will be how to pay for increased infrastructure spending, he said. “We’ll have to see what sort of pay-fors and offsets are available and acceptable,” Tymon said.

Regulatory Moratorium

Trump has also proposed a moratorium on new regulations, which could thwart the Municipal Securities Rulemaking Board initiatives on markup disclosure, pre-trade price transparency, and syndicate practices. He has also joined Republicans in calling for a rollback of some existing laws and rules, such as the Dodd-Frank Act, which provided more funding for the MSRB from the enforcement of muni rule violations and subjected muni advisors to federal oversight and regulation.

The moratorium and rollback raise questions about whether the Securities and Exchange Commission and MSRB will continue to move forward with muni market initiatives, said Vahey.

“As of right now, if you look at the types of things that have been impacting the muni market, especially on the retail and regulatory side, they’re all born out of the 2012 [Report on the Municipal Market],” he said. The report came out of the SEC with bipartisan support, but the expected changeover in the administration raises questions about whether such support will continue.

Vahey said that from BDA’s perspective, the biggest issue with regulation specifically in the muni market has been its scope, pace, and the amount of change that has come in the last five years.

“Could dealers use a breather from reg compliance changes and time to adapt to a new environment? Yes,” Vahey said. “Is there at the same time some potential negatives out there to a regulatory moratorium across the entire economy? Potentially, yeah.”

Matt Fabian, a partner with Municipal Market Analytics, said that it is easier to imagine Trump would appoint industry-friendly individuals to fill the chair and vacant commissioner slots at the SEC. Mary Jo White is expected to step down as chairwoman.

Uncertainty

But one of the biggest concerns about Trump, reflected in the plummeting financial markets Tuesday night and Wednesday, is the uncertainty surrounding him.

Fitch Ratings said Trump’s policies would be “negative for U.S. public finances” because of uncertainties about the detail of his proposals, the degree to which he’ll promote them, and his ability to implement them. Senate Democrats will still be able to filibuster Republican legislation they don’t like, the rating agency pointed out.

Samuels stressed that Trump is a “great unknown” for the municipal market because of his campaign’s overall lack of detail regarding economic advisors and plans. “We really don’t understand who will be running economic and tax policy,” he said. “The situation is very unclear.”

Vahey said, “He’s not an in-the-box Republican, adding, “He doesn’t have a voting record and is very light on details.”

The Bond Buyer

By Evan Fallor, Jack Casey, Jim Watts, and Lynn Hume

November 9, 2016

CDFA Webcast: Capturing the Success of High Performing DFA's.

December 13, 2016
@ 1:00 pm Eastern

Have you ever wondered how all that new and exciting development started in your community? Ever wondered how your neighboring communities have been so successful with their economic development efforts? Well, look no further than your local Development Finance Agency (DFA). DFA's assist in the financing of all types of development projects at the local, state, and even multijurisdictional levels. They benefit communities by eliminating blight, attracting new businesses, and financing critical infrastructure. Thousands of DFA's exist across the country, each serving a special role in their communities. Do you have a high performing DFA in your community or region? How are these agencies organized and how do they operate? This month, during the final CDFA // BNY Mellon Development Finance Webcast Series of 2016, our expert speakers will provide a look into the activities, operations, management and success stories of their high performing DFA. Don't miss this opportunity to learn from the best DFAs in the country.

Click on the Register button below to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

REGISTER

Steve Ballmer's Plan to Make America Great Involves Excel Spreadsheets.

The ex-Microsoft CEO is working on a project that aims to make government data more accessible.

Steve Ballmer is pretty bummed out about the election. A self-proclaimed "numbers guy," Ballmer said the truth is getting lost in the political rhetoric, and he wants to arm citizens with data to defend against lies by the campaigns. "Nobody seems to care about the facts," he said.

When not jumping around on the sidelines of Los Angeles Clippers games, the former Microsoft Corp. chief executive officer has been spending his retirement on the inside of an Excel spreadsheet. Ballmer and a team of about 25 data geeks have been poring over more than three decades of government documents to create a comprehensive accounting of U.S. spending. The goal is to treat the nation like a company and create what Ballmer describes as a "10-K for the government," like the one publicly traded businesses are required to file with regulators each year.

Ballmer's project, called USAFacts, exists in the form of hundreds of Excel files and 385 PowerPoint slides, many of which require a magnifying glass to read. While the complete report won't be ready in time for Election Day, he's using the research as the basis for a class he teaches at Stanford University. His group of 19 sophomores are getting a peek at what Ballmer plans to publish early next year in the form of a 10-K filing, investor presentations, charts, graphics and a dedicated website.

Mary Meeker, a partner at venture capital firm Kleiner Perkins Caufield & Byers, undertook a similar effort called USA Inc. that Bloomberg Businessweek published in 2011. Two years ago, President Obama signed the Data Act, designed to make federal spending information more accessible, while OpenGov and other venture-backed startups have sprung up with the goal of increasing transparency. While any effort toward greater visibility is a good thing, the government shouldn't be analyzed in the same way as a business in some cases, said Alex Howard, a senior analyst at the Sunlight Foundation, an advocacy group for government openness who hasn't seen Ballmer's report.

In Ballmer's worldview, data trumps all. "I just think it's important if you are going to make your case, for you to make your case in the context of numbers," Ballmer said at his office in Bellevue, Washington. "Here are the numbers. You don't have to be a rocket scientist. You don't have to be an economist. You decide what you believe. And when things come up that you need to vote on, you need to opine on, you'll have the view of a citizen that's informed by facts."

A childhood veteran of math camp with an undergraduate degree in mathematics and economics from Harvard University, Ballmer tends to mentally organize his life into rows and columns. He has a superhuman memory for numbers that would impress, and sometimes terrify, his lieutenants at Microsoft. He'd frequently ask detailed questions about a manager's business unit, sometimes reciting metrics off the top of his head that no one else in the room knew. "Steve sees the world as an Excel spreadsheet," said Kevin Turner, who Ballmer hired as Microsoft chief operating officer in 2005 and is now CEO at financial firm Citadel Securities.

Ballmer's obsession with government data originated from a disagreement with his wife. Almost three years ago, Connie Ballmer told her newly retired husband that he should focus more on philanthropy. His wife has dedicated herself to child welfare and other causes, and there's plenty left to give: Ballmer's estimated net worth is $25.1 billion, according to the Bloomberg Billionaires Index. "I said, 'Eh, why do you worry about it so much?'" Ballmer said. "At the end of the day, the biggest philanthropy in the U.S. is the government. So as long as we pay our taxes, we're doing our part."

It was an unusual argument to make, and as with many Ballmer debates, it turned into a research exercise. He scoured the web for a summary of government spending at all levels. He started with Bing and then tried Google. Neither had what he was looking for. So he decided to build it.

Working with data, design and academic experts at Stanford and in the Seattle area, Ballmer runs the project from the 20th floor of a high-rise overlooking Lake Washington. One challenge they faced early on was figuring out how to divide the government into business units. After several failed approaches, a staffer suggested a look through the Constitution. "The Constitution!" Ballmer recalled, suddenly speaking many decibels louder as he got up to diagram the segments on a massive Microsoft Surface Hub touchscreen computer. "It's the perfect way!"

USAFacts breaks down government operations into four main segments based on the preamble to the Constitution. For "establish justice, insure domestic tranquility," they chose police, workplace safety and child welfare; another includes military, defense, foreign affairs and immigration; the third has the economy and caring for the poor; and in the last, civil rights, environmental sustainability and education. The 10-K has a section on risk factors, an essential part of public company filings. It includes war, interest rate hikes, civil unrest and climate change. The draft report also talks about America Corp.'s customers, using copious amounts of demographic data on U.S. citizens.

Researchers collected information from 55 government or nonpartisan sources, including from state and local municipalities, going back to 1980—the year Ballmer joined Microsoft. They kept analysis and interpretation to a minimum. Ballmer's goal is to be completely unbiased. The billionaire said he's an independent and has been an active political donor in recent years, with a tendency to give to both sides. He won't say who he's voting for.

Ballmer said the idea that the U.S. is getting worse mostly isn't true. Infrastructure, such as road and bridge safety, is better than or comparable to 1990. The government doesn't seem as big as some people say it is, either. Of about 24 million government workers, teachers account for some 11 million jobs; police, firefighters and the like for 3 million; and military for about 2 million. Add in public hospitals, waste management, prisons and other workers, that leaves just 1.7 million or so bureaucrats.

Mark Duggan, a Stanford economics professor who is teaching the course with Ballmer, said this project is especially important as Americans consider the need for spending cuts or other changes to Medicare or Social Security. "What Steve is trying to do is to make it possible for people who want to make an informed decision to do that," Duggan said.

Staff working on USAFacts said Ballmer already knows unusual factoids about government spending and demographics by heart. Ballmer, 60, said he doesn't recall as much as when he was 40.

