Bond Case Briefs

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Finance

New MSRB Resource Highlights Infrastrucure Project in Every Congressional District

State and local governments rely on municipal bonds to finance infrastructure projects. Our new resource highlights one such project in every congressional district.

Find out how munis are making an impact in your community.

The Muni-Bond Mania.

Look who's benefiting from the limit on state-and-local tax deduction.

Democratic politicians in the states love to blame the GOP tax reform for blowing holes in their budgets even as they quietly benefit from the new limitation on state-and-local tax deductions. Lo, investors seeking to reduce their tax liability are gobbling up municipal bonds, driving down yields and reducing government borrowing costs.

Municipal bond funds are experiencing near-record inflows. More money poured into muni funds during the first eight weeks of this year than during the same period since at least 2006. No longer able to deduct most of their state-and-local taxes on their federal returns, investors are seeking alternative vehicles that offer protection from the tax man.

Surging demand for tax-exempt investments and low interest rates have let state and local governments borrow more cheaply. The 10-year AAA tax-exempt muni bond this week traded below 2%—about 60 basis points lower than the 10-year Treasury and 170 below a similarly rated corporate bond. Even low-quality muni debt like Illinois bonds boast yields as low as 3.6%.

Beyond the federal tax dispensation, most states exempt their own agency and local government debt. Hence the biggest beneficiaries of the muni-bond rally have been high-tax states, especially those with precarious finances. Eight of the 10 biggest bond issuers during the first quarter were in California, New York and Connecticut. New Jersey and the junk-rated city of Chicago were close behind.

Last week Chicago increased the size of a bond offering to take advantage of swelling demand and low interest rates. The spread on a 10-year Chicago bond relative to a top-rated muni has slid 125 basis points since 2017 despite the city's deteriorating finances and soaring pension payments. Investors last week also inhaled $440 million in bonds issued by Illinois, which is rated one notch above junk.

Democrats can't be blamed for trying to take advantage of the muni-bond mania. Illinois Gov. J.B. Pritzker has proposed selling $2 billion in bonds (which would be taxable) to inject into the state's

insolvent pension funds that are only 40% funded. The idea is the state can borrow at a rate of around 5% and then earn 7% on pension-fund investments. Sweet.

But the state has already borrowed more than $17 billion to prop up its pension funds, and the interest-rate arbitrage transfers risk from state taxpayers and workers to investors. Recall that investors in Puerto Rico, Detroit and Stockton, Calif., were eventually burned by similar schemes.

One question is whether investors are underpricing the risk of muni bonds due to their tax exemption and the low interest-rate environment. This is especially concerning since rating agencies Moody's and Fitch recalibrated their muni-bond ratings in 2010. According to a new accounting study by MIT researchers, the subsequent grade inflation "appears to have yielded significant reductions in interest costs paid by issuers" while bringing in more business and higher fees for the raters.

Misaligned incentives may also be distorting investment decisions. Businesses could often put investor cash to more productive use than municipal governments, which in many cases are borrowing for projects that private industry could do at lower cost. Most muni-bond buyers are merely looking for a higher after-tax return, but they should remember that there's no such thing as a risk-free investment.

The Wall Street Journal

By The Editorial Board

April 4, 2019 7:58 p.m. ET

Fitch Ratings Finalizes U.S. Public Power Rating Criteria.

Fitch Ratings-New York-03 April 2019: Fitch Ratings has published the final, revised version of its sector-specific criteria report titled "U.S. Public Power Rating Criteria". This follows Fitch's June 14, 2018 exposure draft outlining various proposed changes to the criteria for which Fitch sought market feedback. Fitch's previous criteria report from May 18, 2015 and the noted exposure draft have both been retired.

Fitch has also published a special report titled "Feedback Report: U.S. Public Power Rating Criteria" that reviews the market feedback received on the noted exposure draft and Fitch's responses. Fitch made no substantive changes to its exposure draft as a result of market feedback. However, Fitch did include select changes to key rating drivers and the scenario analysis tool in the final criteria report. Primary changes to the rating criteria incorporated in the exposure draft and retained in the final revision are described below.

PRIMARY CRITERIA CHANGES

–Introduction of three key rating factors: revenue defensibility, operating risk, and financial profile;
–Individual assessments for each key rating factor;
–Financial profile alignment with business profile in rating assessment;
–Forward looking consideration of the impact of existing or needed capital investments that may increase financial leverage;
–Introduction of FAST, an issuer specific scenario analysis tool measuring the effect of demand stress on revenue, operating expenses, cash flow and rates.

RATINGS IMPACT

Fitch does not expect the proposed criteria revisions to trigger widespread rating changes, nor will the implementation curtail or influence normal rating migration. Within the next week, Fitch plans to publish rating action commentary to designate various ratings that could potentially be affected by the changes in the criteria as Under Criteria Observation (UCO). However, not all of the ratings designated as UCO will necessarily experience rating changes.

Rating changes will most likely reflect the criteria's heightened emphasis on leverage through the cycle, with upgrades reflecting relatively low leverage, and downgrades resulting from the recognition of higher leverage and/or elevated operating risk. In addition, Fitch also expects that debt ratings of issuers may be designated as UCO, where additional new information required under the revised criteria is currently unavailable and further analysis is necessary to assess the effect of the criteria on the rating. Overall, Fitch estimates fewer than 10% of the ratings covered by the criteria will be affected over time, with a roughly equal mix of upgrades and downgrades.

Fitch will review all of the ratings designated as UCO as soon as practical, but designation must be resolved within six months.

For more information, the full reports titled "U.S. Public Power Rating Criteria", "Feedback Report: U.S. Public Power Rating Criteria", "FAST Public Power – Fitch Analytical Stress Test V 1.1.1 and "FAST Public Power – Fitch Analytical Stress Test, Description and Model Foundation" are available at www.fitchratings.com.

Contact:

Dennis Pidherny
Managing Director
Fitch Ratings, Inc.
+1-212-908-0738
33 Whitehall Street
New York, NY 10004

Kathy Masterson
Senior Director
+1-512-215-3730

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

Additional information is available on www.fitchratings.com

Muni Waste Bond Revives Memory of '90s Recycling Bust: Joe Mysak

- **Bagasse plant in Florida seeks to raise $190 million in debt**
- **Muni landscape is littered with similar deals that went bust**

This is one bagasse story.

I wrote that lead back in September of 1996, which shows that my sense of humor hasn't changed a

whit, as well as how rarely bagasse enters the municipal market lexicon. When it does, investors can sometimes get hurt.

Bagasse — a French word, accent on the second syllable — is what's left after you extract the juice from sugarcane. The Florida Development Finance Corp. is selling $190 million in unrated solid waste disposal revenue bonds to do just that.

The deal is emblematic of a new generation of plants being financed in the municipal market designed to turn all matter of waste into fuel or building materials or something else. Over the last two years issuers in California, Colorado, Florida, Indiana, Nevada, Oregon, South Carolina, Texas and Washington have sold unrated — often high-yield — debt for such projects.

The limited offering for Southeast Renewable Fuels aims to build a mill that will turn bagasse, "other vegetative waste products'' and "energy sorghum'' into pulp for paper, as well as lignin, a chemical used by cement, adhesive and road-building companies.

The Southeast Renewable Fuels facility will be built in Clewiston, Hendry County, on the south bank of Lake Okeechobee and right in the middle of sugarcane plantations. The mill will be ready in 26 months after the bond deal is closed, and is expected to employ 70 people.

Sticky End

The last time bagasse featured in a municipal bond issue seems to have been in 1993 and 1994, when Flo-Sun Inc., one of Florida's largest sugar companies, borrowed almost $300 million to build two power plants to burn bagasse and, after sugarcane grinding season, wood. This was to produce steam and electricity, to be sold to Florida Power & Light.

The plants never quite achieved efficient operation, went bust, and the bonds defaulted. Bondholders eventually recouped 77 cents on the dollar, according to Richard Lehmann, publisher of the Forbes/Lehmann Distressed Municipal Debt Report.

There are some reassuring statements throughout the latest limited offering memorandum. The Southeast project uses "conventional pulp manufacturing equipment and processes,'' similar to projects already running in Kenya and India.

There are agreements for biomass feedstock in place, and for the sale of all of the pulp and some of the lignin. All of which is great — and of course we like the idea of turning waste into something useful.

The biggest risk here — as it was in 1990s bagasse, and the latest co-generation and recycling deals — is operational. Can Southeast and all the various engineers and experts produce a successful commercial operation? Because taking one thing and turning it into something else isn't as easy as it may sound. The municipal market's landscape is littered with similar projects that ran out of money and time.

The risk factors section of the offering memorandum flags "start-up problems, the breakdown or failure of equipment or processes, the performance of the Plant below expected levels of output or efficiency,'' and so on. Management is key.

An executive in the salvage business told me a couple of decades ago why a string of bond-financed de-inkers failed. These were mills designed to take waste paper, soak the ink off, and produce new pulp. The technology was fine, this man told me; he was buying the equipment. The management just couldn't get it to work, or get back to market to raise the money needed to buy it more time.

Bloomberg Business

By Joe Mysak

April 5, 2019, 5:00 AM PDT

(Joe Mysak is a municipal market columnist who writes for Bloomberg. The observations he makes are his own and are not intended as investment advice.)

Prisons Built With Junk-Bonds Get Their Ratings Yanked by S&P.

- **Marshals Service, Bureau of Prisons haven't responded: S&P**
- **Regular contact with federal agencies is important, S&P said**

In 2015, a riot broke out at the detention center in Willacy County, Texas, as inmates protested flooding toilets, rodents and overcrowding in the facility overseen by Management & Training Corp. That prompted the Federal Bureau of Prisons to pull out its inmates and the prison closed, shutting off some of the revenue needed to repay its debts.

The closure shows the level of volatility that investors owning prison bonds can encounter. In fact, Wall Street analysts still aren't sure how to gauge the risk of a default on $13 million of outstanding debt tied to another Willacy County lockup for an entirely different reason.

Those bonds and debt issued for three other Texas jails had their already-junk credit ratings pulled by S&P Global Ratings, an unusual step that reflects the spotty financial disclosures in a corner of the $3.8 trillion market that once boomed as local governments sought to profit by holding federal inmates. That uncertainty has been amplified under President Donald Trump, whose policy shifts have left it unclear whether federal contracts will be renewed or jeopardized by deals cut in Congress.

S&P said in a statement that it withdrew the ratings after repeated, unsuccessful efforts to speak with the Bureau of Prisons and the U.S. Marshals Service, leaving its analysts doubtful that "meaningful dialogue will be forthcoming or be maintained on a regular basis." In December, the company said such regular contact with federal agencies has become increasingly important.

In addition to Willacy County's jail, S&P also withdrew the rating on debt sold for detention centers in Fannin County, Hudspeth County and Garza County.

"As an investor, you have to assume that no news is bad news for a credit," said Matt Fabian, a partner at Municipal Market Analytics. "S&P is totally on solid ground pulling those ratings."

Ripple Effect

Financial disclosures made to investors in the municipal-bond market are less closely regulated than those made by corporations that sell stocks and bonds, whose filings are monitored by the U.S. Securities and Exchange Commission. Some government's audited financial statements can take a year or more to be reported.

But the ripple effects cast by the federal government is unusual. S&P said information from agencies in Washington has become key amid debates like the one in February over the budget, when Democrats sought to slash the amount of money being provided to U.S. Immigration and Customs

Enforcement to detain immigrants swept up by Trump's crackdown on those who enter the country illegally. It also said it had "little insight" into issues like contract renewals.

Garza County Judge Lee Norman said he thinks part of the issue is that the detention center, which is run by MTC, hasn't been able to secure a long-term contract with the Bureau of Prisons. Its troubles began when then-President Barack Obama's administration moved to end the Bureau of Prisons' use of privately-run prisons. But even under the Trump administration, which reversed that order, Garza County's detention facility has had a tough time securing a 10-year contract with the agency.

"It's been hard to get back on track, honestly," Norman said. He added that he thinks it comes down to bureaucratic issues at the Bureau of Prisons rather than issues with the detention center.

More Arrests

Representatives at the Marshals Service and the Bureau of Prisons did not respond to requests for comment. Issa Arnita, a spokesman for MTC, didn't respond to requests for comment.

The outlook for jail financings has improved under Trump, Fabian said. Former Attorney General Jeff Sessions in April 2018 announced a "zero-tolerance policy" toward illegal entry into the U.S. and said law enforcement would prioritize prosecuting criminal immigration offenses.

That's helped translate into more arrests by ICE, which is good financial news for the state and local detention facilities that house detainees on behalf of ICE and receive payment for doing so. ICE's Enforcement and Removal Operations reported an 11 percent increase in arrests of people in the country illegally in fiscal 2018.

Lack of information over what was happening in Willacy County's corrections facility was an issue prior to the 2015 riots. The county sued MTC in 2016, saying the company failed to alert the county to issues at the prison. MTC "turned a blind eye to the enormous problems that plagued the prison from its inception," according to the complaint. After the Bureau of Prisons ended its contract, investors that owned bonds sold for that portion of the prison complex took losses on the debt as part of a distressed exchange, according to S&P.

The county, which is in a remote area of the Rio Grande Valley, struggled after the prison closed, given many people in the area worked for MTC. Ultimately, officials last year decided to reopen the privately-run corrections center, something that was met with protests, according to local news reports.

The withdrawn ratings could suggest something "systemic" with the risks surrounding jail projects, Fabian said. "Lack of disclosure is typically more telling than what's being disclosed," he said.

Bloomberg Politics

By Amanda Albright

April 4, 2019, 6:56 AM PDT

— With assistance by Sophia Sung

What Cities' Revenue-Raising Methods Say About Their Pension Funding.

New research shows places that rely more on property taxes and less on state aid tend to have better-funded retirement systems.

For a range of reasons, some local governments have accumulated massive unfunded pension liabilities over many years. Most often, these shortfalls are attributed to political climates, downturns in the local economy and aging populations.

New research reveals that cities' revenue structures — the mix of taxes, fees and intergovernmental aid they take in — also play a critical role, potentially putting some places at greater risk of mounting pension liabilities.

The University of Texas at Dallas study, published in the journal State and Local Government Review, provides one of the first academic analyses of what factors influence pension funding at the local government level. It finds that localities that rely heavily on property taxes tend to contribute more to their pension systems, while those that depend more on state aid for revenue often experience greater pension funding woes.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | APRIL 2, 2019 AT 4:00 AM

Introduction to a Conduit Bond.

The municipal bond market began as a general obligation market similar to the Treasury market. Since then, the market has grown to include revenue bonds backed by specific municipal revenue sources and private activity bonds (PAB) designed to finance private projects that benefit the public.

Conduit bonds are a type of PAB designed to capture the tax benefits of municipal bonds to advance private projects.

In this article, we will take a closer look at conduit bonds, implications for investors, and tips to keep in mind when considering them for your portfolio.

What Are Conduit Bonds?

Conduit bonds are municipal securities designed to raise capital for revenue-generating projects that benefit the public. For example, a for-profit real estate development firm may issue conduit bonds to finance the construction of student housing or low-income housing projects. The issuer collects the tax or revenue used to secure the bonds and distributes it to the bondholders, but the conduit borrower is ultimately responsible for the debt obligations.

Continue reading.

municipalbonds.com

Justin Kuepper

Apr 03, 2019

Fitch Ratings: Precedents Favor Pennsylvania Turnpike Commission in $6 Billion Truckers' Lawsuit

Fitch Ratings-New York-02 April 2019: Precedents of similar lawsuits indicate that the $6 billion lawsuit filed by commercial truckers is unlikely to have a material adverse effect on the Pennsylvania Turnpike, according to Fitch Ratings. The practice of transferring a portion of tolls for the benefit of transit and other transportation-related purposes is both widespread and long-standing. To the extent a tolling entity must show transferred tolls are benefitting toll payers, courts have tended to take an expansive view regarding the knock-on benefits of transit recipients on toll road congestion. Although these precedents point to a likely favorable outcome for the turnpike, in the event the lawsuit prevailed including through any appellate process, Fitch would consider the terms of the settlement and management responses in assessing potential rating action. Fitch will continue monitoring the lawsuit and will consider any material developments in its rating.

The lawsuit, filed in March 2018 by the Owner Operator Independent Drivers Association (OOIDA), claims that the turnpike is violating the Commerce Clause by raising tolls to fund non-highway transportation projects in the state. Under Act 44, the turnpike must pay PennDOT $450 million a year to support non-highway programs, through fiscal 2022. Act 89 amended Act 44, reducing the payments to $50 million starting in fiscal 2023, with the balance to be made up by the commonwealth from its motor vehicle sales tax revenues. In order to make these payments, the turnpike issued subordinate debt. The higher debt service requirements necessitated toll rate increases in excess of inflation every year since 2009, most recently by 6% in January 2019. The OOIDA requested (1) a preliminary injunction requiring the segregation of all toll receipts in excess of current operating and maintenance costs and funding for the senior revenue bonds, (2) a permanent injunction preventing the issuance of any additional bonds for Act 44 payments outside the turnpike system and (3) a permanent injunction prohibiting the use of toll revenues to make payments on outstanding subordinate bonds issued for Act 44 payments. The lawsuit also requested monetary damages including a refund of a portion of certain tolls. The preliminary injunction was withdrawn, allowing PTC to make its payments on the outstanding subordinate bonds. Since the lawsuit was filed, the turnpike has not issued any additional subordinate debt and thus has not made three Act 44 payments. The Act 44 Lease and Funding Agreement was amended to allow for the deferral of payments through June 2019. Fitch expects that the Agreement would be further amended if the lawsuit is still unresolved.

Similar lawsuits have been filed against state entities and proved unsuccessful. The Ohio Turnpike and Infrastructure Commission was sued in 2015 for raising tolls to divert funds to non-turnpike projects. A federal district court dismissed all except one claim. The court ruled that despite not being spent on the maintenance of the turnpike, the funding spent on non-turnpike projects benefited turnpike users. The outstanding claim that the increased tolls were an unlawful tax or user fee was remanded to state court where it was dismissed in 2017. The judge ruled that the turnpike commission has the legal ability to charge the tolls even if they are considered taxes. The American Trucking Associations (ATA) have filed lawsuits in New York and Rhode Island claiming that tolls on commercial trucks violate the commerce clause of the U.S. Constitution. The lawsuit filed against the New York State Thruway in 2013 was dismissed by a federal appeals court in 2018. The court ruled that Title 23 of the Intermodal Surface Transportation Efficiency Act of 1991 defined the

upstate canal system as an eligible recipient of excess funds from the Thruway. In March 2019, the ATA's lawsuit against the Rhode Island Department of Transportation for tolling tractor-trailers was dismissed by a federal district court judge on the grounds that the matter was more appropriate for state courts because the tolls are a state tax. The state anticipates the case will be refiled in state court.

If the ruling on the Pennsylvania Turnpike lawsuit prohibits future issuance of debt for transfer payments, the turnpike would be able to continue servicing its outstanding debt on the senior and subordinate liens. A ruling could also require the turnpike to pay a lump sum refunding up to the $6.1 billion paid out under Act 44. In that unlikely scenario, Fitch anticipates the turnpike would look to the commonwealth's general government (AA-/Stable) and legislature for assistance. The legislature enacted Acts 44 and 89, which led to the subordinate lien debt issuances and associated toll increases that spurred the litigation. Fitch will continue monitoring developments in the case and assessing potential rating implications. Fitch rates the Pennsylvania Turnpike senior and subordinate bonds 'A+' and 'A-', respectively, with Stable Rating Outlooks.

Contact:

Anne Tricerri
Associate Director
+1-646-582-4676
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Scott Monroe
Director
+1-415-732-5618

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

Additional information is available on www.fitchratings.com

EPA Administrator Wheeler Announces New WIFIA Funding for Water Infrastructure Projects.

Funding could leverage $6 billion in public and private investment for construction-ready projects to protect drinking water from lead and emerging contaminants, upgrade aging infrastructure, promote water recycling and reuse.

WASHINGTON — Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler announced the availability of funding to provide an estimated $6 billion in Water Infrastructure Finance and Innovation Act (WIFIA) loans in 2019.

"Through WIFIA, we are addressing several of President Trump's top priorities simultaneously: modernizing our nation's aging infrastructure, improving public health protections, and creating jobs," said EPA Administrator Andrew Wheeler. "This new round of WIFIA funding provides up to $6 billion in credit assistance which, combined with other sources, could support $12 billion in water infrastructure projects and create more than 180,000 jobs. For this round, we are prioritizing

construction-ready projects in three areas: water reuse and recycling, reducing exposure to lead and addressing emerging contaminants, and updating aging infrastructure."

The WIFIA program plays an important role in President Donald Trump's efforts to rebuild America's aging water infrastructure while improving local water quality, creating jobs and better protecting public health.

WIFIA loans are available to public and private borrowers for a wide range of drinking water, wastewater, drought mitigation, and alternative water supply projects. This year's Notice of Funding Availability (NOFA) highlights the agency's priority to finance projects that are ready for construction in three key areas: reducing exposure to lead and addressing emerging contaminants in drinking water systems; updating aging infrastructure; and implementing water reuse and recycling.

The WIFIA program received $68 million in funding in the Consolidated Appropriations Act of 2019, which was signed into law by President Trump on February 15, 2019. This is a $5 million increase in the program's funding from 2018. Leveraging private capital and other funding sources, these projects could support $12 billion in water infrastructure investment and create more than 180,000 jobs. EPA will accept letters of interest (LOI) from prospective borrowers for 90 days after publication in the Federal Register.

To date EPA has issued eight loans totaling over $2 billion in WIFIA credit assistance to help finance over $4 billion for water infrastructure projects and create over 6,000 jobs. EPA has invited an additional 42 projects in 17 states and D.C. to apply for a WIFIA loan. These 38 borrowers will receive WIFIA loans totaling approximately $5.5 billion to help finance nearly $11 billion in water infrastructure investments and create 172,000 jobs.

Background

Established by the Water Infrastructure Finance and Innovation Act of 2014, the WIFIA program is a federal loan and guarantee program at EPA that aims to accelerate investment in the nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects.

WIFIA credit assistance can be used for a wide range of projects, including:

- drinking water treatment and distribution projects;
- wastewater conveyance and treatment projects;
- enhanced energy efficiency projects at drinking water and wastewater facilities;
- desalination, aquifer recharge, alternative water supply, and water recycling projects; and
- drought prevention, reduction, or mitigation projects.

EPA will evaluate proposed projects described in the LOIs using WIFIA's statutory and regulatory criteria as described in the NOFA. Through this competitive process, EPA will select projects that it intends to fund and invite them to continue the application process.

For more information about WIFIA and this funding announcement, visit: https://www.epa.gov/wifia

03/29/2019

Why Infrastructure Looks Sexy to These Investors.

Investors pouring record sums into infrastructure funds are betting the sting of mishaps like Chicago's parking meter deal has faded enough to make P3s, as they're called, fashionable again. And local investment firms are grabbing their share of the inflows.

Investors are throwing record sums of money at investment funds designed to finance the refurbishing of America's crumbling roads, creaky bridges and outdated airports—and Chicago firms such as Loop Capital and GCM Grosvenor are grabbing their share.

Last year, $90 billion flowed into such infrastructure funds worldwide, a near doubling over 2014, according to research firm Preqin, a London-based tracker of the alternative-assets market. Much of that money went to U.S. firms, but it may not stay in the country.

It could help cash-strapped local governments like Chicago and Illinois shore up public properties, to avoid mishaps like the Lake Shore Drive girder crack in February. But Chicago's flawed 2008 sale of parking meters to private interests chilled such deals nationwide, and financial firms face a hard sell in drawing U.S. cities and states back into public-private partnerships—P3s, in industry parlance.

Continue reading.

Crain's Chicago Business

by LYNNE MAREK

March 29, 2019 01:50 PM

Toll Roads Could Fix America's State-Pension Crisis. Here's How.

There is an infrastructure crisis in America. The U.S. earned a D+ in infrastructure for 2017 from the American Society of Civil Engineers. State pensions aren't in great shape either. They are underfunded by an astounding $6 trillion. And as Barron's Randall Forsyth points out, U.S. states face a dilemma: they need to fund both infrastructure and pensions, but have trouble doing either.

Maybe America's neighbors to the north can teach it something about funding infrastructure projects. Friday, Canadian engineering & construction firm SNC-Lavalin (SNC.Canada) sold 10% of a toll road it owned to the Ontario Municipal Employee Retirement System for $2.4 billion.

SNC has fallen on hard times. It is embroiled in a bribery and kickback scandal that stretches back to 2015 and shares plunged 28% on Jan. 28 due to a problem in one of its mining projects. SNC stock has lost about 2% a year on average since news of the bribery scandal broke, about 7 percentage points worse than the Canadian TSX Composite Index.

Continue reading.

Barron's

By Al Root

April 6, 2019 7:00 a.m. ET

FERC Approves Termination of Market Power Mitigation Measures.

Market power mitigation measures adopted in 2005 to address horizontal market power concerns arising from the merger of Louisville Gas and Electric Company and Kentucky Utilities and the subsequent withdrawal of LG&E/KU from the Midcontinent Independent System Operator, Inc. have recently been terminated by the Federal Energy Regulatory Commission, over the objection of Commissioner Cheryl LaFleur. *Louisville Gas and Electric Company and Kentucky Utilities Company*, 166 FERC ¶ 61,206 (2019).

Need for Market Power Mitigation

LG&E and KU are electric public utilities in Kentucky which proposed to merge in 1998. One of the issues FERC considers when it reviews utility mergers under Section 203 of the Federal Power Act is the effect of the merger on competition. In order to allay horizontal market power concerns raised by their proposed merger, LG&E/KU committed to join the Midcontinent Independent System Operator, Inc. (MISO), which was then being organized as an independent regional transmission organization.

Members of MISO may obtain transmission service throughout the multi-state MISO footprint for a single, non-pancaked transmission charge. Therefore, LG&E/KU's participation in MISO enabled load-serving entities connected to its transmission system to obtain electricity from sources outside of the LG&E/KU footprint without paying multiple transmission charges. In its order approving the merger, the FERC found that the availability of transmission service to customers connected to the LG&E/KU system from anywhere within the MISO footprint at a single, non-pancaked rate helped to mitigate any horizontal market power concerns. An increase in potential electricity suppliers within the LG&E/KU destination market meant more competitive rates for consumers.

Adoption of De-pancaked Mitigation Measures

In 2005, after the merger had closed, LG&E/KU sought FERC authorization to withdraw from MISO, and proposed instead to offer transmission service over their combined transmission systems through a stand-alone Open Access Transmission Tariff (OATT). In order to provide transmission customers the benefits of non-pancaked transmission rates comparable to those enjoyed while LG&E/KU belonged to MISO, it also adopted a De-pancaking Mitigation mechanism involving transmission rates for new service into and through its system from MISO.

Under that mechanism, certain load-serving municipal electric utilities within the LG&E/KU footprint that purchase power from generation sources in MISO receive a credit for transmission service under the LG&E/KU OATT equal to charges for transmission and ancillary services they paid under the MISO Tariff. In addition, LG&E/KU waived transmission and ancillary service charges under the LG&E/KU OATT for power delivered by such customers from generation sources connected to the LG&E/KU system into MISO. As a result, load-serving utilities within the LG&E/KU footprint have continued to obtain transmission service through the KG&E/KU and the MISO systems for a single, non-pancaked transmission charge.

Termination of De-pancaked Mitigation Mechanism

In August 2018, LG&E/KU filed an application with the FERC to terminate the De-pancaking Mitigation provisions. In considering this request, the FERC rejected arguments that any market power mitigation measures either (a) must remain in effect in perpetuity, or (b) have a finite term. Instead, the FERC explained that the De-Pancaking Mitigation measures could be terminated "if

LG&E/KU has demonstrated that loads located in the LG&E/KU market will continue to have access to a sufficient number of competitive suppliers after the mitigation is removed."

In support of its request, LG&E/KU argued that market conditions in the Midwest have changed substantially since the adoption of the De-pancaking Mitigation mechanism. LG&E/KU submitted an analysis showing that the wholesale requirements customers within its boundaries have many more sources of power available today than in 1998; that many of those customers had successfully solicited power supply arrangements from suppliers other than LG&E/KU; and that a delivered-price test revealed more than 100 entities with capacity that could be delivered into the LG&E/KU footprint at competitive rates. After reviewing the record, the FERC found that:

…the Merger continues to be consistent with the public interest without the De-pancaking Mitigation because the record shows that loads located in the LG&E/KU market will continue to have access to a sufficient number of competitive suppliers after the mitigation is removed.

Transition Period

At the time of the FERC's acceptance of the De-pancaking Mitigation, all wholesale requirements customers connected to the LG&E/KU system had long-term contracts to purchase the electricity needed to meet their bulk power supply requirements from LG&E/KU. Some of those customers have now terminated the purchase of power from LG&E/KU and are purchasing power from third-party suppliers, while other customers are in the process of doing so.

Nevertheless, the FERC was concerned that these customers may have made arrangements to procure power from generation sources located outside of the LG&E/KU footprint in reliance on the De-pancaking Mitigation measures. Therefore, as a condition of their termination, the FERC required that the De-pancaking Mitigation measures remain in effect for all wholesale requirements customers dependent upon the MISO transmission system during a transition period equal to the initial term of each power purchase agreement entered into by each such customer.

Commission La Fleur's Dissent

Although the FERC granted the request to terminate the De-pancaking Mitigation provisions after a transition period, Commissioner LaFleur was concerned that the delivered price test provided by LG&E/KU showed that customers would have limited access to alternative generation suppliers during periods of the year when the market is highly or moderately concentrated. She also believes that because the solicitations relied on by LG&E/KU were conducted while the De-pancaking Mitigation mechanism was in place, they were insufficient evidence of adequate competitive options that might be available without mitigation. She therefore would have preferred that the FERC set the matter for an evidentiary hearing in order to confirm that the wholesale requirements customers connected to the LG&E/KU system would have adequate access to competitive third party generation suppliers after the mitigation was terminated. With due regard for rate pancaking, she concluded by saying that:

…while people frequently talk about how the sausage gets made, this case shows how the pancakes get made. While a single pancake may be fine, I do not believe that LG&E/KU should be able to force feed a short stack of pancakes to [the wholesale requirements customers]. Without better ingredients than are presented in this record, the conclusion that these customers have adequate menu alternatives is half-baked at best. While I expect the majority would rather than I hop to their decision, I am not waffling, and respectfully dissent.

Conclusions

The order reflects the FERC's pragmatic attitude in determining whether horizontal market power mitigation measures are needed to protect against potential adverse effects of utility mergers on competition. Although termination of the De-pancaking Mitigation mechanism might affect the ability of some potential suppliers to serve loads within the LG&E/KU market economically, the FERC was satisfied that loads located in the LG&E/KU market would continue to have access to a sufficient number of competitive suppliers after the mitigation is removed. Although Commissioner LaFleur would have preferred that there be additional evidence to support the FERC's conclusion, the transition arrangements provide a reasonable opportunity for affected wholesale customers of LG&E/KU to test the FERC's conclusions while seeking new supplies of electricity to take effect when their existing power purchase agreements with LG&E/KU expire.

by James K. Mitchell

April 4, 2019

Davis Wright Tremaine LLP

FERC Permits Transmission-Only Public Power Entity to Use Same Formula Rate for Future Transmission Projects in Different PJM Zones Based on Cash-Flow Method.

On March 26, 2019, FERC accepted, subject to condition, AMP Transmission, LLC's ("AMP") proposed formula rate template and implementation protocols (collectively "Formula Rate") to recover a revenue requirement based on a cash-flow method for AMP's integrated transmission facilities located in the PJM Interconnection, L.L.C. ("PJM") region. As a minor condition of acceptance, FERC directed AMP to revise on compliance its Formula Rate to enable AMP to use it in PJM transmission zones that require different rate years, as opposed to only in zones whose rate year is based on the calendar year.

AMP is a non-profit entity that was formed solely to provide transmission-related services in PJM through its ownership of some of the transmission facilities of American Municipal Power, Inc.'s members that require compliance with certain NERC Reliability Standards. On November 1, 2018, AMP submitted to FERC a proposed cost-based, forward-looking formula rate that utilizes a cash-flow method to develop its revenue requirement, which does not include an allowance for depreciation expense or for return on rate base. Rather, the cash-flow method incorporates a provision for the recovery of debt service payments and a margin requirement, which is a percentage of AMP's debt service obligation. AMP stated that, as a start-up entity with no equity, it must debt-finance the facilities it will purchase or build, and because the term of any available loans is expected to be shorter than the service life of transmission facilities, a non-cash flow approach does not ensure that AMP will receive the revenue it needs each month to service its debt. AMP also requested approval of the Formula Rate to be used in any PJM transmission zone for any facilities that AMP Transmission may own or lease in the future.

In its order, FERC accepted AMP's proposed Formula Rate, subject to condition. FERC found that AMP had demonstrated that the cash-flow based formula is more appropriate for its circumstances, allowing it to closely match expected revenue with the time of debt service requirements, than the non-levelized approach, which may not ensure it receives the revenue it needs each month to service its debt. FERC also found just and reasonable: (1) AMP's margin requirement; and (2) AMP's proposal that its Formula Rate apply to transmission facilities that are acquired in yet-to-be

determined PJM transmission zones with implementation at some point the future. However, FERC found that AMP's Formula Rate did not allow for use in a PJM transmission zone using a non-calendar based rate year, which was contrary to AMP's stated intent to provide flexibility for use of Formula Rate in zones with different rate years. FERC thus directed AMP to revise on compliance its Formula Rate to enable AMP to use it in PJM transmission zones that require different rate years, as opposed to only in zones whose rate year is based on the calendar year.

A copy of FERC's order is available here.

by Meghan Mandel and Miles Kiger

April 2, 2019

Troutman Sanders LLP

Court Ruling in Puerto Rico Bankruptcy Fans Revenue Bond Fears.

CHICAGO, March 28 (Reuters) – A decision this week by a U.S. Appeals Court in a lawsuit related to Puerto Rico's bankruptcy raises concerns over the payment of municipal bonds backed by specific revenues during future Chapter 9 cases, Fitch Ratings said on Thursday.

The Boston-based First Circuit court on Tuesday determined that municipalities are not required to make payments on debt secured by special revenues while bankruptcy proceedings are ongoing, although municipalities can voluntarily opt to do so.

"The ruling, by stating such payments are optional, creates uncertainty about full and timely payment of special revenue obligations during bankruptcy of the related municipality," Fitch said.

The credit rating agency added that if the ruling stands, it could negatively affect ratings on certain bonds secured by utility, transportation and tax revenue.

The appeals court affirmed a ruling by U.S. District Court Judge Laura Taylor Swain, who is overseeing the island's bankruptcy, which was filed in 2017 in an effort to restructure about $120 billion of the U.S. commonwealth's debt and pension obligations.

Swain had dismissed a lawsuit by insurance companies guaranteeing payments on defaulted Puerto Rico Highways and Transportation Authority bonds. The bond insurers claimed that payments on the debt from pledged toll and other revenue should not be halted during the bankruptcy.

Assured Guaranty Corporation, one of the plaintiffs in the lawsuit, said on Thursday it is assessing options, including an appeal to the U.S. Supreme Court.

"We disagree with the court's ruling, which is at odds with prior court decisions and the legislative history relating to special revenue bonds and has potential negative implications for revenue bonds throughout the municipal bond market," Assured said in a statement.

Chapter 9 municipal bankruptcy expert James Spiotto, managing director of Chapman Strategic Advisors, said the appeals court decision came as a surprise to the municipal bond market, which had assumed Swain's ruling would be reversed.

"This could have a very adverse effect on the use of special revenues all over," he said.

Revenue bonds accounted for an average of 64 percent of annual issuance in the $3.8 trillion municipal market since 1990, according to Refinitiv data. Not all revenue bonds qualify as being backed by special revenues under the bankruptcy code, which specifies special excise taxes or revenue derived from governmental projects or systems providing transportation, utilities or other services.

Reporting by Karen Pierog in Chicago Editing by Matthew Lewis

MARCH 28, 2019

Ruling on Puerto Rico Revenue Bonds May be 'Game Changer' on Mainland.

Credit analysts and ratings agencies said this week's federal court decision in Puerto Rico's bankruptcy may have implications for special revenue bonds across the nation.

The ruling called into question a long-standing assumption that special revenue bonds would continue to be paid in Chapter 9 municipal bankruptcies.

"If this decision were to hold, it would be a game changer in the municipal bond world," Evercore Director of Municipal Research Howard Cure said Thursday. "Holders of these special revenue bonds that thought they had bankruptcy protection from a government entity would ultimately be lumped into the government's credit profile."

On Tuesday the 1st Circuit Court of Appeals ruled that the relevant Chapter 9 sections made payment of these bonds in bankruptcy optional and not mandatory. The court ruled in a case brought by four bond insurers concerning Puerto Rico Highways and Transportation Authority bonds. The appeals court panel was affirming an earlier decision by Puerto Rico bankruptcy Judge Laura Taylor Swain.

Fitch Ratings said it was "evaluating the potential rating implications" of the ruling.

"Credit ratings that could be negatively affected by the decision, if it stands, include bonds secured by utility, transportation and tax revenues that are currently rated above the municipality's Issuer Default Rating (IDR)," Fitch said. "Although technically the decision only affects districts within the 1st Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island), Fitch believes that this decision will be influential in municipal bankruptcy cases nationwide given the overall lack of municipal bankruptcy case law."

The court's ruling was "contrary to the long-established belief in the municipal market that payment on the special revenue debt, such as that issued by utility systems, was required throughout the automatic stay period," Fitch said.

On Thursday Assured Guaranty Corp. told The Bond Buyer that its professionals were "reviewing all of our options," including seeking Supreme Court review of the appeals court ruling.

Fitch said, "The insurers have several avenues of appeal, and Fitch will monitor the court proceedings as they occur."

Kroll Bond Rating Agency said Wednesday it "is analyzing the potential implications to the broader market of the decision rendered on March 26 by the U.S. Court of Appeals for the First Circuit."

Kroll said special revenue opinions informed its ratings of Los Angeles School District general obligation bonds, San Diego Unified School District general obligation bonds, and Board of Education of the City of Chicago general obligation bonds.

Cure said if the ruling became the prevailing legal interpretation of special revenue bonds, investors would have to treat the credit of special revenue bonds similarly to the way they treat related government entities. “A case in point would be the City of Chicago and the impact on the water and sewer system bonds, where the city does have some control of rates, or, a more extreme case, Chicago’s O’Hare and Midway airports where the city has little if any control over rates charged to airlines and concessionaires.”

Moody’s Investors Service had a different response to the court’s ruling: “The recent 1st Circuit ruling in the HTA case highlights the ongoing uncertain treatment of special revenue bonds in Chapter 9,” said Moody’s Vice President Genevieve Nolan.

“Case law offers few precedents, and only a handful of examples to support the assertion that a special revenue designation protects revenue bonds in bankruptcy,” she continued. “For these reasons Moody’s continues to link its special tax and municipal utility ratings to the general credit quality of the issuer.”

BY SOURCEMEDIA | MUNICIPAL | 03/28/19 04:47 PM EDT

By Robert Slavin

NFMA Responds to First Circuit Puerto Rico Opinion on Special Revenues.

The NFMA is disappointed that the U.S. Appeals Court affirmed U.S. District Court Judge Swain’s decision allowing for Puerto Rico’s Highway and Transportation Authority to withhold bond payments backed from pledged tolls and other revenues during bankruptcy. As we stated in the amicus brief that we filed on May 16, 2018 (click here for Amicus Brief), revenue bonds are a critical source of financing for infrastructure projects and it has been an underlying premise and expectation of the municipal market that timely payment of debt service on special revenue bonds would be honored in all circumstances, including Chapter 9 bankruptcy. Judge Swain’s Assured Guaranty decision, and the recent affirmation by the Appeals Court, is at odds with prior court decisions and legislative history and is likely to result in negative market implications for revenue bonds throughout the municipal market.

Fitch Ratings: Appeals Court Ruling on Special Revenues Could Affect Municipal Debt

Fitch Ratings-New York-28 March 2019: Fitch Ratings is evaluating the potential rating implications of Tuesday’s ruling by the United States Court of Appeals for the First Circuit regarding the bondholder protections provided by special revenue status under the bankruptcy code. The ruling, in a case brought by Assured Guaranty Corp, and three other bond insurers regarding the Puerto Rico Highways and Transportation Authority’s (PRHTA) special revenue bonds, affirms a 2018 district court decision regarding special revenues as defined in Chapter 9 of the U.S. Bankruptcy Code. The circuit court ruling is in response to a creditor appeal of the district court’s dismissal of claims

regarding payment of the PRHTA bonds. The insurers have several avenues of appeal, and Fitch will monitor the court proceedings as they occur.

In the ruling, the circuit court agrees with the district court's opinion that section 922(d) of Chapter 9 grants permission to, but does not require, a municipality to continue paying special revenue obligations during a bankruptcy proceeding. This is contrary to the long-established belief in the municipal market that payment on special revenue debt, such as that issued by utility systems, was required throughout the automatic stay period. The ruling, by stating such payments are optional, creates uncertainty about full and timely payment of special revenue obligations during bankruptcy of the related municipality.

The circuit court opines that since the plain language of the code is unambiguous, there is no need to rely on the legislative history of Chapter 9 to interpret them. However, the legislative history appears to clearly indicate the intent to limit the reach of the automatic stay for municipal entities and to make it inapplicable to pledged special revenues.

Credit ratings that could be negatively affected by the decision, if it stands, include bonds secured by utility, transportation and tax revenues that are currently rated above the municipality's Issuer Default Rating (IDR). Although technically the decision only affects districts within the first Circuit (Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island), Fitch believes that this decision will be influential in municipal bankruptcy cases nationwide given the overall lack of municipal bankruptcy case law.

Contact:

Amy Laskey
Managing Director, U.S. Public Finance
+1-212-908-0568
Fitch Ratings, Inc.
300 West 57th Street, New York

Laura Porter
Managing Director
+1-212-908-0575

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

Additional information is available on www.fitchratings.com

S&P: The Drawbacks And Benefits Of U.S. Local Government Consolidations

Municipal consolidations generally materialize to reduce expenditures and save taxpayers' money through operating efficiencies. However, despite some large-scale and notable consolidations, municipalities and school districts rarely follow through on merging.

Continue reading.

Mar. 26, 2019

PPP Innovation Project Award Winner: Paine Field, Snohomish County Airport

The National Council for Public-Private Partnerships' (NCPPP) is proud to name Paine Field, Snohomish County Airport the recipient of the 2019 Innovation Project Award. Paine Field in Snohomish County, Washington is the first privately funded, built and operated passenger terminal in the U.S. as a result of a uniquely structured public-private partnership (P3).

Enormous economic growth in the Seattle region… read more →

Investing in Water for Impact.

At Shenandoah Growers' indoor farm in Rockingham, Va., rainwater is collected on the roof and channeled into a retention tank, where it is mechanically filtered before being pumped into a proprietary system that creates a natural nitrogen cycle indoors.

Then the U.S. Department of Agriculture certified organic water is intermittently supplied to the roots of herbs, micro-lettuces, and other leafy greens growing in soil-filled containers, with leftover water circulating back to the tank in a closed-loop system. Meanwhile, the plants are bathing in energy-efficient LED lights.

"It's a soil-based approach to growing organic produce that uses far less water and avoids the typical agricultural runoff that pollutes land and groundwater with fertilizers and pesticides," says Timothy Heyden, Shenandoah's CEO.

XPV Water Partners, an investing firm focused on small, growing companies tackling big water challenges, invested in Shenandoah in 2016, leading the 30-year-old company's second round of funding, during which it raised $35 million to expand its U.S. indoor growing capacity.

Toronto-based XPV, which has raised two funds totaling $400 million since launching in 2006, provides one of the few pure vehicles for impact investors to address water scarcity and quality challenges resulting from the big macro trends it follows: urbanization, population growth, and climate change.

XPV was drawn to Shenandoah for its innovative approach to addressing the biggest issues at the food-water nexus: water scarcity and water quality.

"It takes a lot of water to produce food," says David Henderson, who founded XPV in 2006, catering to big institutional investors including large family offices. "And agricultural runoff is probably the single largest point-source pollution in the world."

Shenandoah Growers, which has grown more than 200% in the past five years to more than $100 million in sales, presents a clear way to address the central water challenges.

But investing in water for impact—to create a social or environmental benefit while earning a financial return—isn't always simple. Because water touches so many systems—municipal, industrial, and agricultural—it's often difficult to tease out as a separate investible category. And because governments and regulators are often involved, things can move slowly.

Water is also very local. "The challenges you face in California are going to be different than the

challenges you face in Beijing," Henderson says. "But, of course, wherever there's complexity, there's also opportunity."

Greentech Capital Advisors, an investment-banking and asset-management firm focused on sustainability, is also finding opportunities in the trends that XPV identifies, such as the widening gap between supply and demand driven by population growth. Filling that demand will boost the price of water, and require that aging infrastructure be replaced.

"The extremes of water, like drought and flooding, and the implications of those extremes have led water from being seen as a commodity and, particularly in the U.S., free and available to anyone, all the time, to water being properly priced and seen as something that's a valuable resource," says Duncan Williams, a partner at Greentech.

Any boom in water investing for social and environmental impact, however, is unlikely to happen fast.

Encourage Capital, a U.S. social-impact private-equity firm, is realizing the scope of the difficulties as it works with partners to find investments to solve some of the seemingly intractable problems in the Colorado River Basin, a region it has extensively studied in recent years with support from the Walton Family Foundation.

The firm is pursuing opportunities in agriculture and ranching—which accounts for 70% of the basin's water use—as well as in municipal water and infrastructure. "Urban use is growing, and growing much more rapidly" in the region, says Ricardo Bayon, an Encourage Capital partner.

The greatest promise lies in agriculture, where sometime this year the firm expects to have a pilot investment or portfolio of investments to take to high-net-worth individuals, family offices, and other investors.

The plan would involve buying land and/or working with landowners to substitute high-water-use, low-value crops with low-water-use, high-value crops, Bayon says. "You make money on the water, and you make money on the change in the crop."

The lead time on the municipal projects it's pursuing in cities like Los Angeles and San Francisco to address storm-water management and other water problems will take far longer because "we're dealing with municipal agencies, and they do not move at the speed of light," Bayon says.

Encourage Capital has partnered with the World Resources Institute to work on these challenges over the long term, and has identified potential areas where private capital could overlap with municipal finance.

One goal is to integrate water systems like drinking water, storm water, and sewage water that are typically handled by separate agencies.

"It's clear the future of the way we manage water for a city has to be a lot more integrated," he says.

Encourage Capital and the Liquid Assets Project, a consortium it's part of, conclude that through their efforts to put together deals, philanthropic capital will be needed to "prime the pump and guide" water impact investments into the future, Bayon says.

"It's not that private capital won't get there on its own, but it's not necessarily as cognizant of the social and environmental implications," he says.

The firm's difficulties in finding investments that can ensure both financial returns and impact should give some impact investors pause.

As XPV's Henderson says, "Water is a great area to invest in; there's lots of growth, but you've got to be cautious in how you approach it."

Barron's

By Abby Schultz

March 27, 2019 7:30 a.m. ET

Public Private Partnerships in the USA: Debevoise & Plimpton

General PPP framework

Overview

How has the concept of public-private partnership (PPP) developed in your jurisdiction? What types of transactions are permitted and commonly used in your jurisdiction?

There is no uniform statutory definition of PPP in the United States. The scope of transactions that each state may use to procure from, or partner with, the private sector for the delivery or operation of infrastructure varies from state to state. In some cases, including, perhaps most notably, the state of New York, with respect to transportation projects, some infrastructure-related procurement laws have not permitted the typical forms of contracts used in PPPs, requiring, for example, the separation of the procurement of the design of a project from the procurement of the constructions of the same.

Some authors trace back the development of the modern form of PPP to the power purchase agreements developed in the United States during the 1980s, which provided for a two-component compensation system: a capacity availability payment and an actual usage payment.

The market for PPP transportation projects began to develop in the 1990s with the SR-91, Dulles Greenway and Camino Colombia projects. However, when these projects ran into financial difficulty, the market for this kind of PPP project froze for several years. It was only in the mid- to late 2000s that the transportation PPP market in the United States began gaining new momentum. However, many PPP projects at the municipal level had existed for long before that, mainly in the water and waste water sectors. Correctional services companies have also built prisons and offered their services to all levels of government for several years.

Covered categories

What categories of public infrastructure are subject to PPP transactions in your jurisdiction?

The categories of public infrastructure that can be procured through the PPP model also vary from state to state. The most visible projects developed using this model are transportation projects. However, it is becoming more common to find social infrastructure projects being developed in the form of PPPs, particularly courthouses, prisons and schools.

Legislative framework

Is there a legislative framework for PPPs in your jurisdiction, or are PPPs undertaken pursuant to general government powers as one-off transactions?

Some states have PPP-specific enabling legislation; others rely on legislation relating to their procurement authority and common law. In some cases, the PPP enabling legislation is limited to specific categories of projects, such as transportation. In others, it allows the performance of all types of infrastructure projects.

Currently, most states and Puerto Rico have enacted PPP-specific legislation that permits PPP transportation or social projects. In some cases, the PPP-enabling legislation authorises specific projects on an ad-hoc basis. Some states have enacted pilot programmes authorising the procurement of a limited number of projects using the PPP model.

Relevant authority

Is there a centralised PPP authority or may each agency carry out its own programme?

This mostly depends on the approach followed by each state. In those cases where, for example, PPP enabling legislation is limited to specific types of projects, such as transportation, it is commonly the state's department of transportation that is charged with the execution and performance of the applicable PPP project. In other states, a centralised PPP authority (which may be an authority created expressly to fulfil such a role, an office within a department of the state government or an existing instrumentality of the state) is in charge of coordinating the PPP policy for the state. In some cases, such an authority is also directly in charge of executing and performing the PPP directly with the private sector, and in others it is a sector agency (eg, the department of transportation) that executes the PPP under the supervision of the centralised PPP authority. States that have created centralised PPP authorities include California, Colorado, Georgia, Michigan, Oregon, Virginia and Washington. All of these authorities exist within the department of transportation or treasury. Among these states, the PPP authorities of California and Michigan have a broad sector mandate, while the other state authorities are focused primarily, if not solely, on transportation. In other states, the PPP programme has been entrusted to more than one authority. For example, in the case of Indiana, the power to execute transportation PPP agreements has been granted to two separate authorities: the Indiana Finance Authority, the state's authority in charge of the centralised debt programme, with respect to toll road projects only; and the Department of Transportation, for a broader scope of ground transportation projects.

Procurement

Are PPPs procured only at the national level or may state, municipal or other subdivision government bodies enter into PPPs?

Owing to the distribution of powers in the United States, most PPP projects are procured at the state or local level. Some localities and other municipalities, such as city governments or transportation authorities, have traditionally entered into PPPs based on the powers assigned to them under home rule laws or the general powers granted to authorities. However, the federal government has also entered into PPP projects, mostly relating to social infrastructure (eg, through the Department of Veterans Affairs, the National Park Service and the Postal Service), but most importantly, the federal government has significantly encouraged the use of the PPP model, particularly in the transportation sector, through financing and grant programmes such as the Water Infrastructure Finance and Innovation Act (WIFIA), the Transportation Infrastructure Finance and Innovation Act (TIFIA),

Railroad Rehabilitation and Improvement Financing (RRIF) and Infrastructure for Rebuilding America (INFRA) (formerly Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE)). The Federal government created the Build America Bureau to serve as a single point of contact and coordination for states, municipalities and project sponsors looking to explore ways to access federal financing programmes.

Remuneration

How is the private party in a PPP remunerated in your jurisdiction?

The permitted forms of remuneration for the private party vary depending on the state. However, commonly used forms of remuneration include construction milestone payments, availability payments and shadow tolls and user payments (eg, tolls). Although historically some PPP projects have been entered into on the basis of the private party being compensated with the right to collect and keep toll revenue, most of the recent projects are being pursued as availability payments.

Sharing revenue and usage risk

May revenue risk or usage risk be shared between the private party and the government? How is risk shared?

As discussed above, the form of compensation varies depending on the jurisdiction. Some jurisdictions, such as Texas, have incorporated the sharing of usage risk through the use of shadow tolls in public-private projects. In certain revenue-risk deals, it is not unusual for the public entity to retain a share of revenues and thus share the risk.

Government payment obligations

In situations where the private party is compensated in whole or in part through availability or other periodic payments from the government, are the payment obligations of the government subject to the relevant legislative body approving budgetary funding in the future?

State constitutions vary on the period for which a legislature may appropriate payment obligations. Appropriation risk is generally present in PPP agreements in the United States and addressed by remedies entitling the private party, among other alternatives, to suspend work or claim relief events.

Rate of return caps

Is there any cap on the rate of return that may be earned by the private party in the PPP transaction?

Some PPP agreements in the United States have included a mechanism whereby, if the project company refinances the project debt, and as a result thereof there is an improvement in the rate of return of the sponsors, some or all of the gain is passed through to the public entity. Customarily, if the normal operation of the project produces an improved rate of return, there is no rebalancing requirement. On the other hand, some PPP agreements include terms that limit the obligation of the public entity to compensate the project company for adverse actions or certain termination events by reference to a maximum rate of return, as reflected in the financial model used in connection with the closing of the PPP agreement, regardless of the actual financial performance of the project.

Restriction of ownership transfer

Is the transfer of direct or indirect ownership interests in the project company or other participants restricted?

Some PPP statutes establish restrictions relating to the transfer of ownership in the project company depending on the stage in the procurement of the project. For example, in some cases, once a consortium has been shortlisted to participate in the bidding for the project, its members cannot change prior to the award of the PPP agreement. In addition, even in the absence of statutory restrictions, it is customary for the PPP agreements or the bidding rules to include restrictions on transfers by the owners of the project company.

Procurement process

Relevant procedure

What procedures normally apply to a PPP procurement? What evaluation criteria are used to award a PPP transaction?

Generally speaking, statutes include planning and approval processes for PPP projects to determine in the first instance whether the project is worth pursuing. Statutes differ on how this process is performed, mostly based on whether a dedicated PPP authority exists or not. In some states, this process is also involved with respect to unsolicited proposals. Once the relevant authority has decided to procure a project under the PPP model, generally, a public bidding process is required under the applicable legislation. The most commonly used process involves a solicitation for expressions of interest together with a submission of qualification, following which the procuring authority selects a shortlist of bidders to which a request for proposal is issued. It is customary for the procuring authority to request comments and invite commentary by the shortlisted bidders before formally issuing the request for proposals.

Evaluation criteria vary from state to state. In some cases, a specific set of factors must be evaluated. In others, the generic best value for money test (in addition to satisfying the technical requirements of the project) is used.

Consideration of deviating proposals

May the government consider proposals to deviate from the scope or technical characteristics of the work included in the procurement documentation during the procurement process, without altering such terms with respect to other proponents? How are such deviations assessed?

Many jurisdictions within the United States allow proposers to offer alternative technical concepts on a confidential basis, and it is a common feature in many of the current PPP procurements. The authority may accept these deviations and determine whether the procuring authority will indeed receive better value for money by accepting the deviations, while at the same time satisfying the expected outcome from the original technical requirements. After receiving the confidential proposal, in advance of the proposer’s bid, the authority would then analyse if it is willing to accept it or not, based on value for money offered and satisfaction of its expected goals. Typically, before performing such an analysis, the authority will receive the confidential proposal and decide whether it indeed constitutes a deviation or not.