The project has helped settle Ballmer's dispute with his wife. Government funding accounts for a larger share of many social-services organizations' budgets for aiding children than private donations, he said. But economic mobility remains largely unachievable for America's poorest families. The data helped convince the Ballmers to focus their philanthropy on impoverished kids in U.S. cities with the lowest chances of improving their situations. Ballmer will continue making political contributions as well. He still believes influencing public policy is one of the most effective ways to effect change, he said. "We were both right."

Bloomberg

by Dina Bass

November 7, 2016 — 8:55 AM EST

– *With Emily Chang*

Results-Based Financing Approaches.

Observations for Pay for Success from International Experiences

Abstract

Globally, policymakers and the public are searching for solutions to help ensure money meant for public service delivery goes to fund effective programs. One such solution, results-based financing (RBF), leverages existing or new financial resources to incentivize results by paying for desired outcomes or outputs. RBF approaches are diverse and have emerged in different contexts and with different partners. Generally, however, they share two characteristics: payment is based on results and the relationship between payment and results is predefined. This brief introduces the diverse landscape of RBF approaches around the world and offers some observations and thoughts that may be relevant for the field, including those considering pay for success projects.

Download the Report.

The Urban Institute

by Matthew Eldridge and Rebecca TeKolste

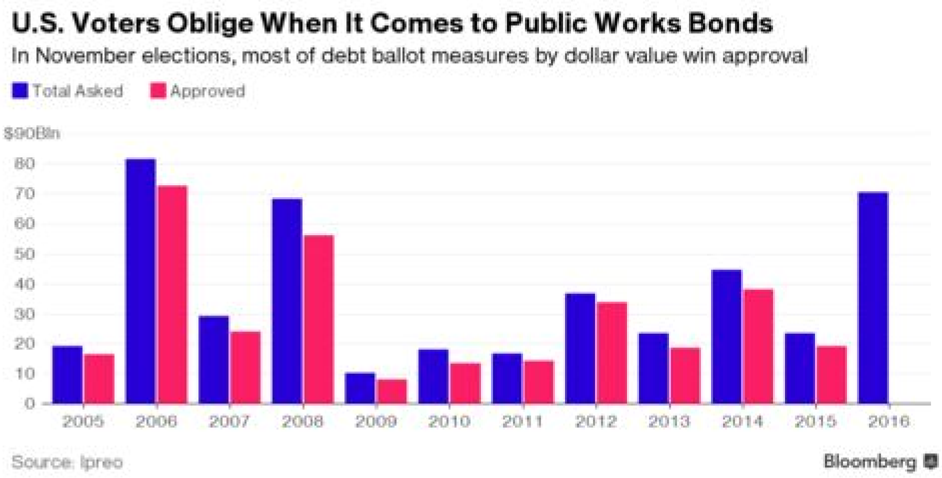
November 10, 2016

U.S. Voters Decide on $70 Billion in Bonds, the Most in a Decade.

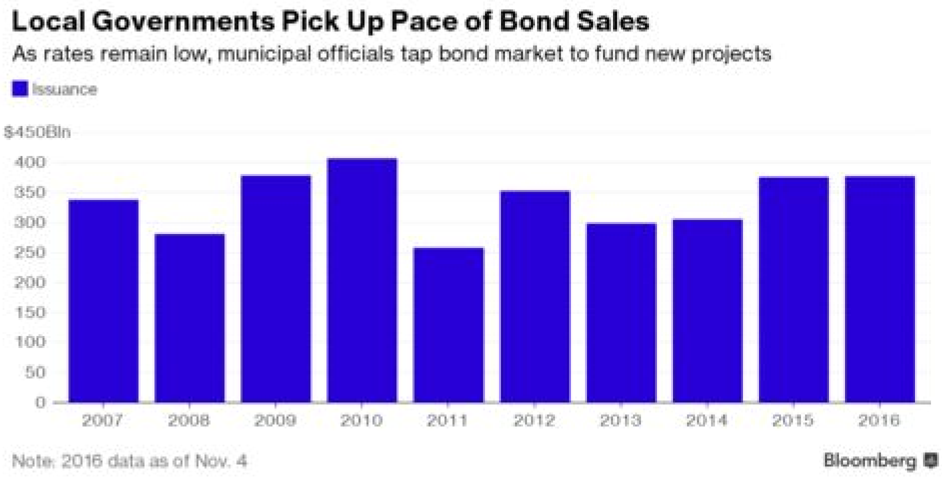
Local governments across the U.S. are asking voters to approve about $70 billion of bond sales, the most in a decade, seeking to seize on improvements in their fiscal positions and near record-low interest rates to borrow for public works.

The jump is driven largely by California, which accounts for about $42 billion of the proposed debt, as officials seek to raise funds for schools, public transportation and affordable housing, according to financial-data provider Ipreo. Elsewhere, voters are being asked to back large issues for roads in Austin, Texas, schools in Denver and waterworks in Columbus, Ohio.

“The cost of borrowing is low,” said Mark Ferrandino, chief financial officer of Denver Public Schools, which is asking voters to approve $572 million, the second-biggest amount for schools in Colorado history. “It allows us to have our money go further.”



The increase signals that states and cities are backing away from the austerity that persisted for years as they contended with budget shortfalls left in the wake of the recession. Amid speculation the Federal Reserve will resume raising interest rates as soon as December, governments have stepped up their borrowing, issuing $387 billion of bonds this year. That’s the fastest pace since 2010, when municipalities rushed to sell federally subsidized bonds as the program expired.



There are large sales proposed around the country:

- California has a $9 billion school bond on the statewide ballot, while residents around San Francisco are being asked to support $3.5 billion of borrowing for the Bay Area Rapid Transit system. In Los Angeles, ballot measures would raise $3.3 billion for community colleges and $1.2 billion to ameliorate homelessness. Santa Clara County, where the Silicon Valley boom has pushed up the cost of living, is weighing a $950 million bond for housing;
- Austin, Texas's booming capital city, is proposing $720 million of borrowing for roads, streets, bike trails and sidewalks. It's the biggest issue outside of California, according to Ipreo;
- El Paso, Texas, is weighing almost $670 million of bonds to build schools;
- Columbus, the AAA-rated Ohio capital, wants to issue $460 million for its water and sewer system.

This proposed borrowing is the most since 2006, when about $82 billion went before voters. The uptick reflects the financial improvement among municipalities as the drop in unemployment and housing-price gains lift tax collections. Meanwhile, the yield on the Bond Buyer's 20-year general-obligation index — while up from the record lows reached in July — is still just 3.27 percent.

"For many years, there was a spirit of austerity where municipal mangers felt pressure not to issue debt and not to leverage up," said Eric Friedland, director of municipal research in Jersey City, New Jersey, for Lord Abbett, which manages $20 billion of local debt. "You get to a point now where infrastructure is crumbling, revenues are starting to increase, interest rates are relatively low and constituents are pressuring their leaders to actually fund more infrastructure projects."

Such spending tends to be an easy sell: Since 2004, voters approved at least 75 percent of the proposed bond sales, based on the amount requested, according to Ipreo data.

The borrowing will only put a small dent in America's backlog of infrastructure projects, an issue that Democrat Hillary Clinton and Republican Donald Trump have both promised to address if they're elected president. The American Society of Civil Engineers estimates that the U.S. is on pace to spend $1.4 trillion less than needed on its roads, airports and other public works.

"We've dug ourselves a pretty deep hole," said Brian Pallasch, managing director of government relations and infrastructure initiatives for the engineers' group. "The problem is not going to be solved by one particular ballot measure or one particular congressional action. It's going to be a series of them."

Bloomberg Business

by Romy Varghese

November 8, 2016 — 2:00 AM PST

Bloomberg Brief Weekly Video - 11/09

Taylor Riggs, a contributor to Bloomberg Briefs, talks with reporter Amanda Albright about this week's municipal market news.

Watch the video.

Bloomberg Business

November 9, 2016

What a Trump Presidency Could Mean for State and Local Finances.

An early review of Donald Trump's health-care and trade policies reveals some potentially bad news for state and local governments. According to Fitch Ratings, Trump's proposals would "significantly lower federal transfers to state budgets and could negatively affect economic growth and revenues."

Specifically, Trump has proposed converting Medicaid funding into a block grant program, which Fitch says would lead to much lower federal funding for the states. A Congressional Budget Office (CBO) assessment of earlier Medicaid block grant proposals projected declines of between 4 and 23 percent in federal funding over 10 years.

The president-elect has also harshly criticized the North American Free Trade Agreement and said he would slap tariffs on goods imported from countries, such as China, that have cheaper labor than in the United States. Fitch Ratings said Trump's trade policy would have adverse implications for U.S. investment and growth, and would push up prices.

On the positive side, Trump has also talked about major investments in infrastructure. But he's been low on details for his plan — only suggesting that federal tax credits could encourage private investments in revenue-generating projects — and could make it more expensive for state and local governments to borrow money for those infrastructure projects. That's because his planned tax cuts would lower the benefit of buying tax-exempt municipal bonds for many individual investors. Without the full benefit, governments may have to swallow a higher interest rate payment in order to attract investors.

The Takeaway: Let's put things in perspective. Since when has a presidential candidate gotten everything he wanted once he took office? Chances are low that every single outcome listed above will actually happen. It's also important to note that President Obama has also called for reducing the municipal bond tax benefit for much of his presidency. So, that particular threat to state and local finances is not a new one, although some suspect tax reform will make its way from the back to the front burner now that Republicans control the executive and legislative branches.

The proposed changes to Medicaid are perhaps the most worrisome for state and local budgets because aid from the feds makes up approximately 15 percent of total state expenditures, according to the National Association of State Budget Officers. If the CBO's estimates are accurate, "reductions of this magnitude would have a significant effect on states' budgets," according to Fitch. And you can bet that states will pass some of that hurt on down to local governments in the form of reduced state aid.

But right now, the word of the day is ambiguity: Trump has been fuzzy on details up to this point, so it remains to be seen if his policies will pass muster with Congress and how, specifically, they'll impact state and local government coffers. Even the proposed changes to Medicaid aid could have a happier ending if states get more spending autonomy under a block grant system. "Depending on the specifics of the program," Fitch said, "states could lower their Medicaid costs with that flexibility."

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 11, 2016

This Government Bond Insures Against Failure.

The first-ever environmental impact bond gives an agency some of its money back if its idea doesn't pan out.

As the drive for accountability in government spending increases, many are looking for ways to keep from paying the full price for programs that don't work.

In Washington, D.C., that desire has led to the first-ever environmental impact bond, issued this fall by DC Water, the city's water and sewer authority. The $25 million bond will pay for new, green infrastructure like rain gardens and permeable pavement to reduce stormwater runoff.

But if the projects don't work as expected, that's where the new financing structure comes in. Under the terms of the bond, which DC Water sold directly to Goldman Sachs Urban Investment Group and the nonprofit Calvert Foundation, the utility stands to get a multimillion discount on its total borrowing costs if the project doesn't meet a certain threshold.

It's essentially an insurance policy on the project's effectiveness. Here's how it works: After five years, the new infrastructure will be evaluated. If stormwater runoff isn't reduced by at least 18.6 percent, investors will owe DC Water a $3.3 million "risk share" payment. The payment represents a near-full refund of the 3.43 percent interest rate payments DC Water made during the first five years of the bond. After that, the bonds would likely be refinanced into 25-year bonds. DC Water would also drop green infrastructure projects and go back to so-called gray ones (like pumps and water tunnels) to reduce runoff.

So what's the incentive for Goldman Sachs and the Calvert Foundation to buy these bonds? If the reduction of stormwater runoff exceeds expectations — if runoff is reduced by more than 41.3 percent — the investors get a bonus payment of $3 million from DC Water after five years. The bonds would then still refinance into 25-year bonds.

Although the deal took two years to iron out, DC Water's CFO Mark Kim said it's a structure that could easily be copied by other utilities because it is still, at its core, a basic market transaction. This makes environmental impact bonds different from so-called social impact bonds or pay for success projects, which are not bonds at all but are negotiated contracts between a private financier and a government. These “bonds” finance certain projects that aim for an agreed-upon outcome, such as reducing recidivism among a certain prison population. The financier gets paid back only if the project outcomes are met after a certain period of time.

For those reasons, pay for success projects are very difficult to replicate. “We structured this as a debt instrument rather than a [pay for success] service contract, so it is very scalable, very transparent and very accessible,” said Kim. “Utilities know how to issue debt. We’ve just structured the deal so that they can look and replicate.”

While the environmental impact bond is getting interest from other governments, and was even held up by the White House as a model, it has its critics. Dan Kaplan, who manages a $4 billion debt portfolio for the King County, Wash., Wastewater Treatment Division, said he isn’t convinced the environmental impact bond is a better deal because of the “exceptionally high interest rate” DC Water is paying the first five years of the deal. Typically, the shorter the terms of the bond, the lower the interest rate. Under a regular five-year bond, Kaplan said, DC Water would likely pay less than 2 percent instead of 3.43 percent.

Also, given that rain gardens and permeable surfaces aren’t new, untested technology, Kaplan doesn’t see the point in DC Water hedging its bets that the projects won’t do their jobs. “If there’s some new technology that needs to be tested and there simply aren’t the resources within the utility to commit the personnel and technology to do it,” he said, “then perhaps [this financing mechanism] could be a tool.”

But Kim said comparing the bond’s terms with a five-year bond’s terms isn’t an apples-to-apples comparison. Although the deal does refinance after five years, it is structured as a 30-year deal and therefore is assigned an interest rate comparable to the utility’s typical long-term borrowing cost. In addition, Kim said, a typical five-year bond doesn’t “provide a risk transfer or downside protection if green infrastructure does not work, which is the whole point of the deal.”

Beth Bafford, investments director for the Calvert Foundation, said she hopes the DC Water deal spurs a new field of social investing that essentially splits the difference between a pay for success project and a traditional bond. Investing in the former means returns might not be realized. Investing in the latter is far less risky — and less exciting.

“We’ve looked at a few pay for success deals,” says Bafford. They are such uncertain , complex systems that it’s “hard to determine what’s causing the outcome. In the environmental space, you can measure it, look at it, it’s more of a science. The hope is it’ll help investors who are more risk averse get into the social contracting space.”

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 10, 2016

Trump Obamacare Repeal Threat Seen Pressuring Hospital Bonds.

The municipal-bond market is facing headwinds from President-elect Donald Trump and more than $250 billion in hospital debt is most at risk.

Yields on benchmark tax-exempt securities climbed the most Wednesday in more than three years after the stunning victory of the real estate developer and reality television star, who has proposed slashing income taxes, which will reduce the incentive to own the bonds. Trump and Republicans in Congress made the repeal of Obamacare a central point of the campaign, a possible one-two punch for hospital debt.

Under the Affordable Care Act, 20 million people obtained health insurance as 30 states expanded Medicaid, the joint federal-state health program for the poor, and others purchased insurance on exchanges. Repealing or scaling back Obamacare would reduce revenue for hospitals and nursing homes as Medicaid expansion is curtailed and private subsidies cut.

“There’s a clear indication that Obamacare benefited a lot of hospitals,” Mikhail Foux, head of municipal strategy at Barclays Plc. “You will probably see weaker systems, especially the ones that are mainly operating in states that have expanded Medicaid, come under some pressure.”

Trump’s victory was felt by some bondholders immediately. Tuesday, the risk premium on debt issued by Livonia, Michigan-based Trinity Health Corp. and maturing in 2045 rose to 1.77 percentage point more than top-rated bonds compared with 1.20 percentage point a month ago, according to data compiled by Bloomberg.

Spreads on bonds issued by Providence St. Joseph Health to refinance debt at hospitals in Washington state and California rose about 0.15 percentage point Tuesday from the day before.

Trump supports letting states administer Medicaid block grants, while promoting tax-free health savings account to encourage people to buy insurance. He also advocates allowing insurance companies to sell policies across state lines.

“The ACA is going to be under threat fairly early on. And that will probably impact more of the low grade standalone hospitals,” said Triet Nguyen, a managing director at NewOak Capital, a New York financial-advisory firm. “The larger systems will be able to cope with any change.”

The Affordable Care Act, which took full effect in January 2014, has been a boon to investors who hold tax-exempt bonds sold by hospitals: Hospital bonds returned 12.72 percent in 2014 and 4.09 percent in 2015, the best of 10 revenue-bond sectors, according to Bloomberg Barclays Indexes.

Performance has weakened this year as factors that have driven enrollment growth waned. States, including Texas and Florida, haven’t expanded Medicaid and aren’t likely to. Hospital bonds have returned 3.57 percent this year.

Political Will

Investors should shift to higher-rated and more diversified hospital systems such as AA- rated Cleveland Clinic and Memorial Sloan Kettering which have specialty clinics for cardiology and cancer, respectively, and that have cheapened recently, Foux said.

The new administration and congressional leaders can forge unity by repealing Obamacare quickly, loosening regulations and cutting taxes, said Dan Holler of the conservative group Heritage Action.

“They will succeed if they focus on the big-ticket items where they have agreement,” he said. “Democrats showed extraordinary political will when they had complete control. I hope Republicans have learned that lesson.”

Not so fast, says Todd Sisson, a senior analyst in Charlotte, North Carolina, for Wells Capital

Management, which manages more than $40 billion in municipals.

While Republicans control the White House and Congress, they don't have a supermajority in the Senate and Democrats can use the filibuster to block a repeal, Sisson said. Repealing Obamacare outright would also be difficult politically given how many Americans are now covered by it, he said.

"You've got a lot of people on insurance now, it's hard to take that back," Sisson said. "I'm looking for them to kind of tweak it and amend it but to flat out repeal it and replace it without a plan, I don't have a crystal ball, but I'm thinking that will be difficult to do."

Hospitals have already built an infrastructure based on Obamacare and transition to value-based reimbursements from a volume-based fee-for-service model, Sisson said.

Bloomberg Business

by Martin Z Braun

November 10, 2016 — 2:00 AM PST

Fitch: More US Infrastructure Failures Likely as Asset Ages Rise.