Unsolicited proposals

May government parties consider unsolicited proposals for PPP transactions? How are these evaluated?

Some PPP statutes, particularly in the most active states in the PPP market, permit receipt of unsolicited proposals. The proposal is, in most cases, subject to an analysis similar to that of projects that the states propose by themselves. If the authority decides to proceed with the project as proposed, it then has to proceed through the same procurement process as if it had proposed the project itself. In some cases, the proponent is entitled to either credit in the evaluation of the proposals or to a special stipend for its work.

Government stipend

Does the government party provide a stipend for unsuccessful short-listed proponents or otherwise bear a portion of their costs?

In the case of some states, the procuring authority is permitted to offer a stipend. Where this is permitted, the stipend is customarily paid to the extent that the unsuccessful proponents agree to assign their work product related to their bid to the procuring authority, which can then incorporate it into the project at hand or other projects.

Financing commitments

Does the government party require that proposals include financing commitments for the PPP transaction? If it does not, are there any mechanisms during the procurement process to ensure that the applicable PPP transaction, once awarded, is financeable?

It is customary in the United States for the procuring authority to require evidence of availability of financing as part of the proponents' bids. Most commonly the requirement is to deliver financing commitments. However, in at least one recent case, the procuring authority has been satisfied with the delivery of highly confident letters.

Legal opinion

May the government ask its counsel to provide a legal opinion on the enforceability of the PPP agreement? May it provide representations as to the enforceability of the PPP agreement?

Typically, in the United States, the public entity does have its counsel provide a legal opinion and provide representations regarding the enforceability of the PPP agreement.

Restrictions on foreign entities

Are there restrictions on participation in PPP projects by foreign entities? May foreign entities exercise control over the project company?

Generally speaking, there are no specific restrictions regarding participation by foreign entities in PPP projects or controlling the project company. However, in the case of brownfield infrastructure projects that are deemed critical, depending on the amount of control that the private entity will exercise or whether the private entity is controlled by a foreign government, the transaction may be subject to review by the Committee on Foreign Investments in the United States, and the authority of the president of the United States to block the transaction if it is determined that it threatens to impair national security. The Exon-Florio provision (Title V, Section 5021 of the US Code, 23 August 1988), as amended, establishes a list of factors that the president must analyse in making a determination. It has been proposed to extend the authority under the Exon-Florio provision to greenfield projects. However, so far this proposal has not been adopted.

Design and construction in greenfield PPP projects

Form of contract

Does local law mandate that any particular form of contract govern design and construction activities? Does it mandate the choice of governing law?

Some PPP statutes mandate the use of specific forms of contracts. In some cases, the statutes create a specific form of PPP agreement or comprehensive agreement, and include the terms that have to be included therein. In such cases, even if the statute does not expressly say so, they create the obligation that the PPP agreement be governed by the law of the relevant state. Typically, a state is not amenable to accept a governing law other than the laws of such a state.

Design defect liability

Does local law impose liability for design defects and, if so, on what terms?

Generally, laws governing design defects in construction vary from state to state to a degree that would be well beyond the scope of this publication. However, although it is common that, in non-PPP projects, design professionals disclaim warranties of the adequacy of their services, some courts have held that, in the case of design-build contracts, unless expressly disclaimed, the design portion of the agreement is warranted in a similar fashion as the construction portion, based on the overall contract being a 'construction contract' and not treating each portion differently.

Warranties

Does local law require the inclusion of specific warranties? Are there implied warranties in cases where the relevant contract is silent? Does local law mandate or regulate the duration of warranties?

Although PPP statutes may imply or list as one of the terms of the PPP agreement the inclusion of warranties, generally the legislation defers on the terms of the warranties to the terms negotiated by the granting authority and the private parties. It will be particularly important for a party participating in a PPP project to confirm whether the local legislation overrides any warranty requirements generally applicable to public contracts and, if permitted, to consider including any disclaimer thereof.

Among the implied warranties that are generally found in state legislation, good workmanship may be the most common. State laws generally regulate the duration of warranties, particularly in connection with hidden defects. However, it is common that the terms of these warranties can be altered by the agreement of the parties.

Although, generally, the uniform commercial code is not applicable to construction contracts, it is important to consider whether the PPP agreement has a component that could be characterised by courts as a goods' supply agreement. Some state courts have recharacterised certain construction agreements as dealing more precisely with the supply of goods. In such cases, implied warranties of merchantability, fitness for a particular purpose and good title could be made applicable to portions of the agreement. Therefore, the parties to a PPP agreement should consider whether they should be expressly disclaimed.

Damages for delay

Are liquidated damages for delay in construction enforceable? Are certain penalty clauses

unenforceable?

Liquidated damages are generally enforceable to the extent that they are a reasonable estimation of damages that are difficult to calculate, and the intent of the clause is to compensate the non-breaching party and not to penalise the breaching party. On the other hand, clauses requiring the payment of a penalty owing to breaches are generally unenforceable.

Indirect or consequential damages

What restrictions are imposed by local law on the contractor's ability to limit or disclaim liability for indirect or consequential damages?

Generally speaking, any disclaimer of a contractor's liability that arises owing to its wilful misconduct or gross negligence is likely to be held unenforceable.

Non-payment

May a contractor suspend performance for non-payment?

This remedy is usually negotiated on a case-by-case basis.

Applicable clauses

Does local law restrict 'pay if paid' or 'paid when paid' clauses?

Payment terms are governed by different rules in each state. Some states deem some payment terms in construction contracts to be matters of public policy and, therefore, the terms provided for in the applicable statutes cannot be modified. In particular, some states have enacted 'prompt payment' statutes that would prohibit pay if paid or paid when paid terms in construction contracts, requiring contractors to review and approve invoices or pay them within a maximum period of time, regardless of whether payment from the owner has been received.

Are 'equivalent project relief' clauses enforceable under local law?

Equivalent project relief clauses are generally enforceable. However, to the extent that they run afoul of prompt payment statutes (eg, permitting a contractor to withhold payment to a subcontractor simply because the payment has been withheld by the owner and not on the basis of a specific breach by the subcontractor), equivalent project relief may be unenforceable.

Expansion of scope of work

May the government party decide unilaterally to expand the scope of work under the PPP agreement?

Subject to the right of the private party to request compensation for such a change, the government party typically may request changes to the scope of work under the PPP agreement. The terms of such a right to request changes are usually negotiated on a case-by-case basis.

Rebalancing agreements

Does local law entitle either party to have a PPP agreement 'rebalanced' or set aside if it becomes unduly burdensome owing to unforeseen events? Can this be agreed to by the parties?

This is not generally found in the United States. However, the general concept is more commonly addressed through a negotiated set of relief events forming the basis for compensation to the private party. We are not aware of a specific rebalancing requirement included in a PPP statute.

Liens laws

Are statutory lien laws applicable to construction work performed in connection with a PPP agreement?

Statutory lien laws are not necessarily overridden by PPP statutes, and therefore would be applicable to any work performed in connection with a PPP agreement. However, it must be noted that, to the extent that the asset on which work is performed is the property of the state, different rules may apply to such liens.

Other relevant provisions

Are there any other material provisions related to design and construction work that PPP agreements must address?

Different states may have different degrees of requirements related to the provision of construction bonds or other forms of performance assurance. Some PPP statutes override those requirements generally applicable to public contracts. However, in some states (or in states without a PPP statute), the generally applicable requirements may be applicable to PPP agreements, which may result in a significant financial cost.

Operation and maintenance

Performance obligations

Are private parties' obligations during the operating period required to be defined in detail or may the PPP agreement set forth performance criteria?

There is no mandatory uniform treatment across states. In recently closed projects and projects that are currently in the procurement stage, a mixed approach of detailed obligations and performance criteria is being used.

Failure to maintain

Are liquidated damages payable, or are deductions from availability payments possible, for the private party's failure to operate and maintain the facility as agreed?

There is generally no specific regime of liquidated damages or deductions in PPP statutes; they are determined on a case-by-case basis. As availability payment projects have become the most common model in use, it has become more common for PPP agreements to include a deduction regime.

Refurbishment of vacated facilities

Are there any legal or customary requirements that facilities be refurbished before they are handed back to the government party at the end of the term?

There is no particular legal requirement regarding the degree to which facilities must be refurbished before they are handed back to the government party. Recently closed projects and projects currently in procurement include handback requirements to varying degrees. In some cases, such

handback requirements include the establishment of a reserve account, funded from payments received by the project company, starting a number of years before the end of term, which must be handed (in whole or in part) to the government in case the scheduled refurbishment of the project is not performed to the required level.

Risk allocation

Delay

How is the risk of delays in commercial or financial closing customarily allocated between the parties?

This varies from project to project. The project company typically is not excused from achieving commercial close, unless the state authority has failed to satisfy its obligations, including obtaining authorisations allocated to it. To the extent that a delay in financial close is not because of the project company (including, for example, trying to renegotiate the terms included in the financing term sheet used for the procurement of the PPP agreement, failing to obtain required approvals assumed by the project company, etc), some states have agreed to take on the risk of timely financial close by agreeing to cover differences in margin or interest rates assumed in the applicable financial model.

How is the risk of delay in obtaining the necessary permits customarily allocated between the parties?

If responsibility for the acquisition of the permit was allocated to the government party (which is typically limited to major environmental authorisations), a delay in obtaining such a permit typically entitles the private party to relief in the form of an extension of the time to perform its obligations. In some cases, the private party assumes the obligation to continue the approval process for some approvals initiated by the government party, and, in such cases, the private party then assumes the risk of timely issuance of such approvals.

Force majeure

How are force majeure and geotechnical, environmental and weather risks customarily allocated between the parties? Is force majeure treated as a general concept relating to acts outside the parties' control or is it defined with reference to specific enumerated events?

In different jurisdictions within the United States, and at different times, PPP agreements have included a force majeure concept that is treated both as a general concept relating to acts outside the parties' control and a list of specific enumerated events that have satisfied the typical concept of force majeure. Occurrence of a force majeure event typically entitles the private party to relief in the form of an extension of the time to perform its obligations, but not additional economic compensation. Weather conditions are usually covered by the concept of force majeure in those cases in which the private party is entitled to relief.

Discovery of geotechnical circumstances that were not shown in the reference information provided by the government party, or that could not be expected or learned after a reasonable investigation (the standard of which may vary from state to state), typically entitles the private party to relief in the form of an extension of time to perform its obligations and payment of additional compensation to cover for additional costs. A similar approach is usually followed for pre-existing environmental conditions and third-party release of hazardous substances, but the calculation of the compensation

for additional costs arising from these circumstances in some cases is different.

Third party risk

How is risk for acts of third parties customarily allocated between parties to a PPP agreement?

Depending on the type of project, the government party typically assumes responsibility for some matters, such as access rights to real estate property or the performance of work by other contractors. However, PPP agreements sometimes make the private party responsible for obtaining some access rights or cooperation from third parties (including in connection with additional property (not originally contemplated for the project)). To the extent that the government party has assumed such a responsibility, any failure to provide access, lack of cooperation or failure to perform by third parties typically entitles the private party to relief, including in the form of economic compensation or extensions to the schedule.

Political, legal and macroeconomic risks

How are political, legal and macroeconomic risks customarily allocated between the parties? What protection is afforded to the private party against discriminatory change of law or regulation?

Risk of political actions (including discriminatory changes in laws and regulation) that occur because of the government of the state to which the government party to the PPP agreement belongs is assumed by the government party. The occurrence of such events typically entitles the private party to extension of time and economic compensation for additional costs. However, in the case of non-discriminatory actions by the state, the economic downside is shared between the state and the private party to varying levels.

Mitigating events

What events entitle the private party to extensions of time to perform its obligations?

See questions 33 to 37.

What events entitle the private party to additional compensation?

See questions 33 to 37.

Compensation

How is compensation calculated and paid?

The calculation of compensation is determined on a case-by-case basis by the PPP agreement, and to a large extent is dependent on the model of PPP used. In revenue risk projects, it is customary to see an allowance for increase in tolls or extensions of the term of the PPP agreement. In availability payment transactions, it is customary to find increases in the availability payment. In both cases, it is common to find an obligation to pay a lump sum by the government party, which, in some cases, is intended to restore the private party to the situation it would have been in but for the occurrence of the relief event, and in other cases, it is intended to restore the private party to the situation it projected in the financial model used for commercial close (in some cases as updated from time to time).

Insurance

Are there any legal or customary requirements for project agreements to specify a programme of insurance? Which party mandatorily or customarily bears the risk of insurance becoming unavailable on commercially reasonable terms?

Customarily, PPP agreements include a programme of insurance that each party must carry. Typically, unavailability on commercially reasonable terms entitles the party obliged to maintain the affected insurance to some form of relief, which may take different forms on a case-by-case basis.

Default and termination

Remedies

What remedies are available to the government party for breach by the private party?

Typically, PPP agreements in the United States allow the government party to collect liquidated damages or apply deductions on the payments due to the private party. To the extent of repeated or material breaches, the government party typically may terminate the PPP agreement. Additionally, the government party has the right to order the suspension of work, to enter into the site and correct any wrongful use or to step-in and perform actions that the project company fails to perform.

Termination

On what grounds may the PPP agreement be terminated?

This varies on a case-by-case basis, but some of the most common termination events that are included in PPP agreements include material or repeated breach (including violations of laws and governmental approvals), abandonment of the project, failure to achieve substantial completion by a certain longstop date, insolvency of the project company or, while its equity commitments remain outstanding, of an equity member, and changes of control.

Is there a possibility of termination for convenience?

PPP agreements in the United States typically provide for termination for convenience, subject to payment of compensation.

If the PPP agreement is terminated, is compensation available?

Customarily, compensation is available in the event of termination of the PPP agreement, including in the case of termination owing to default by the government party or the private party, convenience and extended relief events. Depending on the cause of termination, the termination payment typically includes a combination of amounts due to lenders and, as long as termination is not owing to default by the private party, a component to compensate the private party for its equity in the project. Most commonly, the calculation of the portion of the termination payment that corresponds to the private party involves a determination of the present value of the amounts that the private party was projected to receive during the remaining time of the agreement or a fair market value calculation, depending on the PPP model used for the particular project.

Financing

Government financing

Does the government provide debt financing or guarantees for PPP projects? On what terms? Which agencies are responsible?

States may have different incentive programmes that can apply to different projects. However, the most common debt financing and guarantee programmes for PPP projects are the TIFIA, RRIF, WIFIA and INFRA federal programmes described in question 5. In addition, states and their instrumentalities sometimes agree to issue private activity bonds (a type of tax-exempt bond), and on-lend the proceeds for such an issuance to the project company, to be used for the construction of the relevant PPP project.

Privity of contract

Are lenders afforded privity of contract with the government party through direct agreements or similar mechanisms? What rights will lenders typically have under these agreements?

Typically, PPP agreements in the United States provide for lender rights, naming such lenders as third-party beneficiaries. In addition, it is common for the procuring authority to enter into direct agreements with lenders. These rights typically include the right to cure defaults by the project company, or step into the stead of the project company.

Step-in rights

Is there a mechanism under which lenders may exercise step-in rights or take over the PPP project? Are lenders able to obtain a security interest in the PPP agreement itself?

Lenders regularly obtain a security interest in the PPP agreement itself, and are actually entitled to step into the stead of the project company themselves or through a party appointed by them, which must satisfy certain criteria set forth in the PPP agreement.

Cure rights

Are lenders expressly afforded cure rights beyond those available to the project company or are they permitted to cure only during the same period and under the same conditions as the project company?

This has varied from project to project, depending, in particular, on the jurisdiction procuring the project. In some cases, the cure period is in addition to the cure period of the project company, and in others, the lenders are afforded only the same period as the project company.

Refinancing

If the private party refinances the PPP project at a lower cost of funds, is there any requirement that the gains from such refinancing be shared with the government? Are there any restrictions on refinancing?

This term is not necessarily addressed by PPP statutes. However, PPP agreements that have recently achieved commercial close, or that are currently in the procurement stage, have included an obligation to share any refinancing gain, or even give it all up.

Governing law and dispute resolution

Local law governance

What key project agreements must be governed by local law?

Several jurisdictions deem construction agreement terms to be matters of public order. As such, construction contracts may be required to be governed by the law of the state where the project is located.

Government immunity

Under local law, what immunities does the government party enjoy in PPP transactions? Which of these immunities can be waived by the government?

Generally, states have adopted sovereign claim acts that allow for the state to be sued for liability subject to the satisfaction of certain procedural formalities, in some cases having to prosecute the claim before specific (in some cases, special) courts. However, the scope of immunities that states have retained varies from state to state, and may include immunity from exemplary or punitive damages.

Availability of arbitration

Is arbitration available to settle disputes under the project agreement between the government and the private party? If not, what regime applies?

Arbitration is generally available for the resolution of disputes. Some PPP statutes expressly provide that the granting authority may submit disputes to arbitration. However, many states have been reticent to accept binding arbitration, making PPP agreements subject to the jurisdiction of local courts. Some states have accepted the inclusion of non-binding arbitration clauses into their PPP agreements, where the state has the option to remove an action and have it heard by a court or reject the award and have the dispute further resolved by a competent court.

Alternative dispute resolution

Is there a requirement to enter into mediation or other preliminary dispute resolution procedures as a condition to seeking arbitration or other binding resolution?

There is no specific approach that can be deemed uniform throughout jurisdictions in the United States. This has varied from project to project, but it is common to find PPP agreements providing for the requirement of engaging in prior negotiations or mediation as a condition for submitting a dispute for binding determination by an arbitrator or court.

Special mechanisms

Is there a special mechanism to deal with technical disputes?

PPP agreements generally include mechanisms to deal with technical disputes through determination by technical experts. However, there is no particular mechanism that is uniform throughout jurisdictions.

Updates and trends

We continue to see the most US PPP activity in the transportation infrastructure sector, and there is growing interest in applying the PPP model to the social infrastructure sector. The LaGuardia Airport Central Terminal Building (CTB) project and the Maryland Purple Line light rail transit project were both long-awaited, marquee transportation infrastructure projects that achieved

financial close in 2016. The University of California Merced Campus Expansion also achieved financial close in 2016, and will test the viability of the PPP model for delivering social infrastructure projects.

We have also seen a notable increase in the airport sector, notwithstanding the limitations in the Federal Aviation Administration's (FAA) airport privatisation pilot programme that have hindered PPPs at US airports. Financial close for the Denver International Airport Great Hall project and for the Los Angeles International Airport's Automated People Mover PPP project was achieved in 2017 and 2018, respectively, Indianapolis International Airport tendered a storm and waste water treatment PPP in 2016, and the Illinois Department of Transportation is currently evaluating a PPP structure to develop, finance, operate and maintain a new South Suburban Airport. In addition to the LaGuardia CTB project, the Port Authority of New York and New Jersey is pursuing the redevelopment of Terminal A at Newark Airport through a modified PPP structure, which will involve multiple separate contracts for different aspects of the project, and the redevelopment of Terminals C and D at LaGuardia Airport, largely from private-sector investment.

In terms of procurement structure, one trend we are seeing is the 'beauty contest' procurement. In these procurements, the shortlisted bidders are asked to submit indicative proposals for a conceptual project, instead of a substantively complete concession, and the procuring authority will pick the team that it wants to directly negotiate the detailed terms and provisions of the project. Essentially, the preferred proponent wins a pre-development agreement and the right to negotiate the project with the procuring authority. Both the Indianapolis International Airport waste water project and the Denver Airport Great Hall project were procured on this basis, and it is expected that the newly announced South Suburban Airport in Illinois will also be procured this way.

Broadband network PPP projects is a new category that has attracted particular interest in the past few years. Starting with Kentucky's KentuckyWired project, which achieved commercial close in 2015 and was the result of an unsolicited bid, several broadband projects have come to market in the past three years. Currently, there are more than half-a-dozen projects in procurement process or about to start their procurement process, including proposed projects by the Pennsylvania Turnpike, Riverside County and City of San Francisco in California, the Georgia Department of Transportation and Oakland County, Michigan. Each of these projects seeks to implement the PPP model to either use and improve existing assets or build completely new networks that will serve the needs of the procurement authority (in some cases allowing incremental capacity to be used and marketed by the concession company) or create public access networks. The diversity in the scope of works and services to be provided, assets being allocated and goals pursued make it interesting to follow and see if and in which cases the PPP model will prove adequate for this type of infrastructure.

The current Trump administration has put forward a plan to invest up to $200 billion dollars in federal funds in infrastructure with the goal of stimulating at least $1.3 trillion dollars in new investment by states, local government and private investors over the next 10 years. A number of practical questions have been raised about the plan, and in any event, it is considered unlikely that Congress will implement it. Therefore, it is unclear whether existing incentives will continue in the longer term and what if any new incentives will be put in place. In the current market, TIFIA funding remains vitally important and, historically, the TIFIA Joint Programme Office (JPO) (the office at the US Department of Transport that administered the programme) worked hard to ensure a level playing field among all bidders for any project eligible for TIFIA financing. It is worth noting that the administration of the TIFIA loan programme has now been consolidated under the new Build America Bureau with other loan and grant programmes, namely the RRIF loan programme, Private Activity Bonds (PABs) and INFRA grant programme under a single agency. The hope is that by consolidating these programmes in a single office, federal resources will be deployed more

effectively.

Debevoise & Plimpton LLP

by Armando Rivera Jacobo and Ivan E Mattei

USA March 26 2019

Why the 2020 Budget Debate Indicates More Challenges for Cities.

> *"The Budget devolves responsibility to State and local governments, which are better positioned to assess local community needs and address unique market challenges."* – The President's budget proposal for fiscal year 2020, explaining the proposed elimination of the Community Development Block Grant and HOME Investment Partnership programs for the third straight year.

The administration's budget proposal for FY20 begins with a message touting an "unprecedented", two-year economic boom that has, among other things, resulted in the creation of five million new jobs. For the administration, this means now is a good time for Congress to bring federal spending and debt "under control".

The president's budget proposes to bring spending and debt under control through drastic cuts to safety net programs, including food stamps, Medicaid and Medicare. The proposal also looks to eliminate programs that expand economic opportunity and mobility, including Community Development Block Grants, Economic Development Grants, Community Services Block Grants, Social Services Block Grants, 21st Century Community Learning Centers, and the Weatherization Assistance Program.

For cities, towns, and villages, the 35-day partial government shutdown was a disturbing period of uncertainty that spurred local leaders into action to minimize impacts on vulnerable residents. According to the Congressional Budget Office, the overall economy lost $11 billion during the shutdown. Individual cities have also calculated local economic losses and have adjusted budget and revenue projections accordingly.

The cost of emergency measures and economic losses associated with the shutdown exposed a growing number of fiscal headwinds that would make it difficult, if not impossible, for cities to make up for the cuts proposed by the administration. Among them:

- **Local tax revenue is slowing down.** NLC's 2018 City Fiscal Conditions survey indicates that local tax revenue growth is experiencing a year-over-year slowdown, with growth in service costs and other expenditures outpacing it. This suggests that many cities may be approaching the limits of their current period of fiscal expansion.
- **Federal funding for domestic discretionary programs is *already historically low.*** According to a report from the Center on Budget and Policy Priorities, funding for federal programs (other than Social Security and Medicare) is historically low as a percent of GDP – and it is projected to fall further. Funding for domestic discretionary programs, which includes grants to cities and towns, has been limited since 2011 by the Budget Control Act (BCA) that mandates sequestration if Congress is unable to reach pass higher spending caps.

- **States continue to preempt local authority.** NLC's report, City Rights in an Era of Preemption: A State-by-State Analysis, shows that 42 states have enacted tax and expenditure limitations on local governments. State preemptions created additional uncertainty during the partial government shutdown and have created additional obstacles to raising revenue or spending at the local level to make up for significant losses at the federal level.
- **New Limits on the State and Local Tax Deduction.** The new $10,000 cap on state and local tax deductions, enacted under recent federal tax reform legislation, will hit nearly 11 million taxpayers nationwide this year, according to a report by the Treasury Department. Treasury estimates the cap will prevent those 11 million taxpayers from deducting $323 billion in state and local tax payments from their federal tax returns, which takes money out of local economies.
- **Advance Refunding Bonds Eliminated.** That same tax reform bill exposed that cities' fiscal vulnerabilities are larger than federal budget and appropriations decisions. The bill eliminated advance refunding municipal bonds, a valuable cost-saving tool for municipalities that allowed municipal debt to be refinanced at lower interest rates. Earlier iterations of the legislation even threatened private activity bonds, which put billions in municipal market savings at risk. NLC research shows that 61% of city finance officers think the loss of tax-exempt advance refunding bonds will negatively impact their city's ability to meet financial needs.

Add to these headwinds that municipal governments are generally required to balance their budgets and cannot resort to deficit spending of the sort that the federal government relies on, and it becomes clear how unprepared states and cities are for the kind of wholesale devolution of responsibilities proposed by the administration.

NLC is again tracking funding for city priorities throughout the federal budget and appropriations process at www.nlc.org/budget. A breakdown of proposed funding for individual programs is available at the link.

National League of Cities

By Michael Wallace

March 25, 2019

Bonds Versus Bond Funds: Minnows Versus Sharks.

Brokerage firms like to tell clients they should buy bonds instead of bond funds, but that is rarely a good idea. Investors almost always have an advantage buying a mutual fund's portfolio of bonds rather than buying bonds directly.

Treasury bonds are an important exception. The Treasury market is extremely large and liquid, its structures are as simple as they come, and most brokerages charge modest fees to buy and sell them at very fair prices. For pretty much everything else, the cards are stacked against you.

Time Is Relative

The appeal of Treasury bonds to many do-it-yourself investors is that the former have fixed maturity dates, and the U.S. government has always made good on paying back principal when that time comes. What may be less obvious is that with a few exceptions, most other bond sectors carry features–such as the option for borrowers to refinance or pay off debt early–that make the timing of principal return much less certain. That goes for most municipals, mortgage securities, and

corporate bonds (though the latter often carry some financial penalties designed to compensate investors for the option).

The chief risk associated with an embedded option is that you'll get your money back early at just the wrong time–when market yields are low, the incentive for borrowers to refinance is high, and by definition reinvesting the money at a good rate is most difficult.

What may be less obvious is the cost associated with that option. Think of it this way: When you purchase a bond with an option attached, you're actually buying the bond and simultaneously selling the borrower an option (to refinance). You'll never see the price of the option broken out, but the bond's price–and by extension its yield–will have the value of the option baked in. As such, an identical bond without the option would carry a lower yield and a higher price.

The difference isn't trivial, and no institutional investor would ever pay the same price for those two bonds. In fact, they put tremendous effort into figuring out how much that option is worth and how much more yield they should get from the borrower to account for it.

It's not plain-vanilla math, though, and the number is by definition an estimate. That's because most borrowers' decisions are based on the level of interest rates when they have an opportunity to refinance. Every homeowner with a mortgage knows that it will only make financial sense to refinance when rates get low enough, but that pinning down when that's going to happen or how low they're going to get can be as difficult as predicting the weather.

As such, the process for pricing an embedded option is especially complex for plain-vanilla mortgages that can be refinanced at any time. And institutional investors know that unless they know what it's worth, the market will always look to underpay.

The Return of Your Money

While we know the U.S. Treasury is a safe bet to pay you back, the risk of being stiffed exists with just about every other kind of bond. Knowing how to handicap that risk is another laborious exercise requiring skill, knowledge, and experience. Most fund managers have teams of analysts spending most of their time looking into the finances of bond issuers whether large or small, municipal, corporate, or otherwise. It would be almost impossible for any individual to devote the amount of time and effort to replicate that work, and even if one could, the cost of doing so would likely be well beyond any benefit one might get from going it alone.

Here too, though, the practical risk often isn't actually whether you're going to get your principal back, but rather how much extra yield you should demand in exchange for the risk that you won't. And keep this in mind: While most individual investors don't bother buying mortgages directly, the fact that many do choose to purchase corporate and municipal bonds on their own also means there are plenty of parties–including brokers, corporate borrowers, or mutual fund managers–who make it their business to sell debt to investors who don't know that number and to whom they can sell bonds without paying anywhere close to it.