Fitch Ratings-New York-10 November 2016: The frequency and severity of incidents like the recent water main break in Philadelphia will increase in coming years absent renewed attention and ongoing investment, Fitch Ratings says. Businesses were flooded, shoppers had to be rescued and cars were submerged when the Nov. 4 water main rupture – the third such incident in as many years at this location – released approximately six million gallons of water.

The cost of the damage will likely be significant, although no estimates have yet been reported. The main break is similar to other notable infrastructure failures in recent years in other older, urban cities like Los Angeles, Washington, D.C. and Boston.

The escalating age of the nation's infrastructure and continued underinvestment in underground assets supports Fitch's view that infrastructure failures will continue to occur. The American Society of Civil Engineer's reports 240,000 water main breaks occur annually in the US, while the American Water Works association believes required costs to restore existing water systems reaching the end of their useful lives, and to keep pace with population growth, could be upwards of $1 trillion nationwide.

Moreover, a recent survey compiled by the Environmental Protection Agency showed nearly $385 million is needed to improve and replace the nation's drinking water infrastructure through 2030 to continue providing safe drinking water.

In our 2016 Water and Sewer Medians report, capital spending dropped to the lowest level Fitch has observed since publishing its annual medians (just 113% of annual depreciation). The lack of spending contributed to an inability to improve the median age of facilities, which, at 14 years, is the same as the 2015 median and ties the oldest of any median result.

Moderate increases in planned capital spending are expected for the 2017 medians and beyond, but Fitch expects planned outlays will remain below historical spending levels exhibited during and immediately before the recession, heightening concern regarding the ongoing age of utility infrastructure over the coming years.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

BDA Submits Comment Letter to MSRB on Long-Term Strategic Priorities.

On November 10, 2016, BDA submitted a comment letter to the MSRB on its request for comment on its long-term priorities and initiatives related to its core activities and goals to promote a fair and efficient municipal market. You can view MSRB's request for comment here.

MSRB requested feedback from market stakeholders on areas where it should focus its strategic priorities and how it should prioritize its core activities. BDA's letter recommends that MSRB:

- After many years of significant regulatory change, focus on ways to improve the municipal securities market that do not involve sweeping and burdensome new rules
- Enhance EMMA to allow for users to search by issuer and not be a primarily CUSIP-based system
- Harmonize the requirements of Rule G-15 with the recently adopted changes to SEC Rule 10b-10
- Conduct a study to consider how the cumulative regulatory changes over the past five years have resulted in increased costs, burdens, and inefficiencies, and suggest changes it would recommend as a result of the study
- Increase issuer education efforts
- Encourage the voluntary filing of bank loan information by recognizing and mitigating disclosure liability concerns

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Chicago Board of Education to Issue Bonds as Finances Improve.

Plans $426 million in general obligation municipal bonds next week

The Chicago Board of Education is preparing to issue $426 million in general obligation municipal bonds next week, according to credit ratings firm Fitch Ratings.

The deal would be the first open market bond sale by the troubled school system since February, when it struggled to issue $725 million of bonds amid tepid investor demand.

The bonds are scheduled to be sold via negotiation in five tranches, according to Fitch, which will rate the deal B-plus with a negative outlook, reflecting the likelihood that the school district's costs will continue to outpace revenues amid acrimonious interaction with Chicago's teachers union. Proceeds of the bond sale will repay some of the school board's higher cost bonds, reimburse previously paid swap termination payments and fund capital improvements.

The transaction will be a litmus test of market sentiment toward Chicago public schools now that it has reached a contract agreement with the teachers union, narrowly averting a planned strike.

Many investors balked at buying the bonds issued in February out of fear that the school system might run out of cash.

When the board of education needed more money in July, it opted to issue $150 million of bonds directly to a single bank, J.P. Morgan Chase & Co., to avoid the risk that investors might shy away once again.

Investors grew more confident in ensuing months as the school district made more budget cuts, secured new state aid and tax revenues, and clinched a deal with its teachers. The price of the 7% bond due 2044 that issued in February has risen to around 105 cents on the dollar this week from 84 cents when it was originally sold, according to data from Electronic Municipal Market Access.

THE WALL STREET JOURNAL

By MATT WIRZ

Nov. 8, 2016 4:17 p.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com

Donald Trump's Infrastructure Plan Faces Speed Bumps.

Reliance on private financing could fall short of goals and still see political resistance

Donald Trump's proposal for $1 trillion worth of new infrastructure construction relies entirely on private financing, which industry experts say is likely to fall far short of adequately funding improvements to roads, bridges and airports.

The president-elect's infrastructure plan largely boils down to a tax break in the hopes of luring capital to projects. He wants investors to put money into projects in exchange for tax credits totaling 82% of the equity amount. His plan anticipates that lost tax revenue would be recouped through new income-tax revenue from construction workers and business-tax revenue from contractors, making the proposal essentially cost-free to the government.

Mr. Trump has made a $1 trillion infrastructure investment over 10 years one of his first priorities as president, promising in his victory speech early Wednesday morning to "rebuild our highways, bridges, tunnels, airports, schools, hospitals."

The Trump team's thinking is laid out in a 10-page description of the proposal posted on the website of Peter Navarro, a public-policy professor at the University of California, Irvine, and an adviser to Mr. Trump. Separately, a presidential transition website that went up this week said Mr. Trump planned to invest $550 billion in infrastructure, without offering details on where that funding would come from. Top Trump aides couldn't be reached to comment on the proposal.

Experts and industry officials, though, say there are limits to how much can be done with private financing. Because privately funded projects need to turn a profit, they are better suited for major projects such as toll roads, airports or water systems and less appropriate for routine maintenance, such as repaving a public street, they say.

Officials also doubt that the nation's aging infrastructure can be updated without a significant infusion of public dollars.

The plan "strikes me as sort of a concept paper or a thought piece as opposed to a real plan," said Pat Jones, executive director of the International Bridge, Tunnel and Turnpike Association, which represents private operators of toll roads. "These are sort of formulaic numbers that you could come up with to present something that looks like a plan."

For now, members of Congress of both parties and transportation advocates say they are optimistic lawmakers can reach a bipartisan deal to provide some of the needed funding to update roads, power lines and airports. According to the McKinsey Global Institute, the U.S. needs to boost infrastructure spending by 0.7% of gross domestic product between now and 2030 to meet the demands of a growing economy.

Both parties have said they agree on the need for new spending on infrastructure, but the challenge has been finding the money to pay for it. An Obama administration proposal to use new revenue from a corporate tax overhaul didn't get through Congress last year. In December, lawmakers cobbled together a $305 billion measure using a reserve account held by the Federal Reserve.

Mr. Trump's plan would essentially sidestep the political funding squabbles by focusing mostly on private investment, a concept that both parties generally support.

But the plan could still face an uphill battle in Congress, where Democrats have been pushing for more public funding.

Industry experts note that private financing can complement public funding for some projects but is far from a perfect substitute. Historically low interest rates have made it very cheap for state and local governments to borrow directly on the municipal bond market, giving them less incentive to work with private funders.

At the same time, tolls have proved unpopular in much of the country, with toll-road operators in Indiana and Texas filing for bankruptcy protection in recent years.

"The real need is straight up funding, not additional financing tools," said Bud Wright, executive director of the American Association of State Highway and Transportation Officials.

Only about 6,000 of the nation's four million road miles are tolled. And only about 3.1% of the assets under management of U.S. investors are in infrastructure, of which some share is invested in projects abroad, according to Preqin, a research firm.

"Not every project is necessarily feasible," said Patrick Rhode, vice president of Cintra, which develops privately funded infrastructure projects. "The public and state authorities have to make a determination as to what best serves the public good.”

It’s also unclear how Mr. Trump’s proposal would generate enough new revenue to offset the cost of the tax credits. If the construction workers hired on the new projects were previously unemployed, the proposal would indeed generate significant new tax revenue. But with the unemployment rate for construction workers around 5.7%, it is likely those workers would have found other jobs and paid income tax regardless.

“It’s unclear exactly what [Mr. Trump] has in mind for his infrastructure tax credit,” said Michael Sargent, a transportation policy analyst at the conservative Heritage Foundation. “He says they’re deficit neutral, but I’m not sure how exactly they could pay for themselves.”

Heritage has been advocating reducing the federal government’s involvement in transportation and leaving it up to the states to fund improvements.

THE WALL STREET JOURNAL

By DAVID HARRISON

Updated Nov. 11, 2016 1:22 p.m. ET

Write to David Harrison at david.harrison@wsj.com

A One-Cent Soda Tax Gets Expensive in California.

In this most contentious of elections, you wouldn’t think that a soda tax would be the issue to attract the big bucks. But measures in just two California cities have drawn more money than that state’s Senate race and statewide referendums on marijuana legalization and gun control — combined.

Soda taxes are on the ballots in San Francisco and Oakland, Calif., and spending to persuade citizens to vote for or against them has topped $50 million — enough to buy every person in those two cities about 100 cans of Coke, at least if you bought them in bulk.

On the pro-tax side are big donations from billionaires: Michael Bloomberg, the former mayor of New York, and Laura and John Arnold. And opposing them are the companies in the deep-pocketed beverage industry, which is outspending them by a ratio of about 3 to 2.

The battle is the biggest so far by health advocates in their efforts to reduce the consumption of sugary carbonated soft drinks that they say leads to obesity, diabetes and tooth decay.

The idea of taxing sugar-sweetened beverages, which the measures would do, was initially an esoteric idea hashed out in medical journals. Some municipal officials showed interest, but, until recently, no soda tax got far. The failure of 40 tax measures around the country reflected public skepticism about the idea, often seen as a nanny-state intrusion. But it also reflected the lopsided investment of industry to defeat them.

Recently, the tide has begun to turn, helped in part by big donations from Mr. Bloomberg. Two years ago, Berkeley, Calif., became the first city in the country to pass such a tax. Mr. Bloomberg got involved late in the effort, when it became clear the law had a chance of passing. (San Francisco had its own failed soda-tax initiative that year; it won a majority of votes but failed to clear a supermajority threshold, a bar it won't need to clear this time.)

In June, Philadelphia passed its own soda tax through the City Council. The beverage industry spent about $10 million there, but Mr. Bloomberg weighed in too, contributing about $1.6 million of the $2.5 million spent to support the bill.

Albany, Calif., another community in the Bay Area, is also voting Tuesday, though there has been less direct spending there. Boulder, Colo., will vote on a 2-cent-per-ounce soda tax measure Tuesday. And Cook County, Ill., which includes Chicago, is to consider a soda tax measure later this month.

Public sentiment on soda is also shifting. Many Americans now say they are trying to avoid the products, and national sales of such drinks have been slipping.

The Bay Area initiatives are expensive prizes. Unlike Philadelphia, where much of the battle was fought through lobbying, both California tax proposals must win passage by a majority of voters. That means both sides have invested in big public outreach campaigns.

Citizens have been inundated with pro- and anti-soda tax TV and radio commercials, and mailboxes are filled with direct mail from both sides. Canvassers are making phone calls and going door to door in the final days of the campaign. Dan Newman, a political consultant with SCN Strategies, who is working on the pro-tax campaign, said the volume of messages about the measures dwarfs the 2014 effort.

"It was intense and expensive, and folks were amazed in talking about it," he said of 2014. "And it was nothing like this."

The tax battle has also prompted accusations of skulduggery. The soda industry enlisted the help of several local grocers to pose for mailers and state their opposition to the tax. Several of them, later approached by pro-tax advocates and reporters, said they had been misled about the nature of the tax proposal. Others have become the subjects of negative Yelp reviews and threatened with boycotts, what an anti-tax campaigner described as "intimidation."

The measures are similar in both cities: They would impose a tax of one cent per ounce of any drink with added sugar, including sugary soft drinks, iced teas and smoothies. The taxes would be imposed on beverage distributors, not at the checkout registers. The emerging evidence from existing soda taxes suggests those higher prices will be passed through to retailers and then to shoppers. If they are, they could result in a price increase of 67 cents on a two-liter bottle, or $1.44 for a 12-pack.

Those higher prices are intended to discourage shoppers from consuming so many sugary drinks, which have been linked to obesity, diabetes and tooth decay. The pro-tax side has been emphasizing the negative health effects of soft-drink consumption, and arguing the tax will make the city's children healthier.

Research from Mexico, which passed a national soda tax in 2014, shows that the taxes can drive down soda consumption. But it is not known yet whether those reductions will result in better health.

The industry argues that the taxes have no clear connection to public health and that they will fall disproportionately on low-income shoppers. In California, they have also been arguing that the taxes could result in higher prices for other items at the grocery store as retailers try to spread the rising wholesale cost of soft drinks over other products. But there is no research from Berkeley or Mexico that advocates could cite to support the notion.

A local coalition of anti-tax advocates, led by the American Beverage Association, a trade group for drink-makers, began sending direct mail months earlier than is typical for a ballot initiative.

Susan Neely, the association's president, said her organization was committed to fighting soda taxes on every front. "We oppose them wherever they are introduced — that is a clear position that we have staked out," she said. "That is not going to change."

There has been little public polling on the measures, though consultants on both sides said they have been polling privately, and the vote will be close. The complexity of the city's ballots this year makes predicting a result hard. In San Francisco, voters are considering more than 40 initiatives, including two separate measures about plastic shopping bags. The beverage tax is fairly far down on both ballots, which means some voters may grow fatigued and fail to weigh in.

The New York Times

BY Margot Sanger-Katz @sangerkatz

Nov. 6, 2016

State and City Budget Blues: Pressures Keep Piling Up.

NEW YORK — It's not just Detroit and Puerto Rico with financial problems.

The pressure is rising on local governments around the country that are struggling with big pension obligations and other debts. Five states need to put aside more than 25 percent of their annual tax revenues just to pay pensions and other debts, an untenable amount, according to a recent study by the nonprofit Center for Retirement Research. For major cities, debt costs above 40 percent of revenue are typically an unmanageable burden, and the report counts eight of them.

Overall, U.S. state pension plans are underfunded by at least $1 trillion, various experts and credit rating agencies say. And that funding hole will almost certainly hurt taxpayers, government workers and bondholders.

"It's getting harder to sweep these problems under the rug," says Tracy Gordon, a senior fellow with the Urban-Brookings Tax Policy Center.

After taking into account health care and other debt obligations, states like Hawaii, Kentucky and Massachusetts and cities like Houston and San Jose, California, are all above thresholds that the Center for Retirement Research considers worrisome.

For many years, politicians hoped to make up for the funding gaps by getting strong returns from investments in stocks, bonds and hedge funds, says Gordon. But the typical public pension plan had a return of just 0.5 percent for the fiscal year that ended in June, according to credit-rating agency Moody's.

That has increased the risk for a major crisis at municipalities with outsize debt payment, says Lisa Washburn, a managing director for Municipal Market Analytics, a municipal bond research firm. "This is a liability that they are going to have to come to terms with eventually, and the longer they delay coming to terms with it, the worse it's going to be."

How you might be affected depends on your relationship to the location in question:

— You’re a bond holder.

For muni bond investors, the chief worry is a default. But despite the dramatic headlines, investors who hold state-issued bonds until they mature have little to fear. “You can expect to be repaid,” says Washburn. If your state’s debt rating is downgraded, however, you may find that your bond is worth less if you need to sell it before maturity.

Those who hold the bonds of struggling cities overburdened with debt, however, have cause for concern. “States have sovereign ability to do just about anything they want, so they have a very wide array of options to pursue,” says Alan Schankel, a municipal bond strategist at Janney Capital Markets. “Depending on the level of oversight, cities and counties have much less flexibility. And many of them are dependent on state aid.”

When a city files for bankruptcy, judges sometimes allow payments to be curtailed to muni bondholders. That’s what happened in Detroit and Stockton, California. Moreover, severe budget problems at the state government level can also have a trickle-down effect leading to less support for schools and hospitals supported by the state, which also issue municipal bonds.

— You’re an employee.

The good news for public service workers is that, in some states, pension payments are guaranteed by law. And even in places where they may not be, legislators tend to be sympathetic to pension holders.

Now for the bad news: If things get really bad, you still might find your benefits thwacked. Detroit workers, for example, had their pensions cut when the city filed for bankruptcy. A more likely situation is that you’ll be the victim of pension “reform,” which could involve an increase to your annual contribution rate or fewer cost-of-living salary bumps. You may also see cutbacks in other benefits, such as health care, which are easier for states and cities to enact. Rhode Island suspended cost-of-living adjustments for retirees in 2011 and introduced a 401(k)-like funding system for current state workers, for example.

— You’re a taxpayer.

A simple way for states to boost their sagging budgets is to increase taxes. A sales tax increase along with an income tax increase on wealthy residents helped California pull out of its massive budget hole from the Great Recession, for example. Simple, though, doesn’t mean easy. Politicians are often reluctant to increases taxes on their watch. “Politically, that’s just very hard to do,” says Washburn.

Other places have tried different tactics to boost revenues. A few years ago, Kansas tried cutting taxes in hopes that it would boost its economy and lead to eventual gains in income tax revenue, for example. Unfortunately, the state still recently had a projected $290 billion shortfall.

Instead of raising taxes, states sometimes cut back services in order to save money. “Maybe the Department of Motor Vehicles is open five days a week instead of six,” says Schankel. The challenge is that if too many services are cut, residents will become disenchanted with the community and move elsewhere. That only exacerbates the revenue problem.

It all shows how no single approach will lift local governments out of their troubles. One thing, however, is clear, says Gordon: “Someone has to be left holding the bag.”

By THE ASSOCIATED PRESS

NOV. 7, 2016, 5:03 A.M. E.S.T.

New Jersey Moves to Take Control of Atlantic City.

The State of New Jersey moved on Wednesday to take control of Atlantic City, having lost patience with the financially troubled gambling resort's inability to pay its bills.

Over the objections of Atlantic City's elected officials, the Local Finance Board in Trenton unanimously approved a five-year state takeover to stave off a bankruptcy filing by the city. The decision would give the head of the finance board the power to sell municipal assets, renegotiate union contracts and fire city employees.