Buying in Bulk

Let's say for the sake of argument, though, that you still want to buy a bond with an embedded call option and some level of credit risk and that you've even somehow managed to get confident in the yield number that you're going to demand. Unless you're going to invest a ton of money all at once, it's nearly a sure bet that you're going to have to give up some of that yield in the form of higher trading costs that you won't see broken out from a bond's price either.

The data will look different for every sector and time period, but the phenomenon is well-established. Vanguard has studied the relationship between trade size and pricing among municipal bonds at least three times in the past 15 years, and the data have always borne out that the smaller the bloc the higher the cost, and you generally won't get institutional-level pricing on a single purchase until you're above the $1 million range. And in the case of municipals, roughly 70% of trades are under $50,000, which means most people are giving up the pricing advantage they'd get by throwing in with other investors in a fairly priced fund.

Morningstar

by Eric Jacobson

26 Mar 2019

A Cautionary Tale for the New Muni Bond Era.

A decade after the Libor scandal, a new approach to interest rates could help U.S. states and cities – if they change their thinking.

There's a moment in Act II of Hamlet where his old college buddies are trying to convince him to look on the bright side. Sure, his dad died and his mom hooked up with his uncle, they argue, but Denmark could be worse off. Hamlet's response is one of William Shakespeare's great lines: "There is nothing either good or bad, but thinking makes it so."

Hamlet meant that our beliefs about our circumstances matter more than anything. In fact, they matter a lot more than what others tell us, even if everyone else might be right. Oddly enough, Hamlet's view offers a cautionary tale about the future of the municipal bond market.

A decade ago, two big developments rocked public finance: the Great Recession and the news that bankers in the Bard's beloved England had conspired to manipulate the ubiquitous London Interbank Offered Rate. Libor is the most common benchmark interest rate index used to make adjustments to variable rate loans. Unsurprisingly, public finance experts focused much more on the recession, but the Libor scandal may ultimately prove more important in the long run.

By early 2008, states and localities had borrowed billions of dollars at variable short-term interest rates. This made sense because short-term rates were far below the long-term rates governments were used to getting. By stringing along a series of short-term bonds, governments could borrow for the long run but pay less to service that long-term debt. Even better, with an insurance contract known as a floating-to-fixed swap, they could borrow at variable rates and pay lower long-term fixed rates. Prudent public debt managers around the country employed this strategy, especially when it saved money early in the Great Recession.

But they shortly found themselves dragged into scandal because much of that variable rate was pegged to Libor. When bankers held Libor artificially high, governments believed they paid higher short-term rates than they would have otherwise. When rates were held artificially low, floating-t--fixed swaps paid less and governments had to make extra debt service payments out of pocket. Before the dust settled, several big banks paid millions to settle state and local governments' claims of wrongdoing. State and local leaders across the country vowed to never again venture into the variable rate market, even for bonds tied to other short-term benchmarks.

In the decade since the Libor scandal, the finance industry has worked to develop a better, more transparent benchmark. Last year, it agreed to phase Libor out and instead go with the Secured Overnight Financing Rate (SOFR). Unlike Libor, which was run by the banks and was based on bankers' expected short-term interest rates, SOFR is administered by the New York Federal Reserve and is based on the market prices of very short-term investments. In concept, that makes variable rates less susceptible to manipulation. This is a major move, considering the estimated $200 trillion in mortgages, credit cards and other assets that are tied to variable interest rates.

It's still early for SOFR. Regulators, investors and academics have generally called it a move in the right direction. But so far just a few large governments and corporations have issued SOFR-referenced debt. That will change. As investors become more comfortable with it, they will look for more SOFR-related investment opportunities. That could mean a chance to revive the moribund market for variable rate municipal debt.

When that happens, states and localities will face a difficult choice. They could stick with beliefs based in Libor-era thinking and conclude that variable rate debt is too good to be true. Or they could bring their thinking into the SOFR era and reconsider the many potential benefits of a prudent variable rate debt management strategy. By then, things will have changed in Denmark.

governing.com

By Justin Marlowe | Columnist
Endowed Professor of Public Finance and Civic Engagement at the Daniel J. Evans School of Public Policy & Governance at the University of Washington

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Fitch Ratings: Fortunes May Soon Turn for the Better for U.S. NFP Hospitals

Fitch Ratings-Austin-26 March 2019: Though not over yet, U.S. not-for-profit hospitals appear to have weathered the worst of their operational challenges with more performance stability not far off, according to Fitch Ratings in a new report.

Among the developments generating the most market interest is the emergence of non-traditional competitive entrants like Amazon with grand designs to reinvent healthcare delivery. Whether they succeed in the long run remains to be seen, but it seems inevitable that these non-traditional entrants will ultimately change the way individuals interact with the sector. As such, hospitals will become more concerned with "steerage" into the providers care delivery system versus "leakage" outside the provider system.

Another headwind for the sector is payor mix, which is shrinking. Commercial contracts are yielding diminishing margins at the same time that commercial payors are decreasing as a percentage of revenue due to the growth of Medicare enrollees. "With an estimated 10,000 people set to turn 65 years old every day over the next decade, the spread between the profit generating commercial business and break-even to unprofitable government payors will continue to shrink," said Senior Director Kevin Holloran.

Interestingly, it's the very same Baby Boomer generation that will actually benefit some hospitals over time. "With almost all providers aiming to break even or better on Medicare, organizations that successfully absorb Medicare reimbursements will find themselves well positioned for the future,'

said Holloran. Many providers will find themselves the beneficiary of a growing book of business that is characterized by heavy healthcare usage.

Elsewhere, profitability for hospitals and healthcare systems is still on the decline, though the pace of declines appears to be leveling off. “Operating margin percentages for most hospitals are actually lower than those experienced during the Great Recession of over a decade ago,” said Holloran. “What has yet to be determined is whether margins continue to fall over the longer term, or if this is the point where the sector’s rally begins.”

Despite the heavy headwinds and pressures on operational performance, the healthcare sector has historically been successful at maintaining generally consistent margins over an extended period of time – through both ups and most importantly through downs. As such, not-for-profit hospitals will begin to find their operational footing as 2019 progresses.

Contact:

Kevin Holloran
Senior Director
+1-512-813-5700
Fitch Ratings, Inc.
111 Congress Avenue, Suite 2010
Austin, TX 78701

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

Additional information is available on www.fitchratings.com

S&P ESG in USPF: Connecting The Dots

Environmental, Social or Government related factors contributed to 34% of rating actions in 2017 and 2018.

Continue Reading

Mar. 28, 2019

S&P: When U.S. Public Finance Ratings Change, ESG Factors Are Often The Reason

S&P Global Ratings performed a two-year review of environmental, social, and governance (ESG) factors in our criteria and how they influenced, positively or negatively, the credit profile of our U.S. public finance (USPF) entities. These include local governments and states, as well as health care, housing, higher education, charter school, utility, transportation, and public power enterprises.

Continue Reading

Mar. 28, 2019

New Standards to Drive U.S. Sustainability-Linked Lending.

NEW YORK (LPC) – Global standards set in place by loan trade associations this week that tie syndicated loan pricing to companies' sustainability performance are expected to stimulate the budding U.S. green lending market.

Less than a handful of U.S. companies have issued sustainability-linked loans since the first deal for natural gas utility CMS Energy was completed last June, far lagging firms in Europe which are leading the global push to improve environmental performance.

The new sustainability standards, which were issued on Wednesday by the Loan Market Association (LMA), the Loan Syndications and Trading Association (LSTA) and the Asia Pacific Loan Market Association (APLMA), are expected to bolster borrowers' and investors' confidence in green lending.

Sustainability-linked loans are any kind of loans that incentivize borrowers with margin reductions or increases depending on their ability to meet pre-set environmental performance targets.

A lack of direction and consistency in being able to identify and measure these goals has been stifling growth so far, bankers said.

"By having pricing tied to a borrower's improvement in sustainability performance, it directly incentivizes borrowers to make improvements," said Tess Virmani, the LSTA's associate general counsel. "If market interest keeps gathering steam, then the sustainability-linked loans will find a good home in the corporate loan market."

One of the main differences between sustainability-linked loans and green loans, which are linked to use of proceeds, is that they can be raised for general corporate purposes rather than specific projects. Loans for general corporate purposes are more widely issued, which is likely to boost sustainability-linked loans.

Key characteristics of sustainability-linked deals include disclosing the loan's tie to the company's overall social responsibility strategy; having sustainability pricing targets arranged between borrower and lender; reporting on sustainability performance and external reviews, according to the new lending principles.

TESTING THE WATERS

Global water technology company Xylem Inc became the fourth U.S. company to issue a sustainability-linked loan, with an $800 million revolving credit in early March. Xylem is the first general industrial company to commit to reducing its environmental footprint this way.

The four U.S. sustainability-linked loans that have come to the market so far — two this year and two last year — tally roughly $8 billion. Banks are targeting the sector as a growth area as they seek to improve their own credentials.

"Banks want to show their growing commitment to sustainable development goals, and this is one of the products they might use to show that," said Anna Zubets, vice president at Moody's Investors Service.

Last year, sustainability-linked loans issued globally topped $36 billion, led by European companies, according to Moody's.

Global issuance in the more mature green bond market, in contrast, could jump 20 percent to $200 billion this year, the rating agency said.

“The U.S. is a little behind on the discussion but you see it happening here as well. More than 80 percent of the S&P 500 listed companies are now issuing sustainability reports and it becomes a bigger discussion among shareholders and investors and asset managers, which is what we see among our client base,” said Anne van Riel, head of sustainable finance at ING.

“I expect that that will automatically carry over to more sustainable financing, whether green loans, green bonds or sustainable-linked loans.”

ING was the sustainability coordinator for Xylem’s deal, and helped the company to decide reasonable but ambitious performance targets to guide loan pricing.

Interest margins on Xylem’s general corporate purpose revolving credit will be based on social and corporate governance ratings by independent provider Sustainalytics. Citigroup, JP Morgan, ING, BNP Paribas and Wells Fargo were lead arrangers and bookrunners.

Pricing is initially based on ratings, opening at 110 basis points over Libor with a 15-basis points facility fee, and then will be adjusted up or down by up to 5 basis points based on its ability to achieve predetermined sustainability targets, according to a regulatory filing.

The other sustainability-linked loans completed in the United States so far include global logistics real estate group Prologis Inc in January, renewable energy and utility company Avangrid Inc last July and electric and natural gas utility CMS Energy and its main unit Consumers Energy last June.

“Some treasurers and CFOs are a bit more conservative, and when they see their peers doing it or see more market activity they will also follow,” said van Riel.

Having clear standards for the asset class is a way to hold management accountable for promises made, and make green identification more than a marketing tool.

“In order for money to continue to flow into these kinds of products, reporting standards are going to have to develop and mature so the market can be credible and management can be held accountable for goals,” Zubets said,

“Investors can have trust that if something is labeled as green it is actually going to deliver an impact.”

Reuters

by Lynn Adler

MARCH 22, 2019

Reporting By Lynn Adler; Editing by Tessa Walsh and Michelle Sierra

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[What Are Green Bonds and How ‘Green’ Is Green?]

Trillions of dollars of investment are needed to combat global warming. Enter green bonds, a way for issuers to raise money specifically for environmentally friendly projects — such as renewable energy

or clean transport — and to be able to boast about it publicly. Fund managers also like the notes as a way of meeting growing investor demand for sustainable options. The market, which opened slowly more than a decade ago, has boomed in recent years, helping spur development of other socially conscious debt products. Because investors face the challenge of judging whether a note is truly green, regulators are working on standards to help guard against greenwashing, or misleading claims about just how good a friend to the environment an issuer is.

1. What do green bonds finance?

Green bond proceeds can go toward new or existing projects that are meant to have positive environmental or climate effects. Inside that, the range is vast. It covers energy, transport, waste management, building construction, water and land use. Some definitions also include communications and information technology.

2. How big is the global green-bond market?

A cumulative $580 billion of green bonds were sold through 2018, according to Bloomberg New Energy Finance. Another $170 billion to $180 billion are likely to be sold in 2019 based on what's currently happening in the market, BNEF analyst Daniel Shurey says. The market is expected to keep growing, with Europe alone needing about 180 billion euros ($203 billion) of additional investment a year to achieve 2030 emission targets set by the European Union in the 2015 Paris Agreement on climate change. For now, however, green bonds are a tiny fraction of the more than $100 trillion global bond market.

3. Who sells green bonds?

Issuers from more than 50 countries have sold green bonds including supranational institutions such as the World Bank and the EU's European Investment Bank. Companies are also in the market, along with local, state and national governments. The first emerging-market green bond was issued in South Africa in 2012. Poland opened the sovereign market in 2016, followed by the likes of France, Belgium and Ireland. The U.S. is the largest source overall, led by the mortgage giant Fannie Mae and local governments selling notes to finance infrastructure such as sewerage upgrades.

4. Who decides whether a bond is green?

It's complicated. Many issuers say they follow the Green Bond Principles, endorsed by the International Capital Market Association in 2014 to bring transparency to the market. The principles are voluntary, covering how to spend and manage proceeds, how to evaluate if a specific project is green-worthy, and what type of reporting to put in place. A slew of companies offer services to independently assess, verify or certify a bond's green bona fides. They include ratings companies such as Moody's Investors Service; the Climate Bonds Initiative, which created the first green-bond standard in 2010; and specialized firms such as Paris-based Vigeo Eiris, Amsterdam-based Sustainalytics, and Cicero Shades of Green, a unit of the Norwegian climate research institute Cicero. (Bloomberg LP, the parent of Bloomberg News, provides a green-bond tag and the related disclosures of issuers.)

5. Just how green are green bonds?

It can sometimes be difficult to say given the lack of globally accepted standards or consistent verification. The perception of what's green can differ, too. China, the world's biggest carbon emitter and No. 2 green-bond issuer, has faced criticism for using green bonds to finance coal-

burning power plants, even if the new facilities are cleaner than predecessors. Reports say Chinese regulators may drop so-called clean coal from green-bond definitions to harmonize them with EU standards and win international investors. In its analysis, Oslo-based Cicero uses three shades of green:

- dark green for things that will lower carbon emissions in the long run like wind energy
- medium green for things that take a good step forward such as plug-in hybrid buses
- light green for environmentally friendly steps that won't change the long-term outlook on their own, such as more efficient fossil-fuel infrastructure

New coal projects get labeled brown for being in opposition to what Cicero calls a "climate-resilient future." There's also debate over whether an issuer's overall environmental commitment or carbon footprint should be taken into account. Poland's sovereign green bonds were snubbed by at least one major investor because of the country's reliance on coal and its mixed record on climate action. In 2017, Madrid-based Repsol SA became the first major oil company to sell green bonds.

6. Is there hope for a global green bond standard?

Yes. The EU is creating a Green Bond Standard, which will build on current market practices, such as the ICMA Green Bond Principles. Issuers from anywhere in the world will be able to cite compliance, if their plans are independently verified by an EU-accredited assessor. However, the new standard will be voluntary, rather than legally binding. The European Commission, the EU's executive arm, has directed a group of experts to make recommendations. The International Organization for Standardization is also preparing a Green Bond Standard that will draw upon existing principles.

7. Who buys green bonds?

In general, it's the same as the rest of the bond market — institutional investors including pension funds, insurance companies and asset managers. The overall green market is also getting a boost from investors seeking "responsible" or "sustainable" places to put their money. That has helped Europe's listed green funds double assets under management since 2013 to more than 32 billion euros in 2017, according to Novethic, a sustainable finance data provider. In 2015, France became the first country to require institutional investors to report how they consider environmental factors. The EU is likely to encourage asset managers across the bloc to integrate sustainability requirements into investment decisions as part of its work on the Green Bond Standard.

8. Does green investing mean compromising on returns?

Not necessarily. The vast majority of green bonds are investment grade and they are priced similarly to conventional debt at issuance. Growing investor demand and relative scarcity could also help boost secondary market prices. In the euro market, green bonds returned 0.34 percent in 2018, while the overall investment-grade market returned 0.41 percent, based on Bloomberg Barclays indexes. But for issuers themselves, bringing a green bond to the market can entail additional costs to cover getting an external opinion and report annually on the use of proceeds.

9. Are green bonds the same as sustainable bonds?

No. Green bonds are used solely for environmental goals, while sustainable bonds combine both environmental and social objectives. There are also social bonds, whose proceeds are dedicated to projects aimed at improving social welfare or helping disadvantaged populations. The range of socially conscious instruments keeps growing as more investors look to do good while making

money, and regulators look to the instruments to influence policy and investment decisions. There are now loans linked to specific environmental, social or governance targets, which give companies an incentive to achieve what they say they will. And in October, the Seychelles sold the world's first sovereign blue bond, debt issued to finance marine and ocean-based projects that have positive environmental, economic and climate benefits.

Bloomberg QuickTake Analysis

By Lyubov Pronina | Bloomberg March 29

To contact the reporter on this story: Lyubov Pronina in Brussels at lpronina@bloomberg.net

To contact the editors responsible for this story: Hannah Benjamin at hbenjamin1@bloomberg.net, Neil Denslow, Melissa Pozsgay

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Direct Purchases of Bonds By Banks: A Popular Alternative for Municipalities.

Traditionally, municipalities have sold bonds through competitive sales and negotiated sales. In a competitive sale, bids from interested buyers are opened at the advertised time and place, and the issuer awards the sale to the successful bidder by a sale resolution or an award order signed by an authorized official.

The closing of the issuance of the bonds usually occurs roughly seven to ten days thereafter.

In a negotiated sale, the issuer typically selects a bond underwriter, which markets the bonds. The issuer and the underwriter then negotiate the terms of the bond, and the closing occurs about one to two weeks later.

Municipalities have increasingly used a third method to sell bonds – "direct purchases" by banks or financial institutions, including community, regional and national banks. Bank direct purchases ("BDPs") have become a popular alternative to competitive or negotiated sales of municipal bonds. BDPs can benefit municipal bond issuers by saving them time and expenses compared to competitive or negotiated sales.

BDPs are usually quicker and less expensive for municipalities than competitive or negotiated bond sales because they impose fewer requirements on the issuer:

- No published Notice of Sale in The Bond Buyer (national newspaper of the municipal bond industry)
- No underwriter (and no underwriter's discount or fee)
- No placement agent (and no placement agent's fee)
- No Preliminary Official Statement or final Official Statement (disclosure documents)
- No bond ratings (and no rating agency fees)
- No Continuing Disclosure Undertakings for the purchased bonds
- No CUSIP number for the purchased bonds
- Sometimes no bond trustee; rather, a local official may be the Transfer Agent
- Sometimes no Bond Purchase Agreement; rather, a bank term sheet or commitment letter is more commonly used

No book-entry-only registration; rather, the registered bondholder is the bond buyer
These advantages make BDPs an attractive option for municipalities. In BDPs, the interest rate may be a fixed or variable rate, as agreed between the issuer and bank. The term of the bonds may range from under 10 years to 15 years, as agreed between the issuer and bank. The bonds may or may not be tax-exempt bonds for federal income tax purposes.

Although BDP transactions can be attractive to both municipalities and bank purchasers, they can involve many special considerations that are beyond the scope of this article.

Scott H. Hogan

USA March 27 2019

Foster Swift Collins & Smith PC

How Public Pensions Could Trigger the Next Financial Crisis.

Given that public pension funds are now the dominant investors around the globe, and the fact that agencies are scrambling to raise taxes to catch up on massive unfunded liabilities, he expects the credit boom to continue at least a few more years. … This other extreme view comes from the Modern Monetary Theory, and Reynolds believes it is just as wrong as the expectation of disaster any minute now.

Read the full article on: ValueWalk

Truth in Accounting

Michelle Jones | April 1, 2019

Future Growth of Public Finance Advisory Market 2019-2026 Analysis with Major Player Deloitte, the Hackett Group, KPMG, Forbes, EY, Accenture, L.E.K. Consulting, PwC.

Miami, FL — (SBWIRE) — 03/31/2019 — Public Finance Advisory is a study of the role of government in the economy. It is one of the adjustments to assess government revenue and government spending by government authorities, achieve desirable effects and avoid undesirable consequences. Helping municipal and not-for-profit entities to structure and arrange tax-exempt debt transactions to meet their financing needs.

This research report which has been made by using primary and its subordinate techniques. During the analysis of the Public Finance Advisory market, the existing industries, as well as upcoming startups have been considered. It helps to make informed decisions in the businesses. Well explained Porter’s five analysis and SWOT analysis have been used by a researcher of the report.

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Companies Profile: Deloitte, The Hackett Group, KPMG, Forbes, EY, Accenture, L.E.K. Consulting,

A.T. Kearney, Bain & Company, Boston Consulting Group, Booz Allen Hamilton, McKinsey & Company, Mercer, PwC, JPMorgan Chase & Co., Crisil, ICICI, IFCI, BNY Mellon, Raymond James, Oliver Wyman, Accenture, etc.

The business profiles of leading key players have been profiled to get a detailed description of applicable strategies carried out by top-level companies. The global Public Finance Advisory market has been analyzed in terms of the competitive landscape. It highlights the cost of Public Finance Advisory industries. This research report helps to provide the proper guidelines for boosting the performance of the companies. Detailed information of several clients, vendors, and sellers have been included in the report. Financial terms such as prices, shares, and profit margin have been presented in terms of facts and figures.

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The objectives of the Public Finance Advisory Market report are:

– In-depth analysis of the degree of competition across the globe
– Estimation of global market values and volumes
– Business profiling of prominent companies across the global regions like North America, Latin America, Middle East, Asia-Pacific, Africa, and Europe
– Detailed elaboration on global market value, volume, and penetration
– Global market growth projections
– Detailed description on development policies and plans

It takes a closer and analytical look at the various companies that are striving for the global Public Finance Advisory market. To get more clients rapidly, different applicable sales strategies have been mentioned in the report. The statistical surveying report on Public Finance Advisory market predicts the growth of Public Finance Advisory industries in the near future. A notable feature of the report is an analysis of applications, end-users, size and technical platforms.

Any query, ask to our expert@ https://qyreports.com/enquiry-before-buying?report-id=116097

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If you have any special requirements, please let us know, we will offer you the report as per your needs.

Q1 2019 Review: Tax-Free Municipal Bond - A Shining First Quarter For

Munis

Summary

- Muni supply is down. The drop last year has carried over to this year.
- Demand is also higher, particularly in the high-tax states like New York, New Jersey, and California.
- In the past few weeks, longer-maturity munis have also declined in yield as investors have moved further out on the yield curve to secure incremental yield.
- Clearly, there has been a reversal in bond market sentiment since last October, when the 10-year Treasury reached nearly 3.25%.

The first quarter of 2019 was a good one for the tax-free bond market, with yields falling during the quarter.

There are two main reasons that munis have had a good run so far this year.

Muni supply is down. The drop last year has carried over to this year. Remember, 2018 supply was down almost 25% compared to 2017 supply, in part due to the glut that was issued at year-end 2017 to beat the tax bill. The market has struggled with lower supply since. A great deal of the drop in supply can be traced to the 2017 tax reform act, which prohibited advance refundings of older, higher-coupon municipal bonds. Refundings were an important source of supply in past years, particularly in 2014 and 2016.

Demand is also higher, particularly in the high-tax states like New York, New Jersey, and California. Because of the SALT provisions of the tax bill, the cost (in terms of foregone yield) of owning out-o--state bonds in these states is much higher. We don't see this demand factor changing. (See our February piece regarding the SALT conundrum.)

In the past few weeks, longer-maturity munis have also declined in yield as investors have moved further out on the yield curve to secure incremental yield. Also, the more dovish stance by the Federal Reserve since year end, reinforced in the March Federal Reserve meeting, has seemed to ease retail investors' normal reluctance to invest in longer maturities. The tax-free muni yield curve is also much steeper than the Treasury yield curve is, with the difference between 10- and 30-year AAA munis at approximately 80 basis points, while the difference between 10- and 30-year Treasuries is only 44 basis points.

What does all this positive movement in the muni market mean?

Clearly, there has been a reversal in bond market sentiment since last October, when the 10-year Treasury reached nearly 3.25%. The 10-year is back to a 2.45 yield, but the drop of 80 basis points has been accompanied by almost no drop in the rate of core inflation (nor any rise). And even though headline inflation has fallen (mainly due to oil), the drop in real yields has caused us to reassess bond markets in general and tax-free bonds in particular.

We think the SALT provisions are resulting in people – particularly in high-tax states – paying more this year in income taxes. In a market that has seen a resumption of bond fund inflows, we are concerned that the approaching tax deadline may see some bond selling, either directly or in bond fund form, to pay for the taxes.

We are also concerned that state and local governments – again, particularly those in high-tax states – will be under pressure from their citizens to cut taxes to make up for the extra taxes being borne

because of the SALT provisions. If high-tax states oblige but don't cut expenses, debt service coverage could suffer.

Last fall, we thought real rates were high, bond selling was overdone, and the muni yield of 4%-plus was a giveaway. That yield bogey is very hard to find in a bond market that has done an about-face in the past four months. Thus, we are getting more defensive at the margin to make sure we are positioned to take advantage of any volatility accompanying April 15th. When it gets crowded at our end of the boat, we generally start moving to the other end.

Seeking Alpha

by David Kotok
Chief Investment Officer, Wealth Preservation, portfolio strategy
Cumberland Advisors

Why Billions in Disaster Recovery Remain Unspent for 2017 Hurricanes.

A new GAO report signals bad news for places that will try to rebuild after the Midwest flooding.

Historic flooding in the Midwest has left millions of acres under water in 10 states after a "bomb cyclone" storm brought heavy snow and drenching rains. And it's far from over. Weather forecasters say more precipitation is on the way.

The task list for the cleanup and recovery is already mounting. So far, the floods are affecting the safety of more than a million private water wells; farms won't be able to plant crops this year; and Superfund waste sites are inaccessible.

And when it comes to getting the money to rebuild, states and localities in the Midwest likely have a long wait ahead of them.

According to a new report from the U.S. Government Accountability Office (GAO), states and localities have still barely tapped the billions in federal funding for 2017's major hurricanes.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 29, 2019 AT 4:00 AM

Economics in Brief: Three City Bank Models | Finance Policy Passion | Pot Banking Progress

Here's what got our attention in the world of economic policy and practices this week. If you have a story idea for The Bottom Line, email our senior economics correspondent, Oscar Perry Abello, at oscar@nextcity.org. — Next City editors

Big Public Bank Deposit

San Francisco's treasurer released the Municipal Bank Feasibility Task Force Report last Friday. The findings didn't make the front pages — the city was up against another report delivered by some guy named Mueller that day — but the task force's analysis of three models for municipal-owned banks is worth digging into. BTW, here's how this whole deep dive came to be in S.F.

Must-See Livestreams

Reason #436 that Oscar Perry Abello is the Next City senior economics correspondent you need in your life? He says this profile in The American Prospect, "Congress's New Progressives Take On the Banks," "sums up a lot of why I'll be excited to watch livestreams of House Financial Services Committee hearings for the next year." We can't blame him: Chances are you've seen at least one viral video this month of someone being grilled by committee member Alexandria Ocasio-Cortez. With old and new legislators from major urban areas, everything from the Community Reinvestment Act to strengthening minority-owned banks is on the policy table.

Bipartisan Support for Pot Banking Bill

Speaking of the House Financial Services Committee, members moved a bill along Thursday that would help legal pot entrepreneurs get better access to financial services. As Roll Call reported, at a congressional hearing on the bill, the owner of a Washington, D.C.-based dispensary testified how current barriers more harshly affect less wealthy, minority cannabis entrepreneurs. Next City will continue to report on the growing activism by advocates looking to ensure economic inclusiveness in the industry as profits flow. Here's our latest on that movement, in Chicagoland.

NEXT CITY

MARCH 29, 2019

EPA Issues Guidance to Help States Improve Drinking Water Infrastructure.