"It's an incredible responsibility, one that I've lost sleep over the last few weeks," Timothy Cunningham, the head of the finance board, told reporters, according to The Associated Press. "I'm sure I'm going to lose sleep tonight."

It was not immediately clear what authority the city's Republican mayor, Donald Guardian, or its elected council would retain. Mr. Guardian said before the vote that the city would go to court to assert its rights to manage its own affairs.

Afterward, Mr. Guardian released a statement that said that a five-year recovery plan drawn up by the city "would have saved the state a substantial amount of money and would have allowed us to maintain complete local sovereignty." He said the city would continue to work with the state but would "keep all of our options on the table."

Other New Jersey cities, including Camden, have been placed under state supervision in the past, but the state has granted itself more authority to take direct control in Atlantic City, said Marc H. Pfeiffer, assistant director of the Bloustein Local Government Research Center at Rutgers University.

"This is a new process," Mr. Pfeiffer said. "We've never done a process like this before."

In 2002, the state assigned a chief operating officer to help sort out Camden's financial problems. One of the changes that ensued was the dissolution of the city's police department and the transfer of authority to patrol Camden to the county police.

"Camden is effectively not on the critical list any more" and is in better shape than Trenton and Paterson, Mr. Pfeiffer said. "Atlantic City's fiscal problems are far more critical that those of Trenton or Paterson."

Atlantic City, which has around 39,000 residents, has sunk deep into debt as much of its lifeblood, the money that gamblers lose at its casinos, has been drained away by Pennsylvania and other neighboring states that have legalized gambling in recent years.

Three years ago, Atlantic City had 12 casinos, two of which had once been controlled by Donald J. Trump, the president-elect. But five of the 12, including the Trump Plaza and the Trump Taj Mahal, have shut down as the industry's annual revenue has been cut in half in the past decade.

During that period, the value of the city has plunged to about $6 billion from $21 billion, Mr. Pfeiffer said. But the city has not adjusted its budget to account for that sharp decline in fortunes, he said.

“The city’s not dead,” he said. “They haven’t been able to get their expenses under control to live within their circumstances.”

The state had ordered the city to submit a five-year plan for solving its financial problems. But last week, the commissioner of the state’s Department of Community Affairs, Charles A. Richman, rejected that plan, concluding that the city was “not likely to achieve financial stability” without raising taxes or taking more drastic actions.

The city has few assets that it could sell to pay down its $500 million of debt. City officials have been loath to divest the most valuable of them, the local water utility, operated by the Municipal Utilities Authority. The city also owns a defunct airport, Bader Field.

Rather than selling the utility, city officials proposed another idea: having the utility issue bonds and using the proceeds to buy the airfield for $100 million. Mr. Richman said that would not be “prudent fiscal management.”

Mr. Pfeiffer said that the state might opt to dissolve the Municipal Utilities Authority and sell the utility company or enter into a long-term contract with an outside entity for its operation. But city officials have made it clear that they would sue to stop such a move.

THE NEW YORK TIMES

By PATRICK McGEEHAN

dNOV. 9, 2016

S&P Pushes Credit Rating for Chicago Schools Deeper Into Junk.

CHICAGO — S&P Global Ratings on Wednesday dropped its credit rating for the cash-strapped Chicago Public Schools (CPS) deeper into junk ahead of the district’s planned $426.3 million bond sale.

The rating fell one notch to B with a negative outlook, putting it just two notches above the substantially risky triple-C level.

“The rating action reflects our view of the district’s continued weak liquidity in its most recent cash flow forecast and reliance on cash flow borrowing, combined with the increased expenditures in the district’s new labor contract that exacerbate the district’s structural imbalance challenges,” S&P analyst Jennifer Boyd said in a statement.

S&P warned that the rating stands at least a one in three chance of falling further over the next year. The credit rating agency has raised concerns over the school system’s ability to obtain cash flow financing and a one-time $215 million pension funding boost from the state of Illinois. That money is contingent on the long-shot passage of state-wide pension reform by the legislature this year.

The nation’s third-largest public school system is struggling with pension payments that will jump to about $720 million this fiscal year from $676 million in fiscal 2016, as well as drained reserves and debt dependency.

As CPS's ratings have fallen into the junk level, the municipal bond market has demanded fat yields for its debt. Even a private sale of $150 million of 30-year GO bonds by CPS in July to J.P. Morgan came at a 7.25 percent yield, which was 513 basis points over the yield for AAA-rated bonds on Municipal Market Data's (MMD) benchmark scale.

CPS heads to the bond market in the wake of approval by the Chicago Teachers Union last week of a four-year contract with a retroactive start date of July 1, 2015.

The district plans to refund $160 million of outstanding general obligation bonds and sell new debt through JP Morgan Securities and Loop Capital Markets. A pricing date was not immediately available from a CPS spokeswoman.

Fitch Ratings on Monday affirmed a B-plus rating and negative outlook on the district's $7.1 billion of outstanding bonds.

By REUTERS

NOV. 9, 2016, 3:39 P.M. E.S.T.

(Reporting by Karen Pierog; Editing by Leslie Adler)

U.S. Municipal Credit Report, Third Quarter 2016

About the Report

The municipal bond credit report is a quarterly report on the trends and statistics of U.S. municipal bond market, both taxable and tax-exempt. Issuance volumes, outstanding, credit spreads, highlights and commentary are included.

Summary

According to Thomson Reuters, long-term public municipal issuance volume totaled $108.4 billion in the third quarter of 2016, a decline of 9.2 percent from the prior quarter ($119.5 billion) but an increase of 25.8 percent year-over-year (y-o-y) ($86.1 billion). In-cluding private placements ($3.8 billion), long-term municipal issuance for 3Q'16 was $112.2 billion. Year to date ending September 30, municipal issuance totaled $323.4 billion, well above the ten-year average of $276.5 billion.

Tax-exempt issuance totaled $98.1 billion in 3Q'16, a decline of 29.3 percent but an in-crease of 29.3 percent, respectively, q-o-q and y-o-y. Taxable issuance totaled $7.9 billion in 3Q'16, an increase of 15.8 percent q-o-q and a 0.6 percent increase y o y. AMT issuance was $2.3 billion, a decline of 67.8 percent and 1.5 percent, respectively, q-o-q and y-o-y.

By use of proceeds, general purpose led issuance totals in 3Q'16 ($29.0 billion), followed by primary & secondary education ($17.0 billion) and water & sewer facilities ($10.7 bil-lion).

Refunding volumes as a percentage of issuance fell slightly from the prior quarter, with 50.6 percent of issuance attributable to refundings compared to 51.2 percent in 2Q'16, but was higher than from 3Q'15 (48.9 percent).

Read the full report.

GFOA Webinar: Current Issues in Debt Management.

Current Issues in Debt Management – Internet Training on November 18, 2016

Attend this 2-hour webinar to understand the current (post-election) market outlook for debt management and the importance of disclosure responsibilities following the SEC's MCDC initiative.

Learn more.

MSRB Identifies Potential Risks for Retail Municipal Market Investors.

Washington, DC – In a recent letter to the Securities and Exchange Commission Investor Advocate on potential risks to retail investors in the municipal market, the MSRB identified disclosure practices, price fairness and transparency, types of ownership of municipal bonds and senior investor protection as areas of particular concern.

"As the primary regulator for the municipal market, it is our responsibility to identify areas where we believe retail investors may be at risk," said MSRB Executive Director Lynnette Kelly. "Our letter aims to communicate to the Investor Advocate our top concerns, in addition to highlighting what the MSRB is doing to address these concerns."

The first area of concern involves issuer disclosure practices, including bank loan disclosures, the timeliness of submissions, selective disclosure practices and clarity of general obligation pledges in high-profile municipal bankruptcies and restructurings. The MSRB promotes the transparency and availability of municipal market information, and is continuing to emphasize the importance timely disclosures submitted to its Electronic Municipal Market Access (EMMA®) website by issuers.

The MSRB's letter identifies price fairness and transparency in the municipal market as another area of concern. The MSRB has led multiple initiatives this area including implementing a best-execution rule for municipal market transactions and adding additional post-trade data to EMMA®, and additional initiatives are underway. The MSRB has asked the SEC to approve a proposed rule to help investors better understand the cost of buying and selling a municipal bond, and will continue to make enhancements to EMMA® to support pre-trade price transparency in the market.

The letter also warns that changes in the "ownership profile" of municipal bonds since 2010 have increased the risk that a rise in interest rates could lead to market dislocation and reduced liquidity in the municipal market. The letter cites greater mutual fund ownership and reduced dealer inventories as factors in the risk for investors, and highlights the decline in the number of municipal securities dealers, which has fallen 19 percent since 2012.

MSRB provides multiple free investor education resources related to interest rate risk including Impact of Market Interest Rate Movement on Municipal Bond Prices and Yields, Evaluating a Municipal Bond's Interest Rate Risk and The Importance of Monitoring Municipal Bonds. "Municipal bond investors can use these resources to learn about the risks of interest rate changes and considerations to discuss with their financial professional," Kelly said. The MSRB also makes available an online course aimed at financial professionals called Rules and Risks: Applying MSRB Rules in Relation to Municipal Market Risks.