Over $2 Billion to States, Tribes, and Territories in 2018

WASHINGTON (March 25, 2019) — Building on recent successes to move President Donald Trump's infrastructure agenda forward by providing the financing and resources communities need to modernize local water infrastructure, today the U.S. Environmental Protection Agency (EPA) issued new guidance for states to use when applying for financing from the Drinking Water State Revolving Fund (DWSRF).

In 2018 the Drinking Water State Revolving Fund (DWSRF) committed $2.8 billion in drinking water infrastructure loans and refinancing and disbursed $2.5 billion for drinking water infrastructure to improve our nation's public health.

Last week in a speech at the Woodrow Wilson Center, EPA Administrator Andrew Wheeler suggested federal water funding programs would be excellent models for international organizations to adopt in order to address the global water crisis.

Today's guidance for states highlights recent changes made to the DWSRF as a result of the America's Water Infrastructure Act (AWIA) of 2018. Of note, AWIA:

- increases the amount of additional subsidy available to disadvantaged communities;

- expands eligible uses of the DWSRF set-asides to include source water protection activities and source water assessments;
- extends the American Iron and Steel provision for DWSRF-funded projects through federal fiscal year 2023; and
- increases the maximum-authorized DWSRF loan term up to 30 years for any DWSRF-eligible community or up to 40 years for state-defined disadvantaged community.

A critical component of maintaining and repairing aging water infrastructure is properly managing assets such as tanks, pipes and pumps. Through planning and conducting inventories, systems can maximize their infrastructure investments while minimizing the total cost of owning and operating them. To support this work, EPA has also released an updated State Asset Management Initiatives document. This document update, required by AWIA, allows states to learn about the various state asset management promotion initiatives.

Background

Since the DWSRF was established in 1997, the EPA has worked with the states to turn $20 billion of the American taxpayers' money into $38 billion in assistance to infrastructure projects that are delivering drinking water to thousands of communities across the country—especially in low-income communities and where public health risk is the highest. The Drinking Water and Clean Water State Revolving Funds (SRFs) play an integral role in President Trump's efforts to rebuild the country's aging water infrastructure while improving local water quality, creating jobs, and protecting public health. In 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure.

For more information visit: https://www.epa.gov/drinkingwatersrf and https://www.epa.gov/dwcapacity.

Federal Court Deals Airbnb a Blow in its Fight Against Local Regulations.

"This case is hugely significant," says one legal scholar.

Santa Monica, California scored a significant win in federal appeals court on Wednesday, with a ruling that promises to set a favorable precedent for local governments seeking to regulate home-sharing and short-term rental websites like Airbnb.

Affirming a lower court's decision, the U.S. 9th Circuit Court of Appeals rejected claims by Airbnb and HomeAway.com that the city's home-sharing regulations were illegal under a federal law that shields internet companies from legal risks they could face from third-party content. Similar cases are pending elsewhere.

"Now we have a precedent that really, really opens the door to regulation," said Abbey Stemler, a professor of business law at Indiana University and a leading scholar on the sharing economy.

"Why this case is hugely significant in my mind is it now creates a way for local governments to rein in these platforms," she added.

Santa Monica's ordinance, first passed in 2015 and amended in 2017, permits city residents who obtain a special license to host visitors in exchange for money for a period of less than 31 days, as long as the resident and visitor are both staying in the home.

It also imposes obligations on platforms like Airbnb: They have to collect and submit occupancy taxes, they have to disclose certain listing and booking information to the city, and they can't complete bookings for property not licensed and listed in a city registry.

Businesses are prohibited under the ordinance from collecting booking services fees for unlicensed, and therefore unlawful, short-term rentals.

The companies grounded their legal arguments against the local regulations in a 1996 federal statute known as the Communications Decency Act. Section 230 of that law provides legal protections for online entities that host or republish speech.

A basic example would be that a company providing an online forum would not be held liable for defamatory content posted by a user. But Stemler explained that in recent years the Communications Decency Act has been used in efforts to block regulation.

In the Santa Monica case Airbnb and HomeAway.com argued that the city's ordinance required them to monitor and remove third-party content and in doing so violated the Communications Decency Act, interfering with protections afforded to them under the federal law.

The content monitoring and removal referenced here would have to do with actions the companies may have taken to check that properties appearing on their websites were included in the city's short-term rental registry and removing property listings if they were not.

"While we acknowledge the Platforms' concerns about the difficulties of complying with numerous state and local regulations, the CDA does not provide internet companies with a one-size-fits-all body of law," the 22-page opinion by Judge Jacqueline Nguyen says.

"Like their brick-and-mortar counterparts, internet companies must also comply with any number of local regulations concerning, for example, employment, tax, or zoning," it adds.

The decision points out that the ordinance does not force the companies to review the content of property listings, or to remove them. Instead it prohibits the processing of transactions for properties that don't meet registry and licensing requirements.

An analogy Stemler offers is that if a company hosted a website listing cocaine dealers and took a fee for each sale, the activity would not be protected under Communications Decency Act.

"That final step of processing the transaction is what Santa Monica is saying is not protected by the CDA," she added.

The companies also leveled some claims against the ordinance under the First Amendment. But the district court concluded that the local law regulated conduct, not speech. The appeals court agreed, saying it concerned "nonexpressive conduct—namely, booking transactions."

Airbnb did not respond to an emailed request for comment on Wednesday. The Santa Monica case is not the only time the tech firm has tangled with local governments over regulations.

Around the same time the company began its court battle over the Santa Monica rules it also challenged a similar ordinance in San Francisco. That case concluded with a settlement in 2017 and the company agreeing to follow an amended set of regulations.

In January, a federal judge ruled in favor of Airbnb and HomeAway in a New York City case, issuing a preliminary injunction that blocked city regulations from taking effect while the litigation

continues.

A day later, Airbnb filed a lawsuit in a Florida federal court over Miami Beach's short-term rental restrictions. And last November the company sued Boston over its rules.

Some of the arguments the company has made in the Miami Beach and Boston cases hinge on the Communications Decency Act.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 13, 2019

What to Consider When Budgeting Cloud Migration at the Municipal Level.

Learn how calculating costs and forecasting future savings when budgeting cloud migration can help your local government realize tech modernization.

Budget requests for technology investments hold the promise of running government more efficiently at a reduced cost by improving resource management, processes and decision-making, according to the report, "Transforming Government Through Technology," developed in 2018 to counsel federal operations in digital modernization.

In the report, the Technology CEO Council (TCC) recommended cost-reduction estimates over a 10-year period be used to justify investments in federal workforce, processes and technology tools.

Likewise, civic technology applications that do not have a clear revenue stream often require creative thinking, and potentially a reform of local procurement processes. But budgets can be used to tackle the issue, according to "The Civic Technology Landscape," a 2015 report by the Urban Sustainability Directors Network.

Continue reading.

efficientgov.com

by Andrea Fox

April 1, 2019

Fitch Feedback Report on Discussion Paper: Short-Term Ratings

Read the Report

Fitch Publishes Exposure Draft On New Short-Term Rating Criteria.

Fitch Ratings-London-22 March 2019: Fitch Ratings has published an exposure draft proposing new criteria for short-term ratings across its corporate, financial institution and public finance portfolio. The proposals follow a major review of the function and utility of our short-term rating scale, begun in August 2018 with the publication of a discussion paper and a broad-based market dialogue, which has helped shape our proposed, expanded approach to a short-term scale for today's capital markets.

The proposed criteria revisions would amend our correspondence table between Long- and Short-Term IDRs to provide a substantially more differentiated analytical view of short-term risk between issuers. More specifically, we propose increasing the number of long-term ratings that can correspond to more than one short-term rating to five from three, by permitting Long-Term IDRs of 'A' to correspond to 'F1+' (in addition to the existing 'F1' mapping) and Long-Term IDRs of 'BBB+' to correspond to 'F1' (in addition to the existing 'F2' mapping).

The new proposed criteria would also reflect the greater granularity now present in our asset class criteria, compared with criteria in effect at the time of the original introduction of the short-term scale. Consequently, the exposure draft proposes specific short-term oriented analytical factors that would be used as the primary elements to distinguish between short-term ratings at crossover points.

We have also published a summary of feedback received during our market dialogue on alternative approaches to the current short-term rating scale. As well as responding to different options discussed with the market, this paper outlines some of the logistical issues associated with the proposed revised criteria.

The exposure draft contains an assessment, by sector, on the estimated potential impact of the proposed criteria. The short-term ratings of any issuers whose ratings we believe will be affected by the finalised change in criteria will be individually placed Under Criteria Observation (UCO) upon publication of the final criteria, at the conclusion of the exposure draft period. No long-term ratings will be affected by this proposed criteria change, and we also do not currently expect any impact on any money market fund ratings, where short-term ratings serve as inputs to the rating process. We intend to conclude resolution of all eventual UCO designations within six months of the publication of final criteria. The new criteria would apply cross-sector at the point of finalisation, and sector criteria would be updated to reflect the approach in the course of scheduled sector criteria updates.

Fitch invites feedback on the proposed criteria from market participants. Comments should be sent to criteria.feedback@fitchratings.com by 23 April 2019. Fitch will publish on its website any written responses it receives, in full, including the names and addresses of such respondents, unless the response is clearly marked as confidential by the respondent.

Contact:

Corporates
Richard Hunter
Global Group Head – Corporates
+44 20 3530 1102
Fitch Ratings Limited
30 North Colonnade

London E14 5GN

Financial Institutions
Alan Adkins
Managing Director
+44 20 3530 1709

Public Finance
Dennis Pidherny
Managing Director
+1 212 908 0738

Nicolas Painvin
Managing Director
+33 1 44 29 91 28

Sovereigns
Tony Stringer
Managing Director
+44 20 3530 1219

Supranationals
Arnaud Louis
Senior Director
+33 1 44 29 91 42

Infrastructure & Project Finance
Stephane Buemi
Senior Director
+44 20 3530 1236

Fund & Asset Managers
Alastair Sewell
Senior Director
+44 20 3530 1147

Media Relations: Peter Fitzpatrick, London, Tel: +44 20 3530 1103, Email:

peter.fitzpatrick@thefitchgroup.com
Adrian Simpson, London, Tel: +44 20 3530 1010, Email: adrian.simpson@thefitchgroup.com
Louisa Williams, London, Tel: +44 20 3530 2452, Email: louisa.williams@fitchratings.com

Additional information is available on www.fitchratings.com

Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria

Fitch Ratings-New York-22 March 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Tender Option Bond Rating Criteria." This report updates the prior report published on March 28, 2018. The key elements of Fitch's tender option bond rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

Record High Value a Cause for Concern for Muni Bond Bulls.

Sean Carney, head of municipal strategy and primary markets at BlackRock, discusses record high valuations in the municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

March 20th, 2019

Municipal Bonds Off to Best Yearly Start Since 2014.

- **Muni-debt funds have raked in cash steadily since early Jan.**
- **Tax-exempt bond returns are twice as high as Treasuries**

State and local-government bonds are headed for their strongest start to a year since 2014, propelled by an influx of cash into municipal-debt mutual funds as investors seek out tax havens and the Federal Reserve holds off on interest-rate increases.

The securities have returned 1.8 percent in 2019, putting them on track for the best first-quarter showing in five years. That's roughly double the gain for Treasuries, according to Bloomberg Barclays indexes.

The outperformance has been driven in part by a push among investors to cut their tax bills after the new limit on state and local deductions was ushered in, a trend that Bank of America Corp. analysts said they expect to continue. The Fed's decision to step back from tightening monetary policy is also boosting fixed-income investments.

“SALT is creating elevated demand, especially on the two coasts,” said Michael Pietronico, chief executive officer of Miller Tabak Asset Management. “The perception that the Federal Reserve is on hold has helped pull cash off the sidelines.”

Investors have added about $12.6 billion to municipal-bond mutual funds since early January, with about $1.6 billion sent in during the week ended March 13, the tenth straight weekly gain, according to Lipper US Fund Flows data. At the same time, the pace of new bond issuance hasn’t kept up with demand, analysts say, a factor that helped push the prices of top-rated 10-year bonds earlier this month to their highest against Treasuries since at least 2001.

“We expect demand to remain strong, supply to remain light – it’s going to be a struggle to find value,” said Pietronico, who anticipates that municipal bonds will return from 3 to 4 percent this year. “As the year progresses, we think it will get more brutal.”

Bloomberg Markets

By Claire Ballentine

March 18, 2019, 10:30 AM PDT

How to Survive the Zombie LIBOR Apocalypse: Saul Ewing

They’re out there now, in small towns and big cities, getting ready to rise up and wreak financial havoc on unsuspecting bond issuers and borrowers. Unless they’re sought out early and neutralized, the zombie LIBOR interest rates could take a big bite out of municipalities, hospitals, colleges and other institutions and borrowers with outstanding bonds, loans or swap contracts bearing interest rates tied to LIBOR.

It’s already fairly well known that LIBOR, the London interbank offered rate, is being phased out as a reference rate. By the end of 2021, LIBOR will be replaced with another, as yet undetermined, reference rate or rates. Bank regulators in the United Kingdom and the United States have realized, belatedly, that LIBOR never was an efficient or fair way to set international benchmark interest rates. LIBOR is basically an average of what a small number of banks estimate on a daily basis to be their cost to borrow unsecured funds from each other in different currencies across different time periods. These unregulated self-reported estimates (or, more accurately, educated guesses based on an extremely small number of unsecured interbank lending transactions) are not based on actual transactions and, being free from governmental oversight or transparency, were ripe for inaccuracies and even manipulation.

Following some headline-grabbing charges of LIBOR-rigging by large banks, LIBOR’s days were numbered, and the British authority overseeing LIBOR announced that, after 2021, it will no longer persuade or compel banks to submit estimates for the determination of LIBOR. The only question left then was what would replace LIBOR – or would a seemingly undead LIBOR continue to control interest rates as Zombie LIBOR?

Beware the Zombie LIBOR

LIBOR is now, in effect, a dead rate walking. The plan is that LIBOR will cease to exist as a benchmark interest rate at the end of 2021, but many imaginative market observers are calling it a “Zombie LIBOR”, because it’s not really alive now, and it may not really be dead after 2021. As

mentioned above, LIBOR is no longer considered to be a reliable benchmark rate, and may become even less reliable as fewer banks provide LIBOR estimates and others move to alternate interest rates. Issuers and borrowers may begin to wonder whether their existing LIBOR-indexed bonds, notes or swap instruments actually reflect the real cost of borrowing money. Issuers and borrowers entering into new transactions may eschew LIBOR altogether in favor of another benchmark rate, without waiting for 2022 to roll around.

However, because so many currently outstanding bonds, loans and swap transactions have LIBOR baked into them, with no easy way to switch to another interest benchmark or comparable interest rate, it's possible that LIBOR may need to stay around even after 2021 in order to provide these "legacy" deals with a benchmark interest rate, no matter how unreliable. Some legacy deals with maturities extending beyond 2021 may have no other good choice but to stick with a zombified LIBOR, even as new deals and other legacy deals have switched over to another, more nimble, benchmark rate. LIBOR, kept artificially alive by a small number of reporting banks, would then go head to head with another rate, or rates, until the legacy deals all mature or find a way to provide an alternate benchmark rate.

SOFR to the Rescue?

In the United States, a committee convened by the Federal Reserve Bank to study LIBOR replacements recommended the adoption of an alternative interest rate benchmark tied to U.S. treasuries-backed repurchase agreement market from actual market transactions. The recommended rate – called the Secured Overnight Financing Rate, or SOFR – represents rates that banks are able to fund overnight on a basis secured by U.S. government debt. The Federal Reserve Bank of New York has been publishing SOFR on a daily basis since April 3, 2018.

As a benchmark for determining interest rates, SOFR has some structural advantages over LIBOR. SOFR is an overnight secured rate based on actual Treasury transactions, changing daily, whereas LIBOR is an unsecured rate based on bankers' estimates of future rates, which means that SOFR is much less susceptible to manipulation and abuse than LIBOR. LIBOR is based on unsecured loans and, therefore, builds in a risk premium; SOFR is a secured rate, with no risk premium, so SOFR generally produces a lower rate than LIBOR and is considered less volatile than LIBOR. And who knows what could happen to LIBOR if, or when, Brexit becomes a reality? So far, it appears that SOFR is the heir apparent as the benchmark interest rate in the U.S. following LIBOR's ultimate demise, assuming LIBOR really does go away.

Who's in Harm's Way?

For decades, LIBOR has been ubiquitous in lending and swap transactions. In the public finance sector, many state, county and local issuers, school and park districts, conduit 501(c)(3) borrowers such as hospitals and colleges, and conduit private activity bond borrowers have issued bonds or entered into loan or letter of credit transactions which provide that interest is to be determined by reference to a floating LIBOR rate (of usually 30, 60 or 90 days), together with an "applicable margin" or spread expressed as a percentage or basis points. LIBOR may be used in determining a taxable rate or tax-exempt rate, or both, and borrowers may have the option to convert floating LIBOR rates into floating prime or fixed rates, and then back again.

Issuers and borrowers have also been frequent participants in swap transactions, under which the issuer or borrower pays a fixed rate of interest to a counterparty and receives in return a floating rate as a percentage of LIBOR. In these transactions, the bonds are issued with a fixed rate, which is then exchanged with the swap counterparty for a LIBOR-based rate, so that the bondholders receive interest at a floating rate tied to some percentage of the applicable LIBOR.

Not only do issuers and borrowers need to concern themselves with the phase out of LIBOR, but banks, underwriters, placement agents, trustees, bondholders and other participants in the municipal bond marketplace will also be closely monitoring the looming battle between LIBOR and SOFR, and trying to determine which side to choose.

The Specter of a LIBOR Legacy

With 2021 staring down at them, bond issuers, conduit borrowers, banks and others are now facing LIBOR's demise from two distinct viewpoints – either those with existing, or legacy, transactions which have pegged interest rates to some fraction of LIBOR, or those entering into new deals with the full knowledge that LIBOR as we know it won't be around forever. For those entering into new floating rate transactions, being forewarned is being forearmed against Zombie LIBOR. As further discussed below, issuers, borrowers and banks can anticipate the phase out of LIBOR and draft their documents accordingly, such as by providing appropriate spread, trigger and fallback provisions. Those with legacy contracts referencing LIBOR, however, aren't so lucky. They will need to pour over their existing documents and get a handle on what happens to their interest rates once LIBOR is history.

Issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing prior to the end of 2021 have, ostensibly, no great incentive to revisit their LIBOR agreements, yet they may wish to calculate whether the LIBOR-based interest rate they are currently paying has a real relationship to the actual cost of borrowing funds. They may discover that their LIBOR is a Zombie LIBOR untethered from reality. In that case, they might want to renegotiate for a lower interest rate – through a new benchmark rate, a new applicable margin, or both – for the remaining term of their LIBOR obligations.

On the other hand, issuers and borrowers with legacy agreements for LIBOR-indexed debt maturing after the end of 2021 have a pressing incentive to revisit their LIBOR agreements – and as soon as possible. These agreements contain the seeds of a Zombie LIBOR uprising which, left unchecked, could lead to uncertainty, higher interest rates and the municipal bond market version of panic in the streets.

The trouble with many legacy LIBOR contracts is that they didn't even bother to contemplate that LIBOR may go away someday, or else they contemplated only a temporary suspension of LIBOR quotes. Those legacy contracts which were sagacious enough to address the possible unavailability of LIBOR, no matter how short-term, usually provided for "fallback" language setting out an alternate benchmark rate to be used when LIBOR was not available.

These fallback provisions have taken many forms, and have set up a variety of alternate benchmark rates, ranging from choices like prime, some sort of fixed rate, some other floating rate determined by another index listed in the financial press, or a rate picked at random by a lender or bond trustee. Issuers and borrowers will need to scrutinize the fallback language, if any, in each of their legacy LIBOR contracts with an eye towards such critical issues as:

- **What's the alternative?** Does the fallback language clearly and unambiguously identify an alternate benchmark rate? Is the alternate benchmark rate readily ascertainable in today's market, and does the alternate benchmark rate accurately reflect the cost of borrowing money? If the fallback rate is the prime rate, the issuer or borrower will be facing a rate substantially higher than LIBOR. There's no sense in replacing a Zombie LIBOR with another unreliable rate, or a rate that gives one party a distinct advantage over the other.
- **Who's in charge?** The fallback language may give the lender, a bond trustee or some other party carte blanche to determine if LIBOR is indeed unavailable and what alternate benchmark rate is to

be used in LIBOR's place. Does the issuer or borrower have any say in the matter? If it doesn't like the new alternate benchmark rate or the resulting new interest rate, can the issuer or borrower refinance or redeem without getting hit with a prepayment penalty?

- **What's the spread?** The fallback language in many legacy contracts may have described an alternate benchmark rate, but probably did not provide a mechanism for adjusting the applicable margin or spread in the event LIBOR is not available. Many legacy LIBOR documents set the interest rate for a bond or loan at a multiple of LIBOR – for example, 0.75 of LIBOR for a tax-exempt bond. As mentioned above, though, LIBOR is a risk-based rate and therefore runs higher than risk-free reference rates such as SOFR (which, being based on secured short-term transactions, will generally be a lower rate than LIBOR). A higher or lower applicable margin may be required so that the actual interest rate paid under LIBOR will be roughly comparable to the actual interest rate under the alternate benchmark rate. Issuers, borrowers and lenders may need to perform mathematical gymnastics to come up with a new spread to use with the new benchmark rate, but the end result should be that the actual interest rate charged to the issuer or borrower won't fluctuate wildly if and when an alternate benchmark rate replaces LIBOR.
- **How do we fix this?** There's a good chance that your legacy LIBOR contracts will have to be amended because the fallback provisions are absent, confusing or inadequate, or because the margin is too high or too low for the new alternate benchmark rate. But it may not be so easy to amend legacy contracts. Loan agreements with banks may require the bank's consent, or the consent of all or a majority of syndicated lenders. Indentures for bond issues may require the consent of all or a majority of bondholders. Issuers and borrowers should determine what consent, if any, is needed to amend legacy documents and, if so, can the required consent be readily obtained or waived?
- **But not so fast.** Amending legacy documents for tax-exempt bonds or loans could result in a "reissuance" for federal income tax purposes. The IRS considers a tax-exempt obligation to be reissued if there are what it deems to be "significant modifications" to the terms of the obligation so that it ceases to be the same obligation as originally issued and is essentially a new obligation, unless the terms of the bond documents themselves provide for such modifications. A reissued tax-exempt bond or loan is subject to a re-testing of the requirements for tax exemption. At a minimum, a new Form 8038 will need to be filed with the IRS, bond counsel may be required to perform additional tax due diligence, and bond counsel, issuer's counsel and/or borrower's counsel may have to give new opinions. The bottom line is that bond counsel should always be consulted prior to any amendments of legacy documents for tax-exempt obligations.**Getting Around LIBOR Before It Goes Away**

While bond issuers, conduit borrowers and banks with legacy LIBOR deals will bear most of the brunt of the LIBOR phase out, that doesn't mean that structuring and negotiating new floating rate transactions is going to be a piece of cake for anyone. Those entering into new floating rate bond or loan deals will know the perils of going forward beyond 2021, and will need to be very careful in their negotiations over issues such as:

- **A workable alternative.** New contracts tied to LIBOR should provide for a definitive alternate benchmark rate to go into effect as soon as LIBOR is no longer available. As of early 2019, SOFR seems to be the leading contender for the new benchmark rate, but there are also good arguments in favor of the Federal Funds Effective Rate, especially with respect to swap contracts. Other benchmark rates may emerge as we get closer to 2021. The key thing is to not leave it to chance but instead have a workable, fair fallback benchmark rate waiting in the wings.
- **Who's pulling the trigger?** New contracts should also clearly state who is responsible for determining when LIBOR is no longer available, and how that party will make that determination. Should the new benchmark rate kick in on January 1, 2022, or can the new benchmark rate go into effect earlier, when someone, somewhere determines that LIBOR is nothing but a hollow zombie?

- **Setting the spread.** As discussed above, the spread or margin for LIBOR may not necessarily be the appropriate spread for another benchmark rate. For new contracts, the issuer/borrower and lender should agree on an appropriate spread for when the new benchmark rate goes into effect.

Become a Zombie LIBOR Fighter

The closer we get to 2021, the more likely it is that LIBOR will become a zombie interest rate. It won't reflect real-world interest rates and may wind up costing unwary issuers and borrowers a lot of money in interest rates that are substantially higher than the market rate.

However, you can – and must – fight back against the Zombie LIBOR infestation. First, identify all of your bonds, loans, swap contracts and other financial commitments which have interest rates tied to LIBOR. Then, review the appropriate documents for each deal to see how they handle LIBOR unavailability triggers, new benchmark interest rate fallback provisions, adjustments to the margin and the other issues discussed above. If there is a fallback mechanism, try to figure out what your new interest rate might be using the new benchmark rate multiplied by the appropriate margin (either the existing margin or a new margin corresponding to the new benchmark rate). Is the LIBOR-based rate and the currently specified margin higher or lower than the alternate benchmark rate that would replace LIBOR?

Most importantly, communicate with your lender, swap counterparty or bond trustee. You may need to renegotiate terms, restructure the debt or consider a refunding or refinancing. Also, seek the assistance of competent legal counsel, with up-to-date market experience, to help ward off Zombie LIBOR and guide you through the process of transitioning from LIBOR to the new interest rate benchmark.

by Randall Kulat

March 19, 2019

Saul Ewing Arnstein & Lehr LLP

S&P 2019 U.S. Municipal Green Bond & Resiliency Outlook: Will The Self-Labeled Market Rebound?

The U.S. municipal market for self-labeled green bonds bucked global trends in 2018 and declined for the first time since 2013, although this was in line with broader volume decreases in public financings reflecting tax law changes, which eliminated the ability of issuers to advance refund existing debt.

Continue Reading

Mar. 14, 2019

When Bond Funds Make Sense.

When Bond Funds Make Sense

Like mutual funds and exchange-traded funds, bonds and bond funds can help investors take the edge off market volatility and create a balanced, diversified portfolio. But a debate rages among people who worry about this stuff: Is it better to own individual bonds or bond funds?

The benefits of bond funds

With an individual bond, you get 100 cents on the dollar when it matures (assuming the issuer doesn't default). The knock on bond funds is that, because they are constantly buying and selling bonds, they have no maturity date. Therefore if rates are rising, the value of the fund goes down, and you might have to sell the shares for less than you paid.

While this criticism of bond funds is accurate, there are quite a few caveats. For starters, you'll need at least $500,000 in the bond portion of your portfolio to achieve sufficient diversity and the scale to absorb transaction costs. Short of that, you're better off in funds.

What's more, a bond fund can take advantage of rising rates by constantly buying bonds with higher coupons. But say you own a $10,000 bond paying 3% interest and rates rise to 4%. The semi-annual payouts of about $150 won't be enough to buy a new, higher-yielding bond.

And finally, while it's true you will get your money back if you hold a bond to maturity, you still suffered opportunity cost – you were unable to invest that $10,000 in a new, higher-paying bond without selling and taking the loss.

Continue reading.

Barron's

March 24, 2019 11:00 a.m. ET

Moody's: FEMA's Decision About California Dam Is a Signal to States and Localities

The federal agency may want governments to repair and replace aging infrastructure before it fails, but making California eat some of the repair costs could lead to more deferred maintenance on other projects, the ratings company said.

State and local governments can no longer assume the federal government will cover the costs of disasters it deems caused by deferred maintenance after California's request for $306 million to repair the Oroville Dam was denied, Moody's Investors Service said this week in a report.

Heavy rainfall damaged the Northern California dam's spillway in February 2017, and the resulting flood risk forced the evacuation of 180,000 residents.

The Federal Emergency Management Agency notified the California Department of Water Resources on March 7 that only $333 million of the $639 million the state requested for repairs would be reimbursed. FEMA argued preexisting structural issues with the upper spillway should have been addressed before it failed—declaring those repairs ineligible for at least 75 percent reimbursement.

A 2018 forensic report found systemic problems at the dam, starting with its design and construction but also with maintenance of the structure.

The state agency plans to appeal the decision to FEMA for itself and 29 local water contractors, wholesalers that supply treated water. But FEMA has made clear state and local governments should expedite repair or replacement of aging infrastructure before it fails, according to Moody's weekly credit outlook.

"Prior to the FEMA denial, localities might have anticipated reimbursement even for structures of uncertain storm preparedness," reads the report. "Having to demonstrate infrastructure sufficiency for natural disaster cost reimbursement by FEMA will increase the cost and complexity of local governments' disaster preparation and post-disaster recovery."

The agency doesn't intend to send messages with its decisions, Brandi Richard, spokeswoman for FEMA Region IX, told Route Fifty by email.

"We do encourage tribal, state, and local governments and homeowners to maintain and repair structures as a way to reduce the severity of damage caused by disasters," she added.

FEMA hasn't received the water agency's appeal yet, Richard said, and the appeals process could take up to 18 months. In the meantime, DWR plans to charge contractors $42 million over the course of 2019 for the repairs.

Should FEMA reject DWR's appeal, the department will either have to absorb the repair costs, probably by tapping reserves, or pass them onto contractors and ultimately ratepayers. That could result in higher-than-expected water bills for 27 million people, about 70 percent of California's population, according to the report.

Most of DWR's revenue, 50 to 55 percent, comes from the Metropolitan Water District of Southern California, which serves 19 million customers across Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties. The Metropolitan Water District's contract runs through 2035, and the district would likely be responsible for 45 percent of repair cost through that duration, according to the report.

DWR did not respond to a request for comment.

"We support [DWR] and recognize the agency has worked tirelessly to protect public safety and to successfully repair the Oroville spillways," said Jennifer Pierre, general manager of the association State Water Contractors, in a statement given to The Sacramento Bee. "We firmly believe that federally-required repairs to Oroville after a federally-declared emergency should qualify for full federal assistance."

To further offset costs, DWR may have to defer maintenance on other projects, according to the report, which could lead to another disaster.

"Our decisions to grant or deny funding are solely based on the laws and guidelines that govern our work," Richard said. "It is not our agency's intent to be unfair to our state and local partners. That's why we provide subject matter experts to help them submit projects for reimbursement."

Route Fifty

By Dave Nyczepir
News Editor

MARCH 22, 2019

A Closer Look at Environmental Impact Bonds.

How Are They Affecting Green Infrastructure?

Across the nation, countless cities with antiquated sewer and stormwater systems are under orders from the U.S. Environmental Protection Agency (EPA) to reduce stormwater runoff to decrease the amount of pollution entering local waterways. When Washington, D.C., faced this problem, city officials decided to experiment with green infrastructure rather than investing in expensive new pumps and pipes. Since green infrastructure had never been implemented on such a large scale, however, the city faced a huge challenge when it came to financing the project.

For the city, the solution was to launch the country's first Environmental Impact Bond, or EIB. Considered a "pay for success" strategy, an EIB allows cities to share both the risks and the rewards of solving problems through innovative strategies with investors. They make it possible for governments, investors and other participants to focus on overall outcomes rather than specific activities, and they are proving successful.

What are EIBs, how do they work and how exactly are they affecting green infrastructure? Let's take a closer look.

EIBs and How They Work

EIBs are instruments for financing large projects that pay returns based on outcomes. Like Green Bonds, they are commonly used to raise funding for environmentally sustainable projects, such as green infrastructure. Unlike Green Bonds, however, the financial return of the investment is tied directly to the success of the project. In other words, investors can only collect a return on their investment if the project proves to be successful. In the case of financing green infrastructure projects using an EIB, investors see a financial return when a demonstrable difference to the environment is achieved.

The current generation of investors cares about environmental and social returns as much as it cares about financial gain. Known as "impact investors," these individuals and organizations are seeking environmental, social and financial returns when making investments. When a municipality decides to fund a green infrastructure project using EIBs, it seeks investors who want to help pay for environmental capital projects.

Once bonds have been issued, the issuer uses the obtained funds to pay for their planned green infrastructure solutions. The principal amount of the bonds and interest must be remitted on scheduled payment dates. Following an evaluation period, the issuer pays the investors an outcome profit when there is demonstrable proof that the project has performed better than expected. If it underperforms, however, the investor must pay the municipality a "risk-sharing" payment. This usually means that the investor receives little or no interest.

RELATED — Sharing the Risks and Rewards: Examining the 'Pay for Success' Model of Environmental Impact Bonds

What Is Green Infrastructure?

Green infrastructure, also sometimes referred to as GI, is an innovative approach to managing stormwater runoff. It utilizes natural processes, such as evapotranspiration and infiltration, to slow down stormwater to prevent it from overwhelming municipal sewer systems and polluting

waterways.

Green infrastructure also harnesses the power of these natural processes to clean and sometimes reuse stormwater. There are several types of green infrastructure, but the overall goal is to replicate natural environments and make it possible to deal with rainwater and snowmelt runoff as naturally as possible.

Green infrastructure includes things like permeable pavements, bioretention and roof-top collection processes. Porous asphalt, pervious concrete, rain gardens, bioswales and tree boxes can all be used in green infrastructure processes as a means of allowing water to be absorbed naturally into the ground. Green roofs, rain barrels and cisterns serve as options for collecting or reusing rainwater and reducing runoff. Man-made wetlands are also common solutions for dealing with stormwater in urban and suburban areas.

Benefits of Environmental Impact Bonds for Green Infrastructure

Because green infrastructure solutions are relatively new and have not been tested in the long term, obtaining financing is often a major challenge for municipalities. Environmental Impact Bonds provide access to funding for projects that are normally difficult to finance. They may also make it possible to obtain financing faster by engaging new investors.

Green infrastructure projects are sometimes risky. Financing them through EIBs means that the risk is shared by municipalities and investors. This, of course, makes it easier for municipalities to embrace green strategies since they are not carrying the entire burden if a project fails.

How EIBs Are Affecting Green Infrastructure

There are more than 700 communities throughout the United States with combined sewer systems. This means that stormwater and raw sewage flow through the same system before reaching a treatment facility. When these systems are overwhelmed, the combined sewage and stormwater ends up polluting local waterways. EIBs make it possible for municipalities facing this type of problem to fund environmentally friendly projects as solutions.

In the case of Washington, D.C., the original plan was a $2.6 billion tunnel system to keep overflow out of local rivers. Partway through the project, however, planners realized that green infrastructure initiatives would cost less ($25 million) while helping the city solve its wastewater problem. The country’s first EIB made it possible to move ahead with this innovative project that may have otherwise been impossible to finance.

EIBs are having a huge impact on green infrastructure because they enable municipalities of virtually all sizes to embrace solutions like permeable pavement, green roofs and rain gardens. Financing such projects through traditional means is often challenging due to the unique risks involved with green infrastructure, but organizations are coming up with creative ways to implement greener infrastructure. For example, Atlanta won the first EIB Challenge supported by the Rockefeller Foundation and will be provided with $12.9 million worth of green infrastructure. With the help of creative financing, EIBs make it possible for municipalities to embrace these innovative, environmentally friendly and cost-effective alternatives to traditional stormwater management infrastructure.

A Unique Funding Option

The impact of paving over forests, meadows and wetlands has been seen on a massive scale across the nation. Through green infrastructure projects, however, many cities and communities are

creating natural methods of dealing with stormwater runoff. Environmental Impact Bonds can provide a unique means of funding these projects, as they allow municipalities to share the risk with investors who are interested in environmental, social and financial returns on their investments.

Atlanta DWM completes first publicly-issued Environmental Impact Bond

Quantified Ventures, an impact investment firm, and Neighborly, a mission-oriented broker dealer, recently announced the issuance of the first impact bond to be offered on the public markets. The $14 million Environmental Impact Bond (EIB) gives the City of Atlanta Department of Watershed Management (DWM), access to funding for innovative green infrastructure projects that will address critical flooding and water quality issues, reduce stormwater runoff and enhance the quality of life of Westside neighborhoods that are in the Proctor Creek watershed.

The Atlanta EIB builds on the success of previous impact bond offerings in several ways. As a publicly issued bond, it has all the hallmarks of a traditional public municipal bond offering, such as a designated CUSIP number providing wide distribution and access to the secondary market, and has been highly rated by Moody's (Aa3) and S&P (A+). It is also designed to be priced competitively with other municipal bond offerings.

The Atlanta EIB is the second impact bond to be structured by Quantified Ventures as an actual municipal bond, the first of which, with the DC Water and Sewer Authority, was sold in a private placement. In its role in the Atlanta offering, Quantified Ventures brought expertise in evaluating all aspects of EIBs, which require an ability to translate desired outcomes into financial value that can be priced into a security and develop a rigorous evaluation process.

WATER FINANCING & MANAGEMENT

MARCH 25, 2019

Well, You're Going to Hear About Muni Bond Lawsuits: Joe Mysak

- **Price-fixing, collusion at the center of series of complaints**
- **Minnesota adviser, financial fraud powerhouse seek billions**

There was a scene in the "The Sopranos,'' in which mob boss Tony dreams of talking to a fish. "I don't want to hear it,'' he tells the fish. "Well, you're gonna hear it,'' the fish replies.

That's where we are right now with a series of lawsuits filed against a bunch of banks that served as remarketing agents for variable-rate demand obligations. Nobody wants to talk about it. Nobody wants to comment. Nobody really wants to hear about it. But you're gonna hear about it.

There's so much about this story that is without precedent. First there was the series of lawsuits filed by a whistle-blower on behalf of California, Illinois, Massachusetts and New York, alleging damages and penalties of at least $3.6 billion.

These lawsuits allege that the banks didn't price and remarket VRDOs individually, as they promised, but used something called "robo-resetting,'' basically pricing them as if they were all alike in big buckets. The lawsuits also allege that Wall Street institutions conspired to keep the prices high enough that investors would never put them back, thus saving banks the trouble of having to find new buyers.

Then there was a big antitrust lawsuit filed in the Southern District of New York by Philadelphia, represented by famed financial fraud powerhouse Quinn Emanuel Urquhart & Sullivan. This referenced the whistle-blower as well as its own analysis, alleging that seven banks named in the complaint colluded to inflate prices on VRDOs. The lawsuit also specifically mentioned that the SEC and the Department of Justice were looking into the whistle-blower's allegations, seeking unspecified damages and penalties in the "billions'' of dollars.

And then the whistle-blower, a Minnesota adviser named Johan Rosenberg, revealed himself because of a Massachusetts ruling requiring that only individuals, not corporate entities, could file False Claims Act lawsuits in the state. This was the last piece of the puzzle.

Where to begin? First, you don't get a lot of whistle-blowers making allegations in the municipal bond market, then letting everyone know who they are. Second, you don't get a lot of law firms of the caliber of Quinn Emanuel standing as plaintiff's counsel in the municipal market. Finally, of course, there's the "billions" — probably the least interesting part about all of this, although it's what will get headlines.

We're still only at the very beginning of a process that will presumably take years, marking another gruesome episode in public finance. And yes, I know: You don't want to hear it.

Bloomberg Business

By Joe Mysak

March 19, 2019, 7:03 AM PDT

Ex-Citadel Quants are Gunning for the $3.8 Trillion Muni Market.

- **Headlands responds to 13,000 municipal bond auctions a day**
- **Greater adoption of electronic trading in munis boosts quants**

The quants are coming for the $3.8 trillion municipal market.

Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.

Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.

"This idea that every bond is a unique snowflake and a story — they say 'balderdash'," Paul Daley, a managing director at BondWave LLC, a financial technology company, said of Headlands' approach. "All these bonds are mathematical equations, and if we can model it, we can price it."

The emergence of Headlands comes as quantitative trading firms are stepping into a gap left by

securities dealers, who are holding less debt in inventory and concentrating instead on fulfilling orders for customers. The shift by dealers was spurred in part by regulatory requirements ushered in after the 2008 financial crisis that increased their cost of capital, prodding them to cut their holdings of state and local-government debt by about 60 percent since 2006, according to Federal Reserve Board statistics.

Generating Bids

“The algorithms and technology are bringing more liquidity into the market, which is a good thing,” said Brad Winges, chief executive officer at Hilltop Securities in Dallas. “It’s giving more transparency to the individual retail investor.”

Matt Andresen, a former co-chief executive at Citadel Securities, the New York Stock Exchange’s largest designated market maker, founded Headlands in 2010 with Jason Lehman, who ran Citadel’s global options business, and Neil Fitzpatrick, former chief operating officer of Citadel Execution Services.

They were joined in 2013 by Martin Mannion, who had succeeded Fitzpatrick at Citadel. Headlands started trading municipal bonds in 2014 and focuses its computer-driven approach on lots of $100,000 or less, which represent about 80 percent of daily trade volume, though it also trades large blocks as well.

The Chicago-based firm executes more than 1,000 trades a day and had an inventory of $400 million, Andresen, Headlands’ chief executive officer, told a fixed-income market structure panel in April 2018. He said the firm’s technology can generate prices on more than 700,000 bonds.

“We felt like given our experience providing liquidity to retail-sized orders in other asset classes, even though munis were very different, that we could potentially add value as a liquidity provider,” Mannion said in a phone interview. He declined to disclose Headlands profitability.

Ripe Market

Even with such approaches, the municipal market is unlikely to ever be as uniform as the stock market. The over-the-counter municipal bond market has more than 900,000 separate securities issued by tens of thousands of municipalities, with a big chunk of them held by buy-and-hold individual investors.

In 2011, about 99 percent of the market’s bonds didn’t trade on any given day, according to a report from the U.S. Securities and Exchange Commission. Last year, daily trades averaged 40,400, about half of which had a value of $25,000 or less, according to the Municipal Securities Rulemaking Board.

Yet, several factors have made the the market ripe for the type of quantitative trading that’s already got a major hold on the stock market.

The release of same-day trading prices since 2005 has given firms like Headlands more than a decade of data that can now be used to build pricing models, while electronic trading platforms have increasingly displaced the old-fashioned practice of executing trades over the phone. Regulations enacted in 2016 that require brokers to seek the best prices available has also led them to expose bonds to a large number of bidders on such trading platforms.

Win or lose, through the auction process Headlands gets feedback that allows it to refine its pricing models. Automation allows the firm to respond, in periods of volatility, to a spike in the number of

auctions, which would be difficult for an individual trader to do manually.

What makes Headlands different from banks such as Citigroup Inc. and Royal Bank of Canada, underwriters that also use such techniques, is that the company doesn't handle new securities offerings and focuses mostly on small lots of bonds. Quantitative tools have allowed the big banks to free up traders to focus on block trades of more than $1 million, where relationships with counterparties are important.

Winges, a former senior executive at Piper Jaffray Cos. who took over as Hilltop's CEO last month, said the firm is spending more money on data aggregation and trading capability for clients. But he said computers won't replace humans on the trading floor.

"If you want to compete, the perfect combination is technology with historical knowledge," Winges said. "You can have the greatest quant model and still lose money and you can have the smartest trader — but not have a lot of technology — and he or she is going to lose money, too."

Bloomberg Markets

By Martin Z Braun

March 19, 2019, 5:11 AM PDT

Quants in the Muni Market Show Bond Liquidity Will Be Fine.

Debt markets continue to evolve in an era of diminished Wall Street influence.

At least one quantitative trading firm thinks it has finally cracked the code to the widely idiosyncratic, infrequently traded, largely individual investor-based U.S. municipal bond market.

Bloomberg News's Martin Z. Braun has the scoop:

> Headlands Tech Global Markets LLC, a firm founded by former senior executives at Citadel LLC, is using complex mathematical formulas and powerful computers to buy and sell state and local government securities, seizing on the sometimes divergent prices in a market where the vast majority of bonds only rarely change hands.
>
> Headlands' five-man band of algorithm-driven traders have become a major, if little known, force in the industry, bidding each day on about 13,000 municipal securities that are put up for sale on electronic trading platforms. That's placed it among a group of companies that are bringing technology that has swept through other corners of Wall Street to state and local-government debt trading, challenging a long-held view that a market that finances everything from factories to state governments requires detailed research to gauge prices.
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Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 19, 2019, 10:15 AM PDT

Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

Legal Insight - Summary And Analysis Of The Water Infrastructure Improvement Act

Background

Over the last several decades, cities and other municipal entities (such as water reclamation districts) that own and operate wastewater treatment plants and sewer systems have been subjected to additional and increasingly stringent regulatory requirements under the Clean Water Act (CWA).

These requirements emanate from several distinct CWA programs, including those that address control of nutrients and other discharges from municipal treatment plants (also called publicly owned treatment works, or POTWs); systems that combine domestic effluents and stormwater (which give rise to combined sewer overflows, or CSOs); municipal separate storm sewer systems (MS4s); wasteload allocations in total maximum daily loads (TMDLs); and other CWA requirements. Each of these requirements is imposed independently, but the combined impact on the municipal operations, and on the financial status of the community and its residents, can be enormous.

To address these municipal concerns, EPA, in 2012, adopted a policy that allows municipalities to do an "integrated plan" or an IP. In an IP, the municipality can assess all of the CWA requirements that apply to its operations and prioritize them in a manner that seeks to maximize the environmental benefit from using the available resources. Several communities (including Lima, Ohio; Springfield, Massachusetts; and Evansville, Indiana) have used the IP process and have found that it can help them reduce their economic burdens while better protecting water quality.

However, broad implementation of the IP process has not proceeded quickly. Many communities have found that EPA Regions and States within which they operate are hesitant to use this new mechanism. Also, without clear statutory authorization, there is some concern about the long-term stability and continuity of the program. To address these concerns and to provide clear legal authority for IPs, Congress passed the Water Infrastructure Improvement Act – H.R. 7279, now Public Law 115-436, which provides Congressional support for use of the IP process on a long-term basis. The president signed the act into law on Jan. 14, 2019.

The new law's IP provisions ensure that each community must be informed by their permitting authority (in most cases, the State) that it has the opportunity to develop an IP that can be incorporated into its CWA permit. The permit can then incorporate all regulatory requirements addressed in the IP – and may include projects to reclaim, recycle or reuse wastewater, as well as green infrastructure measures. IP permits can contain compliance schedules, which can last longer than one permit term. IPs can also be developed by communities in enforcement actions, and communities that develop IPs can request that their enforcement orders or decrees be modified

based on the provisions in the IP. To ensure that EPA is held accountable for the effective implementation of the IP program, the Agency has to prepare a report to Congress on IPs, and make that report publicly available, within two years after the new law was enacted. The report must contain information on all IPs developed and implemented since EPA's guidance was issued in 2012.

In addition to codifying the IP process, the new law also contains provisions that promote the use of "green infrastructure" measures, such as porous pavement and green roofs. Many communities have sought to use these measures to reduce stormwater discharges without the need to build extensive and costly "gray infrastructure" (GI) systems, such as storage tanks and underground tunnels. However, implementation of GI concepts by EPA and other federal agencies has been inconsistent – sometimes encouraging and promoting their use, and sometimes imposing such extreme restrictions on their implementation that communities simply build gray systems instead. The GI provisions in the Water Infrastructure Improvement Act are intended to require EPA to work actively to promote GI use (within existing legal authorities), and to coordinate the GI policies that are being implemented by EPA offices and other agencies.

In navigating the myriad CWA requirements that are imposed on their operations, municipalities have often found it difficult to have their community-specific concerns heard by EPA. They have also found it challenging to access financial information and other resources that are available to them through EPA. Therefore, the new law includes one other provision: it creates a new office at EPA for a Municipal Ombudsman. The ombudsman's office will assist municipalities by providing them with information and assistance, and will also have the responsibility of providing information to EPA Administrator to ensure that the Agency policies as to CWA obligations of municipalities are consistently implemented by all EPA offices, including EPA Regions.

Specific Provisions of New Law

1. Integrated Planning

- EPA (or the State if the State has been delegated a National Pollutant Discharge Elimination System NPDES permit authority) must inform communities of the opportunity to develop an integrated plan that may be incorporated into the municipality's permit.
- A permit incorporating an integrated plan may integrate all regulatory requirements addressed in the plan, including requirements related to: (1) a combined sewer overflow, (2) a capacity, management, operation and maintenance program for sanitary sewer collection systems, (3) a municipal stormwater discharge, (4) a municipal wastewater discharge, and (5) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.
- An integrated plan incorporated into a permit may include the implementation of (1) projects, including innovative projects, to reclaim, recycle, or reuse wastewater; and (2) green infrastructure.

2. Compliance Schedules in Integrated Planning Permits

- A permit incorporating an integrated plan can contain a compliance schedule, which can be longer than one permit term if the compliance schedule is authorized by the State water quality standards and meets the requirements of EPA regulation concerning compliance schedules, 40 CFR 122.47.
- The requirement in EPA regulations (40 CFR 122.47) for compliance by an applicable statutory deadline does not prohibit implementation of an applicable water quality-based effluent limitation over more than one permit term.
- Nothing in the CWA provision regarding compliance with water quality-based requirements (Section 301(b)(1)(C)) precludes including a compliance schedule in an integrated planning permit.

- A compliance schedule can be reviewed each time that the permit is renewed, to determine whether the schedule should be modified.

3. Implementation of Integrated Plans Through Enforcement

- In any CWA enforcement action relating to municipal discharges, EPA must inform the municipality of the opportunity to develop an integrated plan.
- Any municipality under a CWA administrative order or settlement agreement (including a judicial consent decree) that has developed an integrated plan may request a modification of the order or agreement based on the integrated plan.

4. Report to Congress on Integrated Plans

- Within two years after enactment, EPA must submit a report to Congress on integrated plans, which must contain information regarding each integrated plan that has been developed and implemented under the CWA since the publication of EPA integrated planning framework in 2012. The report must also be made publicly available.

5. Municipal Ombudsman

- An Office of Municipal Ombudsman has been created at EPA.
- The ombudsman will have duties that include providing technical assistance to communities seeking to comply with the CWA, and providing information to the administrator to help ensure that Agency policies are implemented by all EPA offices, including Regional offices.
- The ombudsman will work with headquarters and Regional offices to ensure that communities are provided information about available federal financial assistance, about flexibility available under the CWA, and about the opportunity to do an integrated plan.
- The ombudsman will publish, on EPA's web site, general information related to technical and financial assistance to municipalities, flexibility available under the CWA, and resources developed by EPA related to integrated plans.
- The ombudsman will also publish on the website, a copy of each permit, order, or judicial consent decree that implements or incorporates an integrated plan.

6. Green Infrastructure

- EPA must promote the use of green infrastructure in, and coordinate the integration of green infrastructure into, CWA permitting and enforcement, planning efforts, research, technical assistance, and EPA funding guidance.
- EPA must ensure that the Office of Water coordinates efforts to increase use of green infrastructure with other federal agencies, State, tribal and local governments, and the private sector.
- EPA must direct each Regional office, as appropriate based on local factors, and consistent with the requirements of the CWA to promote and integrate the use of green infrastructure within the Region, including outreach and training, and incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including requirements under consent decrees and settlement agreements in enforcement actions.
- EPA will promote green infrastructure information sharing, including through a web site.

7. Savings/Transition Provisions

- Nothing in the integrated planning provisions reduces or eliminates available flexibility under the CWA, including the authority of a State to revise a water quality standard after a Use Attainability

Analysis, subject to EPA approval.
- A compliance schedule issued in a permit shall not revise a compliance schedule in a judicial order or decree resolving a CWA enforcement action to be less stringent, unless the order or decree is modified by agreement of the parties and the court.
- Nothing in the integrated planning provisions modifies any obligation to comply with applicable CWA technology and water quality-based effluent limitations.

Analysis of New Provisions and Practical Impacts

The Water Infrastructure Improvement Act provides several tools that municipalities can use to improve their programs for CWA compliance – to make them more effective, less confusing, and to reduce the onerous financial burdens on the communities and their ratepayers. Each community should, for example, consider carefully assessing whether developing an integrated plan will be useful to address its particular compliance obligations. The new law emphasizes incorporation of IPs into permits, rather than enforcement orders or decrees, so each community doing an IP will want to explore use of the permit mechanism rather than the enforcement tools that are usually used by EPA and the States. In developing IP permits, long-term compliance schedules should now be available for use, to ensure that the community has enough time to implement its compliance requirements in a reasonable and affordable manner. Also, the community should be able to include innovative projects in its IP, including reclaim/reuse/recycle programs and green infrastructure measures.

Beyond use of the IP process, communities should be able to utilize other opportunities provided by the new law, whether they are developing an IP or dealing with their CWA issues in another way. To the extent that the community wants to use green infrastructure, for example, it can now point to the clear congressional message that EPA should be promoting – not discouraging – use of GI measures. And, even if it is not using GI or developing an IP, a community can seek the help of the new ombudsman if it encounters difficulties in dealing with EPA demands, or if it needs assistance in accessing EPA financial or informational resources.

Role of Barnes & Thornburg in Assisting Communities

The law firm of Barnes & Thornburg – and its Water Team – has assisted many communities in addressing their CWA compliance and enforcement issues.

In 2010, the Water Team began working with the U.S. Conference of Mayors in its efforts to craft solutions to the CWA challenges faced by its members. In that capacity, members of the team were closely involved in the Conference of Mayors' work with EPA to develop the Agency's integrated planning policy. During the development of that policy, the Water Team convened a group of municipalities that were interested in integrated planning ideas – the Municipal Integrated Planning Alliance (MIPA) – and through that group, participated in EPA meetings and submitted detailed comments on EPA draft policies. Once EPA issued its policy, the Water Team began working with communities to develop IPs, and succeeded in obtaining the first EPA approvals of final IPs. Subsequently, as IP issues began to be debated in Congress, the members of the Water Team participated in drafting proposed legislation. During the legislative process, the team lawyers represented the National Association of Clean Water Agencies (NACWA), and worked in cooperation with the Conference of Mayors and other municipal groups, in developing and obtaining passage of the final bill.

Our Water Team has deep knowledge of the Water Infrastructure Improvement Act because of our direct involvement with the bill. With that knowledge, the Water Team assists clients with how those provisions can be used to address their specific challenges, how to develop detailed IPs, and how to engage with EPA and State agencies to secure approval of IPs.

For more information about the new CWA provisions, please contact the Barnes & Thornburg attorney with whom you work, practice lead of the firm's Water Team, Fred Andes, at 312-214-8310 or fandes@btlaw.com, or chair of the firm's Environmental Law Department, Erika Powers at 312-338-5904 or epowers@btlaw.com.

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1https://www.epa.gov/sites/production/files/2015 10/documents/integrated_planning_framework.pdf.
2https://www.congress.gov/115/bills/hr7279/BILLS-115hr7279enr.pdf

Barnes & Thornburg LLP

by Fredric P. Andes and Erika K. Powers

March 19, 2019

On the Intersection of Competition Law and Local-Government Conduct .

This post studies an interesting question in competition law: can a local government be sued for money damages based on a federal antitrust violation?

The answer is "no," according to a recent decision from a federal court in Charlotte. *Benitez v. Charlotte-Mecklenburg Hospital Authority* is one of several high-profile antitrust cases involving Atrium Health, the large public-hospital system in Charlotte.

Raymond Benitez had inpatient care at Atrium. After insurance, Mr. Benitez faced a $3000 medical bill.

Mr. Benitez's insurer had an agreement with Atrium. That agreement included what are known as steering restrictions. These restrictions limited an insurer's ability to direct subscribers—like Mr. Benitez—to healthcare providers other than Atrium.

These facts prompted a putative class action. The complaint alleges that the steering restrictions unlawfully drive up prices for inpatient services, inflate the amount of co-insurance that patients must pay Atrium, and thereby violate the federal antitrust laws. The putative class sought money damages and an injunction to stop Atrium's steering restrictions.