The MSRB's letter to the Investor Advocate also identifies protection of senior and vulnerable investors as an issue of increasing importance. The MSRB is focused on bringing awareness to existing protections for these investor groups, and helping financial professionals better understand the needs and risks surrounding these investors.

The MSRB wrote to SEC Investor Advocate Rick Fleming in response to a request that the MSRB identify products and practices within the municipal securities market that may have an adverse impact on retail investors.

Date: November 10, 2016

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MSRB Announces Members of Investor Advisory Group.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced the members of its 2017 Investor Advisory Group, which provides the MSRB's Board of Directors with access to additional expertise on municipal market practices, transparency and investor protection issues.

Members of the 2017 MSRB Investor Advisory Group are:

- Fred S. Cohen, SVP/Director, Municipal Bond Trading, AllianceBernstein LP
- Jim Ladge, COO and Portfolio Manager, Appleton Partners, Inc.
- Geoffrey L. Schechter, Investment Officer, MFS Investment Management
- Justin Schwartz, Head of Municipal Money Markets, Vanguard Group, Inc.
- Ben Smelser, Vice President and Senior Trader, Breckinridge Capital Advisors

"As the MSRB advances several significant investor protection proposals, the Investor Advisory Group will help ensure that the MSRB's policies are informed by the expertise and perspectives of a diverse group of investors," said MSRB Chair Colleen Woodell.

Among the topics the MSRB is addressing this year are primary offering practices and the potential addition of pre-trade data to the Electronic Municipal Market Access (EMMA) website. The advisory group, created in 2015, will meet periodically throughout the year, as directed by the Board.

Date: November 10, 2016

Contact: Jennifer A. Galloway, Chief Communications Officer
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- Pay for Success Project Assessment Tool.
- MSRB Files Proposed Rule Change to Extend MSRB's Proposed Customer Complaint and Related Rules to Municipal Advisors and to Modernize Those Rules.
- MSRB Seeks New Complaint Process for MAs, Updated One for Dealers.
- Bond Attorneys' Workshop Round-up: Squire Patton Boggs
- IRS Releases Three-Part Video Series on Conduit Issuers.
- MSRB Municipal Advisor Registration Compliance Webinar.
- Attn. California practitioners – California Debt Limit Allocation Committee Releases Proposed Regulations: Orrick.
- *GE Funding Capital Market Services, Inc. v. Nebraska Investment Finance Authority* – District Court holds that Investment Agreement entered into between Investment Finance Authority and GE Capital was ambiguous as to whether the redemption of a particular series of revenue bonds automatically terminated the investment account associated with that series of bonds. Check your Investment Agreements to ensure that redemption triggers termination.
- And finally, in our ongoing quest to bring you the answers to questions you haven't asked, we proudly present *State v. Alaska Laser Wash, Inc.*, which obviously sent us on a quest to ascertain the role of actual laser beams in the Alaska car wash industry. Sadly, the answer is, "none whatsoever." We did, however, turn up a priceless gem in the Alaska Laser Wash FAQs. (Yep, this is indeed how we fritter away your hard-earned subscription dollars.) The question: "How often should I wash my car?" The answer: "It depends." Have truer words e're been spoken?

EMINENT DOMAIN - ALASKA

State v. Alaska Laser Wash, Inc.

Supreme Court of Alaska - October 21, 2016 - P.3d - 2016 WL 6134788

Owner of car wash brought inverse condemnation action against the State, claiming business damages resulting from State's acquisition of car wash site as part of highway improvement project.

Following jury trial, the Superior Court denied State's motion for directed verdict, entered jury verdict in favor of owner, and awarded attorney's fees and costs to owner. State appealed.

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

- Business owner may recover business damages when the State condemns the business only if it is not feasible for the business owner to relocate, and
- Relocation of car wash was "feasible," and thus, owner could not recover business damages, which owner claimed resulted from State's acquisition of the car wash.

A business owner may recover business damages when the State condemns the business only if it is not feasible for the business owner to relocate; if it is not feasible for a business owner to relocate, the State's taking is reasonably certain to have directly damaged the value of the business, requiring compensation.

Relocation of car wash that was taken by State as part of highway improvement project was "feasible," and thus, owner of car wash could not recover business damages, which owner claimed resulted from State's acquisition of the car wash, in inverse condemnation action against State, where owner had the ability to obtain financing to build another car wash, other available sites existed upon which to relocate the car wash, and new owners of owner's car wash business successfully built additional locations on the sites that owner considered for relocation.

In determining whether a business owner whose property was taken by the State may recover business damages since it was not feasible for the owner to relocate the business, “feasible” means capable of being accomplished or brought about and possible. Feasibility is a lower threshold than reasonableness.

JOINT POWERS AGREEMENT - IDAHO

City of Sandpoint v. Independent Highway District

Supreme Court of Idaho, Boise, June 2016 Term - November 1, 2016 - P.3d - 2016 WL 6462148

City brought action against highway district for breach of contract and sought both a declaratory ruling that a Joint Powers Agreement (JPA) was valid, and an order enjoining highway district from interfering with city’s control of streets within city limits.

The District Court granted city’s motion for summary judgment, and highway district appealed.

The Supreme Court of Idaho held that Joint Powers Agreement (JPA) between city and highway district, in which city assumed control of all streets in the city and highway district agreed to pay over to the city all highway ad valorem taxes collected on property in the city limits, was void and unenforceable. JPA sought to divest highway district of its statutory responsibility to maintain and improve the streets of city.

PENSIONS - ILLINOIS

Underwood v. City of Chicago

Appellate Court of Illinois, First District, First Division - September 21, 2016 - N.E.3d - 2016 IL App (1st) 153613 - 2016 WL 5239868

City retirees filed state court action alleging that reduction in their health care benefits violated state constitution and Contracts Clause.

After removal, the United States District Court dismissed complaint, and retirees appealed. The United States Court of Appeals vacated and remanded. On remand, the Circuit Court denied retirees’ motion for a preliminary injunction, and granted city’s motion to dismiss with regard to retirees’ contract and estoppel counts. Retirees appealed.

The Appellate Court held that:

- City retirees had no ascertainable claims to lifetime health care benefits under time-limited Pension Code amendments;
- Evidence was sufficient to support finding that retirees could not demonstrate a likelihood of success on the merits of their claim that the city’s plan was a diminishment of anything they were entitled to, as required for the issuance of a preliminary injunction against city;
- City annuitant’s handbook did not create a right to lifetime medical benefits for city retirees; and
- Retirees failed to demonstrate that they could overcome the statute of frauds, or any express act by the city or any of its authorized representatives to bind city to a commitment to provide retirees with lifetime medical benefits, as required to allow for the extraordinary relief of enjoining the city from phasing out plan on retirees’ health care coverage.

Pension Code amendments that provided only time-limited health care benefits to city retirees did not create or give retirees rights beyond what the legislature afforded, and thus, city retirees had no ascertainable claims to lifetime health care benefits.

Evidence was sufficient to support trial court's finding that because city's most current pension plan did not diminish or impair the benefits set forth in non time limited amendments to the Pension Code, retirees could not demonstrate a likelihood of success on the merits of their claim that the city's plan was a diminishment of anything they were entitled to, as required for the issuance of a preliminary injunction against city. Retirees received greater health care subsidies under the city's plan than they received under the Pension Code amendments, which did not provide for any increase in monthly subsidies or for fixed premiums.

City's annuitant's handbook did not create a right to lifetime medical benefits for city retirees; the book referred several times to the ideal that the city's plan to provide medical benefits to retirees would at some time terminate.

City retirees failed to demonstrate that they could overcome the statute of frauds, or any express act by the city or any of its authorized representatives to bind city to a commitment to provide retirees with lifetime medical benefits, as required to allow for the extraordinary relief of enjoining the city from phasing out plan on retirees' health care coverage.

ZONING & PLANNING - MARYLAND

Viles v. Board of Municipal and Zoning Appeals

Court of Special Appeals of Maryland - October 27, 2016 - A.3d - 2016 WL 6276908

Objectors sought review of decision of the Board of Municipal and Zoning Appeals of Baltimore City, concluding that it was without authority to review decision of the Baltimore Planning Commission that modified terms of planned unit development (PUD) established by the Baltimore City Council.

The Circuit Court for Baltimore City affirmed. Objectors appealed.

The Court of Special Appeals held that Board had authority to review decision of Baltimore Planning Commission to modify PUD, as Planning Commission was acting in an administrative capacity when it approved the design modifications to the PUD.

Baltimore Planning Commission's decision to approve modifications to planned unit development (PUD) was an administrative one within meaning of constitutional provision governing the review authority of the Board of Municipal and Zoning Appeals of Baltimore City, because the decision of the Planning Commission clearly was limited to design changes within the PUD property.

EMINENT DOMAIN - MISSISSIPPI

State v. Murphy

Supreme Court of Mississippi - October 27, 2016 - So.3d - 2016 WL 6427112

Property owners brought inverse condemnation action against State and city, after city constructed municipal harbor on disputed property.