Atrium moved for judgment on the pleadings. It argued that a federal statute called the Local Government Antitrust Act barred the claim for monetary damages. The Act provides local governments with absolute immunity against monetary damages brought under section 4 of the Clayton Act.

In its opening brief, Atrium emphasized that it functions as a political subdivision of the state—and that it was created to serve a public purpose. Atrium pointed to numerous cases that have applied the Act to hospitals based on those features.

Judge Robert J. Conrad, Jr. agreed.

Judge Conrad began his analysis by looking at the Act's definition of "local government." That definition includes any "special function governmental unit established by State law in one or more States."

Judge Conrad then noted that courts have broadly construed this definition. That broad construction means that the Act applies to a wide range of decisions that any local-government entity makes.

And, to eliminate any doubt, Atrium is a local-government entity. The General Assembly created Atrium as a public-hospital authority under chapter 131E of the North Carolina General Statutes. Judge Conrad specifically cited section 131E-16(14), which defines a hospital authority as "a public body and a body corporate and politic organized under [North Carolina law]." He explained that the term "body politic" means "a body acting as government."

Judge Conrad then turned to Atrium's powers under the statute. Those powers, he observed, parrot the powers that the General Assembly gave to municipal hospitals under the same chapter. This similarity bears significance, because the Fourth Circuit has granted absolute immunity from antitrust damages to a municipal hospital established under chapter 131E.

By extension, Judge Conrad concluded, a public-hospital authority formed under chapter 131E is likewise immune from antitrust claims that seek monetary damages.

So the Act shields Atrium from claims for money damages. But it does not shield Atrium from claims for injunctive relief.

Judge Conrad put the case on ice nonetheless. He did so because the same injunctive relief being sought in *Benitez* is also being sought in another pending case against Atrium before Judge Conrad. A stay in *Benitez* avoids duplicative litigation, and a resolution of the issues in the other case would resolve the issue in *Benitez*.

That resolution is coming soon, because the parties in the earlier case have reached a proposed settlement. That settlement stops Atrium from enforcing steering restrictions in its insurer contracts and bars Atrium from taking action that would prohibit, prevent, or penalize steering by insurers in the future.

Ellis & Winters LLP

byScottie Lee and Stephen Feldman

Legislation Introduced in the States Raises Privacy and Contracting Concerns.

At least 28 states have legislation pending that would require state vendors to use a software application that would track actual computer time by state vendors who bill for hours of work on computers. Monitoring by the software would include frequent screen shots and logging of key

strokes, and the referred to technology is currently only being offered by one company.

An analysis by the Department of Finance and Administration in Arkansas finds that:

> The provisions in this legislation create significant issues with privacy and federal regulatory compliance. It is not possible to take a screen shot every three minutes and not capture individual and personal data. Key logging software would record everything including passwords, healthcare, and other personal information with no mechanism for redaction before being recorded or stored by the tracking software.

The National Association of State Chief Information Officers has issued the following statement.

> NASCIO, which represents state CIOs, opposes state legislation which would mandate contractor monitoring software because of the significant risks to citizen privacy and federal regulatory compliance concerns it could create. While NASCIO certainly supports contractor productivity, cost efficiency and successful project outcomes, legislation of this nature could introduce unnecessary risks to citizen data by essentially transferring ownership of private citizen data to a third party. This type of legislation also has the potential for unintended consequences, such as impacting a state's cybersecurity insurance policy coverage. State CIOs inherently understand and appreciate the seriousness of protecting citizens' data, and therefore do not support legislation that could serve to increase or introduce additional risk.

According to NASCIO, legislation has been introduced in the following states: Arizona, Arkansas, Colorado, Connecticut, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington and West Virginia.

NASACT members should be aware that the software company seeking to have the legislation passed is billing it as an important fraud prevention and accountability tool. Your office may receive questions from your state legislators.

Questions should be directed to NASACT's Washington Office at (202) 624-5451.

S&P: With Oil Price Volatility, Recent Economic Gains In U.S. Oil-Producing States Are At Risk

Over the past year, economic performance among oil-producing states stabilized following a lingering economic downturn that began in mid-2014. A changing economic outlook and a wide range of fiscal adjustments resulted in an easing of the negative pressure facing overall state credit quality.

Continue Reading

Mar. 12, 2019

Creating a New Marketplace for Resilient Infrastructure Investment.

Summary of Contents

- Understanding the stormwater investment challenge and opportunity
- What do we mean by a resilience marketplace?
- Better define the environmental and economic benefits of more resilient infrastructure
- Develop technical understanding and capacity around new financing tools
- Scale innovation and realize market potential

Climate change is getting harder to ignore, from alarming new reports about its impacts to debates around a Green New Deal. Yet for all this attention, individual places—from the biggest cities to the smallest towns—are still struggling to do something about it.

An unpredictable climate should serve as a strong motivator for every community to better maintain its manmade and natural stormwater infrastructure to be more flexible and responsive. Increased flood risks are among the clearest challenges, with climate change already having generated billions of dollars in flooding costs. But as we saw in Houston during Hurricane Harvey—and in several other places along the Gulf Coast, Mississippi River, and beyond over the past few years—many communities currently have failing systems of water pipes, plants, and natural wetlands. Even more troubling is how communities cannot even handle runoff from daily rainfall, as well as additional pollution.

Communities need a new approach to accelerate investment in infrastructure that is resilient to growing climate pressures. They should carry out proactive repairs of their aging, inefficient stormwater systems as a way to deliver fiscal savings and long-term environmental and economic benefits. They also should invest in new technologies and green infrastructure to better protect properties and improve livability.

Continue reading.

The Brookings Institute

by Joseph Kane & Adie Tomer

March 18, 2019

CUSIP Request Volume for Corporates and Municipals Increases.

NEW YORK, NY, MARCH 11, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a noteworthy increase in requests for new corporate and municipal debt identifiers, while requests for international security identifiers declined in February.

Read Report.

BDA Hosts Capitol Hill Infrastructure Fly-in and Congressional Briefing.

Read more.

Fitch Ratings: No Immediate Impact Likely on US Colleges in DoJ Investigation

Fitch Ratings-Chicago/New York-14 March 2019: This week's charges of fraudulent admissions brought on by the U.S. Department of Justice (DoJ) are not likely to lead to near-term negative rating actions for U.S. colleges and universities, according to Fitch Ratings. Over the longer term, credit risks may arise from related legal costs, as well as from reputational damage contributing to any weakened demand and/or philanthropic efforts.

The DoJ has charged multiple individuals with federal crimes tied to seeking fraudulent admissions into various institutions of higher education. Eleven employees at eight universities were named in the filings, along with dozens of other individuals. No universities were named as defendants in the released criminal complaint.

These prominent institutions maintain sufficient expense flexibility, liquidity and student demand to mitigate minimal near-term effects. However, longer term, less definite fallout could include litigation, reputational damage, erosion of philanthropic support and other challenges arising from legislative or regulatory reactions. Highly rated universities have historically shown considerable resiliency through near-term legal and reputational risks. Additionally, the institutions involved generally exhibit strong demand profiles and robust financial positions.

Effective governance and leadership is necessary for long-term viability. As such, we view this as an important rating factor in assessing the creditworthiness and potential performance of a rated institution. As an asymmetric (downside risk only) credit factor, Fitch generally highlights instances where governance and management are weak in ways that constrain or pressure the rating. Our baseline expectation for rated entities is that governance practices and organizational structure are adequate and neutral to ratings with notably strong management to be reflected in operating and financial performance over time.

Notably, the sector as a whole continues to face scrutiny over the value of higher education. Any tempering of the broad public and private financial support the sector has benefitted from over time would pose longer term risks.

Contact:

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

Justin Patrie, CFA
Fitch Wire

+1 646 582-4964
Fitch Ratings
33 Whitehall
New York, NY, 10004

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

Additional information is available on www.fitchratings.com.

Inside Trump's Budget: 6 Things State and Local Governments Should Know

The president's 2020 proposal would slash domestic spending by nearly 10 percent and increase defense spending by 5 percent.

SPEED READ:

- President Trump's 2020 budget proposes major cuts for the Environmental Protection Agency, Medicaid, food stamps, cash welfare, public housing, transportation, clean energy and economic development.
- State and local organizations are noticeably quiet in response.
- It would run a $1 trillion federal deficit for the next four years.

This week, President Trump introduced his vision for the federal government's 2020 budget. It proposes slashing domestic spending by 9 percent, including a 31 percent cut to the Environmental Protection Agency (EPA). Defense spending, on the other hand, would increase by 5 percent, or $34 billion.

Here are six things state and local officials should consider when reviewing the administration's proposal.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 14, 2019 AT 3:12 PM

How The Rooftop Solar Financing Model Can Alleviate "Water Poverty"

Celebrities have had a bit of a rough news cycle this week, but earlier this month came a feel-good story about actor Jaden Smith providing money to help Flint, MI residents get "The Water Box", a relatively small-scale drinking water treatment system.

We shouldn't have to rely upon the generosity of celebrities to make sure everyone has access to clean, safe drinking water. And yet, nevertheless, here we are. While we're all probably at least a little familiar with pictures of villagers in developing countries facing scarce water supplies, the problems exist right here in America as well, and they're getting worse.

This isn't a problem isolated to Flint, despite all the media attention there. Recently 21 cities and towns in New Jersey learned they have elevated lead levels in their own tap water. There are an estimated 240,000 water main breaks in the United States each year, and degrading water infrastructure in the country is expected to cost businesses $147B in losses from 2013 through next year. And meanwhile, there are few signs that at the Federal level, policymakers are about to get serious anytime soon about the hundreds of billions of dollars of investment deemed necessary to fix our crumbling drinking water and sewage infrastructure.

Continue reading.

Forbes

by Rob Day

Mar 14, 2019

New Report Highlights Benefits of Utility Consolidation.

The US Water Alliance and the Environmental Finance Center at the University of North Carolina have released a new report titled Strengthening Utilities through Consolidation: The Financial Impact. The report synthesizes the financial impacts of consolidating water utility service by looking at the real-world, diverse experiences of eight communities from across the country.

There are tens of thousands of water utilities and authorities in the United States. According to many experts across the sector, collaboration could be essential to securing the nation's water future. Consolidating water utilities is one of many options communities may consider to pool resources, streamline decision-making, and increase efficiency.

While complex, consolidation may be an appropriate consideration when the community value proposition outweighs costs. The report is intended to inform water leaders about the financial effects of consolidating utility service.

For more information on the US Water Alliance visit uswateralliance.org.

For more information on the EFC, visit efc.sog.unc.edu.

BY WFM STAFF

MARCH 11, 2019

National League of Cities Pushes for Federal Government to Invest in Infrastructure.

Mayor Muriel Bowser and over 2000 municipal leaders met this week during the National League of Cities (NLC) Congressional City Conference held this week in Washington. Bowser, who is chair of the NLC's Housing Taskforce, pushed for federal corporation in improving infrastructure and housing for all.

“Washington D.C. is a growing city. We’re 700,000 people strong with a strong local economy- in fact one of the strongest in the region,” Bowser said during a press conference. “With our growth and prosperity we have developed other problems, where we have an expanding income gap, opportunity gap and in some cases achievement gap for our young people.”

“So at this year’s conference, cities and jurisdictions of all sizes, people from both side of the ideological spectrum are here today to focus on the big issues that affect us. Mayors will frequently say ‘there’s no Democrat or Republican way to pick up the trash.’

“Infrastructure will put American’s back to work. Infrastructure will offer good paying jobs and infrastructure will allow us to compete region to region, nation to nation across the globe. This is the focus that we have had in the NLC housing task force,” the District of Columbia mayor said.

Bowser touched on some specific issues around infrastructure and housing saying, “We still have housing pressures big and small. We know that the demand on housing, like housing shortages have to be met, and we also know that cities that seamingly have nothing in common sadly have homelessness in common.”

The NLC has a robust agenda for federal government including:

- Act as a champion for tax-exempt municipal bonds, the primary financing mechanism for state and local infrastructure projects. Any policy to alter the tax-exempt status of these bonds will cost local governments billions of dollars and prevent many projects from going forward;
- Support adequate and reliable long-term funding for infrastructure reflecting local needs and priorities;
- Support a vibrant web of connected transportation options — from transit and air to railways, roads, and waterways — as a means to reduce congestion, protect the environment, and stimulate economic development;
- Encourage and promote deployment of broadband networks in a competitive and technologically neutral manner, while preserving local authority to take action to ensure that residents have access to high-speed Internet and other communications services.

“Having safe and reliable infrastructure is a priority of every single leader because all communities will benefit from reliable water infrastructure, great streets and highways, a trained workforce and broadband infrastructure no matter where you live, said Mayor Karen Freeman-Wilson of Gary, Ind. and president of the National League of Cities.

“Investing in our infrastructure and investing in the people who can build our infrastructure should be one of the most single most priorities of government at every level. So as local leaders were are here this week calling on our federal government to rebuild with us,” Freeman-Wilson said.

“We understand that no branch of government can do it alone,” the NLC president added.

According to the Congressional Budget Office, federal, state and local governments spent $441 billion on infrastructure in 2017, ranging from aviation, water transportation, water resources and highways. The bulk of the funds, $177 billion, went to highways, water utilities and mass transit and rail according to a summary report.

By AFRO Staff – March 15, 2019

By George Kevin Jordan, AFRO Staff Writer

Blockchain Could Cut Middleman Costs, If It Catches On.

FORT MYERS, Fla. — Blockchain technology has the potential to cut costs for municipal bond issuers by reducing the need for some intermediaries in transactions and it is here to stay, a distributed ledger and cryptocurrency expert told bond lawyers Thursday.

At a National Association of Bond Lawyers conference in Florida, Stevie Conlon, vice president and tax and regulatory counsel at Wolters Kluwer spoke about the potential effects of cryptocurrency and blockchain on the public finance sphere. While Conlon urged the attendees to accept the changes blockchain and cryptocurrency may bring to public finance, some lawyers in attendance continued to be skeptical of blockchain's ability to flourish in the muni space.

A blockchain system could allow investors to buy bonds directly and standardize documents, therefore it could cut fees normally paid out to lawyers and underwriters, she said.

A member of the audience asked Conlon about the effect of blockchain on smaller investors, using $100 bonds as an example.

"I'm skeptical as to whether it's real for mom and pop investors, who will they trust, blockchain or underwriters?" he asked.

Conlon said blockchain could work and be used by younger generations who are more apt to use their phones to bank and avoid fees.

"Those small quantities that weren't attractive in a hundred dollars before, it's just the opposite now," Conlon said.

In the corporate world, blockchain and cryptocurrency caused some concern due to a multitude of security issues. There have been some high-profile hacks, and cryptocurrency still carries a negative stigma among some people for having served as a defacto coin of the realm for illegal online activity.

In a blockchain, every block has to have a consensus from 50% of the other blocks, making it less likely to be obstructed by hackers. Hackers can become more apparent in smaller blockchains, where people can buy the computing power to gain that 50% and commit fraud, Conlon said.

"Anyone involved, whether it's the finance attorneys or whether it's the underwriter or whether it's the issuer — all of those people have to say, am I comfortable with the related risks of the complete process?" Conlon said.

Lori Lea Shelley, a partner at law firm Mickes O'Toole LLC, said the conversation as a whole is interesting but is hesitant on whether blockchain and cryptocurrency would take off. Hacking and the use of blockchain for illegal activities taints the practice, Shelley said.

"I feel like a lot of that underworld activity or illegal activity is being financed that way and it just might sabotage the whole idea for legitimate business reasons," Shelley said. "So I have a hard time buying into it."

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 03/07/19 03:04 PM EST

Considering a State Bank for Local Governments.

Proponents say it could help with infrastructure financing, particularly for smaller jurisdictions. Bankers are skeptical.

OLYMPIA, Wash. — Lawmakers and researchers have been taking a fresh look here at creating a public bank, specifically to provide state agencies and local governments with improved access to infrastructure financing and other financial services.

The type of "state-chartered, public cooperative bank" under consideration would not be open to consumers or businesses.

But depending on how the bank were to take shape—if it ever takes shape at all—it's possible that its scope and offerings would be broader than state "infrastructure banks" that typically offer low interest loans and other financing assistance for transportation projects.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MARCH 5, 2019

Market Seeing Tremendous Flow Into Muni Bonds: Portfolio Manager

Part of the investor noise affecting the capital markets in 2018 was rising interest rates. The Federal Reserve didn't show much dynamism in 2018 with respect to monetary policy, obstinately sticking with a rate-hiking measure with four increases in the federal funds rate.

That appears to have changed given the current economic landscape, and especially in the capital markets as Fed Chair Jerome Powell is now preaching patience and adaptability. Powell's latest comments come as U.S. equities finished their worst year in over a decade–the Dow fell 5.6 percent, while the S&P 500 lost 6.2 percent and the Nasdaq Composite fell 4 percent.

This has posed challenges for not only equities, but the fixed income markets–specifically areas that were tried-and-truel safe-havens when stock markets go awry.

"Think about investment grade, high duration–that's seen a lot more volatility than many investors had expected," said Josh Rogers, Beta Specialist at JP Morgan Asset Management. "We believe that not only is that a challenge it's also an opportunity, especially when you look at the ultra short side of the curve where you can actually get paid now. Whereas if we rewound the clock two years ago you weren't getting anything."

While investors are flocking to safe haven assets like bonds, there's still a need for products that capture the upside potential in U.S. equities. At the same time, however, there's also a need for strategies that offer downside protection built into the product.

One area that has been experiencing an increased interest in the bond markets is municipal bonds. In the video below, Nisha Patel, portfolio manager with Eaton Vance, and Rachael Aiken, vice president and portfolio manager with Rockland Trust.

by ETF TRENDS on MARCH 5, 2019

Muni Bonds Enjoy Historic Run Despite Tax Overhaul.

Investors this year have poured the most money into municipal bond funds in at least 13 years

Municipal bonds are enjoying their strongest start to a year since at least 2006, defying expectations that President Trump's sweeping tax overhaul would depress demand in the market.

Investors poured more than $15 billion into municipal-bond funds in the first eight weeks of the year, the most over that period in at least 13 years, according to net inflows tracked by research firm Municipal Market Analytics. Demand stayed strong through the end of February, Investment Company Institute data show.

Many observers had expected Mr. Trump's tax changes in 2017, which cut corporate levies to the lowest point since 1939 and lowered individual taxes for many households, to reduce the market's appeal. Muni bonds are often exempt from federal taxes, making them valuable to people seeking tax-free investment income.

Continue reading.

The Wall Street Journal

By Gunjan Banerji

Updated March 6, 2019 6:47 p.m. ET

Shutdown Is Still Taking a Bite as Schools Report Missing Payments.

The longest-ever government shutdown may have ended, but it's still having an impact on the municipal-bond market.

Eight school districts in Oklahoma were late making interest payments on tax-credit bonds because they're still waiting on checks from the federal government, according to filings made today by trustee BancFirst.

Keys Public Schools in Park Hill, Oklahoma, made a late interest payment on qualified school construction bonds due March 1 because it still hasn't received payment from the Internal Revenue Service, according to a filing Tuesday. Bondholders receive a tax credit from the government for holding that type of tax-credit bond.

Sand Springs Public Schools also reported it was late with interest payments due on Build America Bonds, whose payments are partially covered by the U.S. government. "The Trustee has yet to

receive payment from the Internal Revenue Service due to delays caused by the federal government shutdown," the filing said.

Other issuers have said they didn't have any problem receiving subsidy payments on bonds as a result of the shutdown. Chuck Tombarge, a spokesman for the University of Minnesota, said in an email last month that the school received a subsidy payment from the federal government that was due in February.

Bloomberg Politics

By Amanda Albright

March 5, 2019, 2:06 PM PST

— With assistance by Ariana Mika

Nuveen Sued by Preston Hollow Over 'Campaign of Intimidation'

- **Nuveen threatened to pull business from banks, lawsuit says**
- **Preston Hollow Capital seeks injunction in Delaware Court**

Nuveen's head of municipal bond investments, John Miller, engaged in a "campaign of intimidation" to coerce banks that underwrite high-yield state and local government debt deals from doing business with Preston Hollow Capital, the Dallas-based lender alleged in a lawsuit.

Miller and his staff at Nuveen, which oversees more than $140 billion in municipal assets and is the biggest buyer of the market's high-yield debt, threatened to use its power to pull tens of millions of dollars in business from banks that engaged in limited offerings with Preston Hollow, the firm said. Chicago-based Nuveen also made threatening, anti-competitive and defamatory statements about Preston Hollow to the firm's primary lender, the suit said.

"If broker-dealers do not make Preston Hollow aware of investment opportunities, or if they refuse to serve as underwriter for transactions that Preston Hollow directly originates, Preston Hollow's business of investing in municipal bonds that are the product of its custom-structured solutions will be significantly impaired," Preston Hollow said in the suit filed in Delaware Chancery Court.

A Nuveen spokesman said the company and Miller believe the claims are without merit and intends to vigorously defend itself against the allegations.

Preston Hollow, founded in 2014 by Jim Thompson, a former chief executive officer at Orix USA, occupies a growing niche in the $3.8 trillion municipal bond market by lending directly to risky projects. Preston Hollow has extended $2 billion in loans, financing projects like a hotel in a Dallas suburb, hospitals in California and New York, student housing in Pennsylvania, and roads, sewers and other infrastructure for economic redevelopment projects in the suburbs of New York City, Cleveland and Atlanta.

Preston Hollow is "highly dependent" on its relationships with investment bankers who can help the firm find deals, the suit said. Since Preston Hollow typically buys all of a borrowers securities in a limited offering, that would potentially put it in direct competition with Nuveen as a buyer.

Miller allegedly defamed Preston Hollow by saying that the firm charged excessive rates, causing

borrowers to overpay for projects. He boasted he had secured commitments from several banks to discontinue or curtail doing business with Preston Hollow, the suit alleged.

On Feb. 25, one bank told Preston Hollow it wouldn't participate in certain deals with the firm because of Nuveen's threats, according to the complaint.

Details on the alleged calls that Miller and his team made to banks were redacted in the complaint.

Preston Hollow wants the court to stop Nuveen from further "unlawful and tortuous communications" with banks and direct Nuveen to disavow Millers comments and adopt supervisory procedures to ensure Miller and Nuveen employees don't engage in future misconduct.

"Miller's efforts to weaponize Nuveen's considerable market power and use its leverage with those institutions pose a serious risk to Preston Hollow and its businesses, causing Preston Hollow to suffer irreparable harm," the suit said. Left unchecked "Miller and Nuveen will be emboldened to similarly attack other, smaller competitors to the detriment of the municipal markets as a whole."

The case is Preston Hollow Capital LLC v. Nuveen LLC. Docket Number: 2019-0169 in Delaware Court of Chancery.

Bloomberg Markets

By Martin Z Braun

March 6, 2019, 9:51 AM PST

Drama Erupts in the Tiny Corner of High-Yield Munis.

A lawsuit involving Nuveen and Preston Hollow shows there's money for ambitious capital projects.

There's nothing quite like big drama in a relatively small market.

The latest public spat isn't about manipulation on a global scale, like foreign exchange or the London Interbank Offered Rate. Nor is it about trading stocks on inside information. It centers on the U.S. municipal-bond market, specifically a dispute between investors involved in the small corner devoted to high-yield state and local government debt. Bloomberg News's Martin Z. Braun has the details:

Continue reading.

Bloomberg Opinion

By Brian Chappatta

March 7, 2019, 2:00 AM PST

Banks In Record Retreat From Muni-Bonds After Tax Cut Makes Them Less

Attractive.

- **State Street, JPMorgan, Bank of America report cutting stakes**
- **Signals first annual pullback from the market since 1995**

Big banks cut their holdings of state and local-government bonds during the last three months of 2018 as the corporate tax cut reduced the benefit of owning the securities, signaling the industry's biggest annual pullback from the market on record and its first in more than two decades.

State Street Corp., JPMorgan Chase & Co., Bank of America Corp. and Goldman Sachs Group Inc. together reduced their holdings of municipal debt during the fourth quarter by $5 billion, according to filings with the Securities and Exchange Commission. While some, including Wells Fargo & Co. and Citigroup Inc., stepped up their purchases at the end of the year, it wasn't enough to make up for the cutbacks by other lenders.

The fourth-quarter reduction comes after banks slashed nearly $40 billion from their state and local-government bond holdings from January through September, according to Federal Reserve Board figures, marking a stark reversal for an industry that had been a steadily growing source of demand. The filings indicate that banks' holdings declined overall last year for the first time since 1995 and eclipsed the record drop of $29 billion in 1987.

Continue reading.

Bloomberg Markets

By Michelle Kaske

March 6, 2019, 7:33 AM PST

Private Money Takes On Bigger Role in Airport Projects.

When Paine Field, about 25 miles north of Seattle in Everett, Wash., was born in the 1930s as a New Deal project, it was envisioned as a major commercial airport for the region. But that never happened. Instead, it became known as the place where Boeing offers "North America's only publicly available commercial jet assembly plant tour."

That is about to change. Thanks to private investment, Paine Field is finally set to offer air service to the public. A sleek, new, $40 million two-gate terminal was built by Propeller Airports, a Seattle company, and commercial flights are set to begin this month.

Brett Smith, Propeller's founder and chief executive, expects that travelers will be attracted by the convenience of avoiding traffic jams near Seattle-Tacoma International Airport. "No reason why tax dollars should be used to build passenger travel while there's private-sector money ready and willing to do it," he said.

Continue reading.

The New York Times

By Amy Zipkin

March 3, 2019

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5 Ways Congress May Try to Fix the Highway Trust Fund.

Better mileage and slower growth in miles traveled have combined to produce less revenue than Congress voted to spend

For nearly half a century, taxes on gas and diesel fuel funded what Congress spent from the Highway Trust Fund on roads, bridges and, after a 1982 compromise, mass transit.

For the past decade, however, better mileage for cars and trucks and slower growth in the number of miles Americans traveled combined to produce less revenue than Congress voted to spend.

The current five-year transportation law, which expires in September 2020, covered that shortfall by transferring $70 billion from the general fund. To spend similar amounts from 2021 through 2025, Congress would have to find an extra $17 billion to $23 billion a year, or $94 billion over five years, according to the Congressional Research Service.

And that's to maintain a spending level that is inadequate, according to business and transportation advocates, many lawmakers and, at times, President Donald Trump.

The American Society of Civil Engineers' national infrastructure report card in 2016 said there was a $1.1 trillion shortfall over the coming decade between total needs for surface transportation and estimated funding available. When other public works such as water and sewer systems, the electrical grid and airports are included, the shortfall exceeds $2 trillion.

The House Ways and Means Committee will discuss the need for "immediate action" on "crumbling infrastructure" on Wednesday. Rep. Earl Blumenauer, D-Ore., said Tuesday the House tentatively has set aside floor time in "the late spring" to take up a still-undefined infrastructure package.

Here's a look at some of the ways to cover a funding shortfall that Congress is considering.

Gas and diesel taxes

Last raised in 1993, the federal gas tax is 18.3 cents a gallon, and the diesel tax is 24.3 cents a gallon. If those rates had been indexed to inflation, in 2017 they would have been 31.7 cents for gas and 42.1 cents for diesel, according to the CRS.

In 2015, the Congressional Budget Office said a 1-cent increase in fuel tax rates would generate about $1.7 billion a year, but that would drop to $1.5 billion within 10 years.

That indicates that a 10-cent increase in the gas tax, indexed to inflation, would come close to plugging the first year's shortfall, but it would not accommodate any major increase in spending.

As the traditional funding source, fuel taxes are the most discussed option for closing the trust fund shortfall. They are also the easiest to implement and have the lowest administrative costs. But any tax increase, even one sold as a user fee, comes with political danger, especially in a politically polarized environment a year ahead of a presidential election.

Supporters have been arguing that Democratic and Republican state legislators and governors in more than two dozen states have raised their gas taxes without being punished by voters. Newly

elected Michigan Gov. Gretchen Whitmer, a Democrat who ran on a promise to “fix the damn roads,” announced in her budget speech Tuesday she wants to raise the state gas tax by 45 cents a gallon.