After a jury trial, the Circuit Court found State liable. State appealed.

The Supreme Court of Mississippi held that:

- Issue of whether State owned disputed property was for jury;
- Cause of action accrued when property was actually taken;
- Owners' expert did not include noncompensable littoral rights in his calculation of damages;
- Weight of the evidence supported jury's finding that property owners owned disputed property;
- State was not prejudiced by the decision to admit city's deemed admissions;
- Jury's verdict did not exhibit impermissible prejudice or bias against State; and
- State was not entitled remittitur.

Issue of whether State owned all property east of seawall was for jury in property owners' inverse condemnation action, arising out of State's lease of property to city for building municipal harbor.

Property owners' cause of action for inverse condemnation accrued when property was actually taken by State and city to construct municipal harbor, despite contention that three-year, "catch-all" statute of limitations was triggered when final map of public trust submerged land was published pursuant to Tidelands Act. Final map did not establish that property in question was public trust tidelands, and owners had no cause of action against State when map was published, because they still owned property in dispute after map was published.

Property owners' expert on real estate appraisal in inverse condemnation action did not include noncompensable littoral rights in his calculation of damages, and therefore expert's testimony was admissible. Even though expert said phrase "riparian and littoral rights" on cross-examination, expert did not mention littoral or riparian rights during his direct examination, and expert simply explained characteristics of property that he considered in calculating fair market value before and after taking, including fact that property no longer had access to or view of ocean after taking.

Weight of evidence supported jury's finding that property owners owned disputed property east of seawall in their inverse condemnation action against State and city. Even though evidence was conflicting, deeds referenced mean high water tide or water's edge of bay as eastern boundary of property, oldest deed was executed 12 years before seawall was completed, and no deed in chain of title made reference to seawall.

State was not prejudiced by trial court's decision to admit city's deemed admissions in property owners' inverse condemnation action against city and State, and therefore court did not abuse its discretion. State did not object to admissibility of city's deemed admissions, but only to format in which they were admitted, owners amended city's deemed admissions so that they clearly stated they did not apply to State, and jury was instructed that admissions did not apply to State.

Jury's verdict finding State, but not city, liable to property owners in inverse condemnation action, after city constructed municipal harbor on property, did not exhibit impermissible prejudice or bias against State. State claimed true ownership of property, State was listed as lessor of property to city, and city could not have constructed harbor without State first exercising claim of ownership over property.

State was not entitled remittitur in property owners' inverse condemnation action regarding municipal harbor constructed on land east of old seawall, despite contention that owners considered construction of new seawall by Army Corps of Engineers as cause of approximately 90% of owners' damages. Owners considered new seawall and harbor to be part of one project, new seawall did not completely block owners' access to or view of beach, whereas construction of harbor did, and jury's award was lower than owners' calculation of compensatory damages.

Award of attorneys' fees to property owners in inverse condemnation action against State was authorized by statute, even though State merely leased property to city for construction of municipal harbor, where State claimed and asserted control over property owned by owners, and State stated in its discovery responses that, upon information and belief, federal funds were used in construction of harbor.

The statute authorizing the trial court to award reasonable expenses, including attorneys' fees, in specific inverse condemnation proceedings does not limit the source of recovery to the party who actually used the property or received federal funds, but broadly orders the trial court to award reasonable expenses in any case in which private property is being used in any program or project in which federal or federal-aid funds are used.

EMINENT DOMAIN - NEBRASKA

Strode v. City of Ashland

Supreme Court of Nebraska - October 28, 2016 - N.W.2d - 295 Neb. 44 - 2016 WL 6395384

Husband and wife landowners brought action against city and county, alleging zoning regulation inverse condemnation and alleging that bridge load limit constituted a taking.

The District Court dismissed husband's inverse condemnation claims as time barred, and granted summary judgment for city and county. Landowners appealed.

The Supreme Court of Nebraska held that:

- As a matter of first impression, cause of action for inverse condemnation based on a regulatory taking begins to accrue when the injured party has the right to institute and maintain a lawsuit due to a city's infringement, or an attempt at infringement, of a landowner's legal rights in the property;
- City's letter to landowners providing notice of nonconforming use and the city's intention to institute legal action began running of 10-year statute of limitations on husband landowner's cause of action for inverse condemnation;
- Statute of limitations on wife landowner's separate claim for inverse condemnation began to run on date husband received letter from city; and
- Load limit on bridge to property did not constitute a "regulatory taking."

In the context of a regulatory taking, a cause of action for inverse condemnation begins to accrue when the injured party has the right to institute and maintain a lawsuit due to a city's infringement, or an attempt at infringement, of a landowner's legal rights in the property.

At the latest, city's letter to landowners providing notice of nonconforming use and the city's intention to institute legal action if landowners did not conform their use began running of 10-year statute of limitations on cause of action for inverse condemnation, as city's actions had an adverse economic impact on the landowners' right to use the property in the commercial manner that they wished.

Statute of limitations on wife landowner's separate claim for inverse condemnation began to run on date husband received letter from city providing notice of nonconforming use and the city's intention to institute legal action if landowners did not conform their use, rather than any date on which wife received actual notice of land use ordinance affecting the property, as letter constituted an infringement or attempted infringement on wife's right to use the property as she wished and gave rise to her right to institute and maintain a lawsuit.

Load limit on bridge to property did not constitute a "regulatory taking"; while load limit restricted landowner to using either semitrailer trucks that weighed less for access across the bridge or trucks of a limited height for access through railroad underpass, restriction was not an injury different in kind than injury to the general public, bridge limit did not decrease the economic value of the property, and bridge limit, which was posted prior to landowners' purchase of the property, did not interfere with any reasonable investment-backed expectations.

BONDS - NEBRASKA

GE Funding Capital Market Services, Inc. v. Nebraska Investment Finance Authority

United States District Court, S.D. New York - September 14, 2016 - Slip Copy - 2016 WL 4784002

Nebraska Investment Finance Authority ("NIFA") is an independent, quasi-governmental body established under the Nebraska Investment Finance Authority Act. Between 1994 and 2000, NIFA issued a series of revenue bonds to finance its acquisition of mortgage loans or mortgage-backed securities, which were generated in connection with purchases of homes by eligible Nebraska residents.

For each bond series, NIFA and the Trustee entered into an Investment Agreement GE Funding Capital Market Services, Inc. ("GE"). The Investment Agreements provided that GE would pay a fixed rate of return to NIFA on amounts deposited in the Accounts created in connection with each series of bonds. The Investment Agreements further provided that NIFA could make withdrawals from the Accounts for "Permitted Withdrawal Purposes" and that GE would remit to NIFA on the "Termination Date" the outstanding principal balance and all unpaid interest thereon. This arrangement was designed to provide NIFA with an income stream so that NIFA could make debt service payments on, and ultimately redeem, each series of bonds.

NIFA redeemed the bonds on a rolling basis between 2005 and 2010. Although the Investment Agreements required the Trustee to give GE notice if and when each bond series was redeemed, GE was not aware that any of the bond series had been redeemed until late 2014. NIFA continued to invest funds and accept interest payments under the Investment Agreements.

In September 2014, GE requested an explanation why the Investment Agreements had remained funded following the redemption of the bonds. On February 13, 2015, after GE and NIFA failed to reach agreement as to the status of the Investment Agreements following redemption, GE filed this action. GE sought a declaratory judgment that NIFA had no right to further interest payments under the relevant Investment Agreement following redemption of each series of bonds and that NIFA's conduct in that regard constituted ultra vires activity. GE also brought claims for unjust enrichment, constructive trust, breach of contract and breach of the duty of good faith and fair dealing.

NIFA and GE proffered competing interpretations of the Investment Agreements as they pertain to when interest payments to NIFA cease. NIFA argued that it is entitled to interest payments until the relevant Investment Agreement terminates, either on the Termination Date or "earlier … in accordance with its terms." Because neither the Termination Date nor any of the events expressly defined as triggering termination have come to pass for any of the Investment Agreements, NIFA contended that it should continue to receive interest payments. GE argued that the determinative issue was not whether the Investment Agreements have terminated but whether there was still a qualifying Investment. Because the Investments are defined in terms of series-specific Accounts, GE posited that redemption of each bond series extinguished the associated Accounts and, with them, the qualifying Investment.

The District Court found that both interpretations of the Investment Agreements are reasonable and cannot be reconciled with one another. Section 2.2 of the Investment Agreements provides that interest payments shall be made on the “Investment” and until the “Termination Date.” “Each party begins its interpretation with one of those key terms, and by following the plain language of the Investment Agreements the parties come to opposite conclusions as to whether NIFA is entitled to interest payments following bond redemption.”

“Since the Investment Agreements are ambiguous regarding NIFA’s entitlement to interest payments following redemption of the bonds, NIFA’s motion for judgment on the pleadings is denied with respect to GE’s claims for declaratory judgment on that issue.” The court also denied NIFA’s motion for judgment on the pleadings with respect to the ultra vires and breach of contract claims.