Blumenauer said that as a national funding model, the gas tax would not be reliable in 10 or 15 years. “But in the short term, the fuel tax, I anticipate, will be what we hear people feel most comfortable with,” he said.

The U.S. Chamber of Commerce has endorsed a 25-cent increase over five years. The American Trucking Associations has endorsed a 20-cent increase over four years. Representatives of both groups will testify Wednesday.

Miles-traveled tax

Taxing miles traveled would require plug-in electric cars that do not fill up at the pump — which comprised 1.1 percent of vehicle sales in 2017 — and hybrids that use less fuel to contribute more toward their wear and tear on roads and bridges.

But such taxes are only in the experimental stage in some states, and taking them national would incur new administrative and enforcement costs, which CRS said could range from 5 percent to 13 percent of collections.

The system would also have to address privacy concerns, since putting a global positioning tracker in a vehicle to measure how far it travels would also tell the government where it went and when. And there would have to be a way for motorists who do not have credit cards or bank accounts to pay.

House Transportation and Infrastructure Chairman Peter A. DeFazio, D-Ore., has said he would prefer the next transportation bill to create a national pilot program, and that the tax be designed to charge less for using lightly traveled rural roads and more for adding to rush-hour congestion.

Tolls and private financing

While the number of miles of roads with tolls grew by 1,280, to a total of 6,001, from 1990 through 2017, toll revenue as a share of total transportation spending has remained steady at about 5 percent to 7 percent for more than 50 years, according to the CRS.

“While there may be many existing roads on which tolling would be financially feasible, the vast majority of mileage on the federal-aid system probably has too little traffic to make toll collection economically viable,” the research service said.

Future upgrades or replacements could be made to federal projects by allowing private companies to collect tolls to recoup construction costs through public-private partnerships, often called P3s. But local officials may resist new tolls on bridges that were previously free, for example, and such projects would need enough guaranteed traffic to make the private investment feasible.

“Private-sector financing generated through P3s might best be seen as a supplement to traditional public-sector financing rather than a substitute,” CRS wrote.

Other proposals have included “asset recycling,” which is the sale of existing public works to private operators to use the revenue to build new projects; and developing national “infrastructure banks” that could lend money for projects and use repayments from states or other borrowers to fund new projects.

Roll back tax cuts

Senate Democrats in 2018 released an infrastructure plan that included a proposal to roll back parts of the Republican-crafted 2017 tax overhaul. Specifically, it called for raising the top individual tax rate back to 39.6 percent from 37 percent for couples with more than $600,000 in income and individuals with more than $500,000; increasing the Alternative Minimum Tax, the estate tax, taxes on the income of hedge fund operators, and raising the top corporate tax rate to 25 percent from 21 percent.

The proposal has little chance of being signed by Trump as he goes into his 2020 re-election bid, however. And the president of the U.S. Chamber of Commerce, Thomas Donohue, said last month that while he would work to support any member of Congress who ends up in danger of losing re-election for voting for a gas tax increase, he would fight any effort to roll back the 2017 tax law's provisions.

Blumenauer, a member of the Ways and Means Committee, indicated it is not a route the House is preparing to take.

"Of all the ways that we could have to fund the rebuilding and renewing of America, I think that is fraught with peril," Blumenauer said. "You're stepping on toes, you have little landmines, you have conflicting priorities, and you don't need to do it, because there are paths forward that do not involve a food fight."

Spend less

The Highway Trust Fund was set up to be a temporary program to fund the construction of the interstate highway system. And while Trump said during the 2016 campaign that he wanted to fund a $1 trillion infrastructure program, some in his party have said the federal government could pull back.

Some lawmakers argue that the highway fund should be dedicated solely to roads and bridges and that Congress should end setting aside for transit the first 2.86 cents of the 18.3-cent gas tax. Mass transit has expanded since the dedication, however, and systems in both red and blue states rely on it, though the biggest systems tend to be in states with Democratic senators.

Marc Scribner of the Competitive Enterprise Institute, who will testify at Wednesday's Ways and Means hearing, said Congress should focus transportation spending on areas intended by the Constitution, particularly interstate routes used for commerce and shipping.

"As important as the New York City subway system is, I don't think it's a nationally significant project," he said.

Roll Call

by Herb Jackson

Posted Mar 6, 2019 12:20 PM

S&P OPEB Brief: The Credit Impacts Of OPEB Obligation Bonds

Other postemployment benefit (OPEB) underfunding of obligations is pervasive across U.S. state and local governments, and costs are likely to continue to rise rapidly. Although, compared with pensions, these obligations may have some more flexibility in how they're provided, we recognize that funded levels are almost universally lower than those of pensions and could quickly become a challenge to

Continue Reading

Mar. 11, 2019

S&P Pension Brief: The 'California Rule' Survives The First Round Of The State Supreme Court

The California State Supreme Court issued an opinion March 4, 2019, regarding a long-discussed and anticipated California Firefighters Union (Cal Fire) case dealing with the "California Rule."

Continue Reading

Mar. 6, 2019

What Makes Muni Bonds Attractive in 2019?

The municipal bond market has experienced its fair share of headwinds over the past few years, including credit issues in Illinois and Puerto Rico and rising interest rates. While the economy has been improving, many municipalities have been hesitant to issue new bonds given the rising interest rates. However, demand among investors has remained robust given the favorable yields.

In this article, we will take a look at three reasons why muni bonds remain attractive to investors in 2019 as well as some lingering concerns in the market.

Continue reading.

municipalbonds.com

by Justin Kuepper

Mar 06, 2019

New Law Aims to Improve Water Infrastructure Planning for Municipalities: Barnes & Thornburg

The Water Infrastructure Improvement Act (H.R. 7279), which became law on Jan. 14, 2019, amends the Clean Water Act (CWA) to codify 2012 EPA guidance on flexible, cost-effective approaches to integrated infrastructure planning for municipalities. The act provides municipalities with the tools

to prioritize investments in wastewater and stormwater projects and to more easily comply with CWA requirements.

Barnes & Thornburg worked closely with U.S. Conference of Mayors and the National Association of Clean Water Agencies in developing the Water Infrastructure Improvement Act and lobbying for its passage.

The act allows communities to incorporate integrated plans directly into their National Pollutant Discharge Elimination System (NPDES) permits to update water infrastructure and achieve CWA compliance. NPDES permits that incorporate integrated plans can address CWA regulatory requirements related to any or all of the following:

- combined sewer overflows
- capacity, management, operation and maintenance programs for sanitary sewer collection systems
- municipal stormwater discharges
- municipal wastewater discharges
- water quality-based effluent limitations to implement an applicable wasteload allocation in a total maximum daily load

Additionally, a permittee's integrated plan can include innovative water reuse projects and green infrastructure. The act allows NPDES permits to include compliance schedules to allow for the implementation of integrated plans, and those schedules, if authorized, can exceed a single permit term.

The act also includes several important provisions that relate to CWA municipal issues other than integrated planning. For example, it establishes an Office of Municipal Ombudsman within EPA to support cities in complying with the CWA by providing technical assistance, federal financial assistance information, and information on integrated planning opportunities.

Further, the act requires EPA to promote the use of green infrastructure in CWA permitting, enforcement, planning, research, technical assistance, and guidance. The act is also designed to ensure coordination in the use of green infrastructure between EPA, other federal agencies, state governments, tribal and local governments, and the private sector.

Within two years of enactment, EPA will provide an update to Congress regarding all integrated plans that have been developed and implemented under the CWA since the publication of EPA's 2012 guidance.

by Ashley E. Parr

USA March 7 2019

Barnes & Thornburg LLP

GASB Issues Proposed Implementation Guide on Leases.

Norwalk, CT, February 28, 2019 — The Governmental Accounting Standards Board (GASB) has issued a proposed Implementation Guide that contains questions and answers about the GASB's new standards on accounting and financial reporting for leases.

The Exposure Draft proposes answers to questions about GASB Statement No. 87, Leases. GASB Implementation Guides are intended to clarify, explain, or elaborate on the requirements of Board Statements.

This Exposure Draft of a proposed Implementation Guide, Leases, is available for download at no charge on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by April 30, 2019.

State and Local Governments and Impact Investing.

A Guidebook for Strategic Engagement

Abstract
Impact investing approaches, which deploy capital seeking both a financial return and a social or environmental impact, have gained increasing attention and popularity. Conspicuously absent from many conversations on it, however, are state and local government actors. Yet there are clear benefits for governments to engage with impact investing as well as for impact investors, investees, and communities. For governments, impact investing can leverage significant private and philanthropic funds in the interest of social and environmental goals, access resources to stimulate growth and boost governance capacity, and help shift risks for innovative solutions. At the same time, governments can add significant value to impact investing efforts through a range of roles. In this report, we argue that governments can and should consider engaging with impact investing efforts and in many cases already are. Adopting a coherent, and locally appropriate strategic policy that accounts for the full opportunities, risks, and options presented by impact investing will enable governments and the communities they serve to leverage and support these new financial resources in ways that benefit the public.

Read the Full Report.

The Urban Institute

Matthew Eldridge, Rayanne Hawkins, & Mayookha Mitra-Majumdar

February 27, 2019

America’s Cities Are Running on Software From the ’80s.

Even San Francisco’s tech chops can’t save it from relying on computers that belong in a museum.

The only place in San Francisco still pricing real estate like it’s the 1980s is the city assessor’s office. Its property tax system dates back to the dawn of the floppy disk. City employees appraising the market work with software that runs on a dead programming language and can’t be used with a mouse. Assessors are prone to make mistakes when using the vintage software because it can’t display all the basic information for a given property on one screen. The staffers have to open and exit several menus to input stuff as simple as addresses. To put it mildly, the setup “doesn’t reflect business needs now,” says the city’s assessor, Carmen Chu.

San Francisco rarely conjures images of creaky, decades-old technology, but that's what's running a key swath of its government, as well as those of cities across the U.S. Politicians can often score relatively easy wins with constituents by borrowing money to pay for new roads and bridges, but the digital equivalents of such infrastructure projects generally don't draw the same enthusiasm. "Modernizing technology is not a top issue that typically comes to mind when you talk to taxpayers and constituents on the street," Chu says. It took her office almost four years to secure $36 million for updated assessors' hardware and software that can, among other things, give priority to cases in which delays may prove costly. The design requirements are due to be finalized this summer.

For local officials throughout the country, the shift from old-school servers to rented cloud storage has made it tougher than ever to fund upgrades. They can budget physical equipment as capital expenses, meaning they could issue bonds to pay for them. But cloud computing is a service, as the people selling it love to say, which means officials have to pay for it with operating funds—the same pool of money that goes toward addressing more tangible demands, such as parks and cops. The deliberate pace of government compounds the problem of strained resources, says Marc Pfeiffer, a former New Jersey official who now advises municipalities on managing technology as part of Rutgers University's Bloustein Local Government Research Center.

Continue reading.

Bloomberg Businessweek

By Romy Varghese

February 28, 2019

Closing of SLGS Window Will Affect 3 Types of Muni Transactions.

WASHINGTON — When the Treasury closes the window at noon Friday on the purchase of state and local government securities it will add complexity and costs to the municipal bond market for three types of transactions.

"Any time the SLGS window closes, it causes an inconvenience and an increase in costs to state and local governments," Shaun Snyder, executive director of the National Association of State Treasurers, said in an email Wednesday.

The SLGS window is closing as the Treasury begins to take extraordinary measures to prevent breaching the nation's debt limit after it is reset on Saturday.

At midnight Friday the current suspension of the debt limit expires.

The nonpartisan Congressional Budget Office reports the national debt stood at $21.9 trillion at the end of January and the new debt ceiling will reflect additional borrowing that has occurred between Jan. 31 and March 1.

SLGS purchases are being suspended until Congress acts to set a new debt limit or once again suspend the debt ceiling for a period of time.

SLGS are typically used by state and local governments and other entities that issue tax-exempt municipal bonds because of yield restrictions and arbitrage rebate requirements under the Internal

Revenue Code.

The role of SLGS has been significantly diminished by the termination of advance refundings under the Tax Cuts and Jobs Act, with the amount of SLGS outstanding declining about 32%.

There were 15,254 SLGS bonds and notes with a combined value of $61.4 billion as of Jan. 31 of this year compared to 21,015 SLGS bonds and notes valued at $94.4 billion at the end of 2017, according to the Treasury.

Rich Moore, president-elect of the National Association of Bond Lawyers and partner at Orrick Herrington & Sutcliffe in San Francisco, said there still are three uses for SLGS.

First, they are sometimes used for escrows in current refundings. They also are sometimes used for equity defeasance escrows which are yield restricted. The third use is for longstanding advance refunding escrows.

Current refundings represent the smallest share of SLGS use, Moore said. “No one is buying SLGS for a 7-day escrow, but if it’s 30 to 90 days they might well buy SLGS,” he explained.

“An equity defeasance may come up because someone is taking a remedial action and needs to defease the non-qualified bonds,” Moore said, explaining the second use for SLGS. “Or an issuer may do an equity defeasance of bonds for business reasons. If there’s a long-term defeasance escrow for non-callable bonds, that escrow is going to be yield restricted.”

Moore said that three years ago SLGS weren’t needed for an equity defeasance, but he’s now seeing a use for them “in a minority of cases” where the defeasance escrow is capable of earning a yield in excess of the bond yield.

“And in those circumstances it’s nice to be just able to apply for SLGS to get a perfect escrow,” he said.

The third continued use for SLGS in the municipal bond market involves longstanding advance refundings.

“There are some advance refunding escrows out there or equity defeasance escrows from way back,” Moore said. “Those are the ones who are probably least happy with having the SLGS window being closed, because they will have to find a different way to invest the proceeds while the SLGS window is closed.”

Issuers can make yield reduction payments to the Treasury to remain in compliance.

However, Moore said, “Now all of a sudden they’ve got to hire a rebate analyst or undertake that burden themselves. It’s been so long since anyone has been able to earn arbitrage there’s not many escrows like that left. I know of some.”

“It’s frankly one more mouth to feed,” Moore added.

Snyder echoed Moore’s sentiment that state and local governments will cope with the closing of the SLGS window.

“Just as they have in the past, state treasurers will adapt and will keep their hopes up that the SLGS window will only be closed for a short time,” Snyder said.

The SLGS window has previously closed 13 times since 1995, most recently between Dec. 8, 2017 and Feb. 12, 2018.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 02/27/19 02:04 PM EST

C-PACE De-Mystified: C-PACE Alliance Releases New Guide That Explains Bonds vs. Direct Financing For Commercial Pace.

WASHINGTON, Feb. 25, 2019 /PRNewswire/ — C-PACE Alliance, a coalition of large capital providers and transaction experts, announced today the release of a comprehensive guide that demystifies C-PACE and the use of bonds vs. direct financing for C-PACE programs. The C-PACE Alliance Policy Note explains that direct financing typically offers property owners lower costs and less complexity, while bond funding promotes better liquidity and potentially offers lower interest rates over time.

C-PACE is a program that state and local officials can authorize, allowing property owners to finance improvements in energy and water efficiency and increased resiliency of commercial buildings. C-PACE programs have launched in 23 states and the District of Columbia, with more programs slated for 2019. To date, property owners have financed over $850 million in improvements in more than 1,800 buildings using C-PACE programs.

C-PACE programs envision two methods to fund a transaction– direct financing or bond funding. The optimum funding method depends case-by-case on many variables, often leaving state and local officials in an uncomfortable position in determining how best to proceed. Officials who understand the difference between bonds and direct financing can avoid common misconceptions and are better-prepared to design C-PACE programs that benefit their constituents.

The Policy Note urges that state and local officials offer both direct financing and bond funding, if possible, unless local political realities or priorities favor just one option. Allowing free-market competition for both types of financing will maximize the flexibility and overall success of a C-PACE program.

About C-PACE Alliance
Formed in 2018, the C-PACE Alliance consists of six of the largest C-PACE capital providers along with major law firms and an accounting firm. The C-PACE Alliance articulates and advocates for industry practices that increase the usage and streamlining of C-PACE in order to maximize energy and water savings, resiliency and economic development impact. Visit http://www.c-pacealliance.com/ to learn more.

Contact: Cliff Kellogg
202-744-1984
ckellogg@c-pacealliance.com

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Related Links
http://www.c-pacealliance.com/

S&P: U.S. Independent Schools' Fiscal 2018 Median Ratios Are Steady, With A Stable Sector Outlook For 2019

S&P Global Ratings' outlook for the U.S. kindergarten through 12th grade (K-12) independent school sector is stable. The outlook reflects healthy financial and enterprise profiles for our rated schools – with steady enrollment and demand, proactive management oversight, good revenue diversity, and growing resources, building upon healthy market returns and solid fundraising efforts.

Continue Reading

Feb. 28, 2019

The Drastic, Risky, Measures to Fix America's Brokest Pension Systems.

Kentucky and Illinois are weighing extreme options to reduce their pension debt — but critics say they could ultimately cost the states more.

Kentucky and Illinois have two of the worst-funded pension plans in the country, and they're struggling under the weight of skyrocketing costs. Both are now considering drastic measures to ease the annual burden in ways that critics say will ultimately make the problem worse.

In Kentucky, where teachers staged a "sickout" on Thursday over separate pension legislation, an unusual, if not unprecedented, bill is making its way through the legislature that would allow regional colleges, universities and other quasi-government institutions to leave the state's troubled pension system without immediately paying off their debt. Instead, they could pay it off over 25 years. Employers leaving the fund would be required to provide other retirement options for their employees, such as a 401(k).

The legislation is being pushed by the presidents of the regional universities as increasing pension costs are squeezing their budgets and forcing them to raise tuition.

But ditching the plan without a lump sum payout is a move that actuaries have warned could threaten the solvency of the $2 billion plan.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MARCH 1, 2019 AT 4:00 AM

S&P Extra Credit: Todd Talks Take On 2019

In this week's Extra Credit, we give our 2019 outlook for pensions and other post-employment benefits in 2019. Hear what our analysts think will be the risks and opportunities in the upcoming year. Sussan Corson, Todd Tauzer, Todd Kanaster and Lisa Schroeer discuss the issues.

Listen to Audio

Feb. 25, 2019

Municipalities and Universities New Targets in ADA Website Accessibility Lawsuits.

For years, private businesses have faced demand letters and litigation over the accessibility of their websites by individuals with disabilities, with 2018 seeing a record number of website accessibility lawsuits under the Americans with Disabilities Act. Now, plaintiffs' firms are focusing on new targets, including municipalities, county governments, and universities.

People with disabilities access websites in a variety of ways, and common website problems may create barriers for these individuals. For example, a blind person may use screen-reading software, which reads the text of the website out loud to the individual. If the website has used images to convey information without using text alternatives, the screen-reading software cannot convey that information and the blind person will not be able to use the website. The "World Wide Web Consortium's Web Content Accessibility Guidelines" – otherwise known as WCAG – is the most commonly accepted voluntary set of guidelines for ensuring websites are accessible to all.

Title II of the ADA applies to public entities, including state and local governments and public universities. Public entities are required to "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. §35.160(a)(1). Moreover, Section 504 of the Rehabilitation Act of 1973 also prohibits entities that receive federal funding from discriminating against individuals with disabilities. In January 2018, updated Section 508 regulations specifically adopted WCAG version 2.0 level AA as the web accessibility standard. Some states, including Oklahoma, also have state laws regarding electronic and information technology accessibility for state agencies.

Website accessibility lawsuits on the rise

Local governments across the country that been sued for inaccessible websites include Palm Beach and Orange counties in Florida; Carver County, Minnesota; and the city of Atlanta, Georgia. Both private and public universities have also been hit with lawsuits under the ADA. In the final months of 2018, 50 universities were hit with lawsuits alleging their websites were not accessible to the screen-reading software used by the same blind plaintiff, who said he came across the universities at a college fair in New York City for prospective students interested in performing and visual arts.

The issue of website accessibility is not a new one for colleges and universities, which have long faced complaints over accessibility. In fact, the U.S. Department of Education's Office for Civil Rights reported in May 2018 that it had investigated "hundreds" of complaints regarding website accessibility against educational institutions throughout the country. Harvard and M.I.T. were sued in 2015 over failing to caption online courses. In 2017, The University of California, Berkeley removed more than 20,000 audio and visual files from their website in response to a Department of Justice accessibility order. In response to the large number of complaints, the U.S. Department of Education Office of Civil Rights in May 2018 announced a new technical assistance initiative designed to offer technical assistance regarding website accessibility directly to information technology professionals who work with schools.

An issue of accessibility, not accommodations

Many universities may think that they have solved the problem by providing a disability accommodations office. For example, an instructor may refer a student with a hearing impairment to the accommodations office, instead of captioning an online lecture. However, the issue is one of accessibility, not accommodations.

Accommodations are provided upon request, on a case-by-case basis, based on the specific needs of a student with a documented disability. Accessibility, on the other hand, is the responsibility of the creator or publisher of the online content, with no need for a specific complaint or explanation of need. Moreover, academic institutions need to remember who their audience for their website is. Many educational websites are public-facing, meaning that the university could face lawsuits from individuals with disabilities who are not students of the university.

Appeals court confirms websites must comply with ADA

Meanwhile, the first ADA website accessibility case of 2019 was a big win for individuals with disabilities. In *Robles v. Dominos Pizza, LLC*, the Ninth Circuit Court of Appeals announced that websites and mobile apps are clearly covered by the ADA, holding that the ADA applies to "the services *of* a place of public accommodation, not services *in* a place if public accommodation." Notably, the court held that potential places of public accommodations have received fair notice that their websites and apps must comply with the ADA.

Risks of noncompliance

To date, most lawsuits have been filed in California, Florida, and New York. However, if the flood of ADA website litigation continues, local governments and educational institutions in Oklahoma that are not making efforts to ensure their websites are accessible are risking a lawsuit, or at the very least, a complaint from a resident or student.

Robles v. Dominos Pizza, LLC, No. 17-55504 at 11 (9th Cir. Jan. 15, 2019)

McAfee & Taft

by Elizabeth Bowersox

March 1, 2019

The Ability of Municipalities to Regulate Electric Scooters, Segways, Electric Bicycles, and Other Light Motorized Vehicles.

As dockless electric scooters from companies like Bird, Lime, Razor, and Spin gain popularity and notoriety in municipalities across the country, towns and cities should be aware of the scope of their ability to regulate these and other light motorized vehicles, and what they can and cannot do under local, state, and federal law.

Where should municipalities look to determine regulatory scope?

1. Town or City Code and Ordinances
   Take a good look into your own town or city codes and ordinances. Many codes have provisions

regulating what kind of vehicles are allowed on sidewalks and streets, and other relevant traffic regulations. You may already have some useful tools at your disposal.

2. County Codes, Ordinances, and Regulations
   The county (or counties) in which your town or city is located likely has rules and regulations regarding vehicles or devices permitted in county parks and trails. Counties may also specify whether the county or the municipality officials (or both) have the ability to determine locations for signage and time-of-day restrictions permitting or disapproving of various vehicles.
3. State Statutes
   Before looking anywhere else, look for definitions sections in your state, county, and municipality laws. Before you can determine whether something is worth regulating, you need to know precisely what that "something" is. In Arizona, the majority of these definitions will be found in state statute. See A.R.S. § 28-101. Importantly, look at how "pedestrian" is defined and what devices (devices that in non-lawyer speak would never be confused with human beings) are legally characterized as pedestrians. See A.R.S. § 28-908. In Arizona, for example, Segways, wheelchairs, electric wheelchairs, and other "electric personal assistive mobility devices" are legally considered pedestrians.
4. Federal Law
   Perhaps the most relevant federal law to consider in regulating light motorized vehicles is the Americans with Disabilities Act (ADA). The ADA has clarified that regardless of the laws and regulations a local authority may enact about other power-driven mobility devices (or "OPDMD" as used by the ADA), when such a device is being used by a person with a mobility disability, different rules apply than when such a device is used by a person without a disability. Reasonable accommodations must be made for those with mobility disabilities. If pedestrians are allowed to be in a particular area, so is the OPDMD when used by a person who affirms he or she has a mobility disability, unless there is a true danger in doing so.

What kind of regulations are permissible?

As an example, Arizona municipalities are permitted to enact the following types of restrictions:

- Time of day restrictions
- Age-based restrictions (the State of Arizona also created an age limitation that a person must be at least sixteen years old to operate an electric personal assistive mobility device. See A.R.S. § 28-911)
- Location of use restrictions (both temporary and permanent)
- Safety restrictions (such as requiring closed toed shoes and helmets)
- Parking restrictions

What kind of regulations are not permissible?

A municipality may not ban the use of Segways or electric personal assistive mobility devices across the board. Under some state laws (such as in Arizona), certain devices (like Segways and wheelchairs) are considered pedestrians; but they are subject to all applicable laws to which pedestrians are subject. Under federal law, municipalities must make exceptions—even for devices other than electric personal assistive mobility devices that normally could be regulated en masse by a municipality—when such a device is used by a person with a mobility disability.

What considerations should municipalities take into account?

As with almost any new invention, there are positives and negatives with light motorized vehicles such as dockless electric scooters and electric bicycles. Articles such as https://slate.com/technology/2018/12/electric-scooter-bird-lime-lakes-r-

vers-environment-vandalism.html from Slate.com highlight both sides. Before enacting regulations or ordinances, take time to consider your overarching goals in regard to these light motorized vehicles and note the positives and negatives that each proposed regulation would have on your community. Don't overlook the possibility that some of the electric scooter companies, for example, are also trying to think of innovative solutions to problems with their devices, and may be willing to work creatively with municipalities on how to use and regulate these devices appropriately. For example, articles like the one above indicate that companies have the ability to continue charging riders' credit cards until the devices are parked in permissible locations.

Is there currently pending legislation on this issue?

Yes. Pending in the Arizona Legislature is S.B. 1398, a bill that would add two new electric device categories and definitions for state and local regulation: "Electric Miniature Scooters" and "Electric Standup Scooters." The bill adds "handlebars" as one of the defining features of these devices, and separates the two based on speed and weight.

As revised by the bill, A.R.S. § 28-819 would place operators of "Electric Miniature Scooters" and "Electric Standup Scooters" in the same category as operators of "Electric Bicycles" and would grant them all the rights and privileges of, and subject them to all the duties of, a person riding a bicycle. The devices themselves (rather than the operators) would also be regulated as bicycles. The proposed bill includes language that these devices would be subject not only to state statute, but also to local regulation. The bill specifically states, "A local authority may consider the environmental benefits and traffic benefits of electric bicycles, electric miniature scooters and electric standup scooters when regulating the electric bicycles, electric miniature scooters and electric standup scooters." See S.B. 1398 (proposed revisions to A.R.S. § 28-819(A)).

Although neither category of devices would be required to comply with statutory provisions related to certificates of title, registration, vehicle license tax, driver licenses or vehicle insurance, "Electric Standup Scooters" are required to have "a unique identification that consists of both letters and numbers and that is visible from a distance of at least five feet." For more information, see S.B. 1398 (proposed revisions to A.R.S. § 28-819(F)) and the Arizona State Senate Fact Sheet for S.B. 1398 available here: https://www.azleg.gov/legtext/54leg/1R/summary/S.1398TPS.pdf.

The sponsor of the bill stated in testimony before the Arizona Senate on February 13, 2019 that the bill is a collaborative effort between Bird, Lime, other scooter entities, cities, towns, and the League of Arizona Cities and Towns. While there may still be revisions to the bill, such as additional language affirming the powers of the local authorities to regulate, the cities, towns, and scooter companies present at the Senate hearing all agreed that having common definitions would be beneficial. For more information on the purpose of the bill, see: https://www.azcentral.com/story/news/politics/arizona/2019/02/12/arizona-senate-bill-1398-could-put-electric-scooter-definitions-state-law/2796250002/ (explaining that one of the bill's purposes is to distinguish between children's scooters and those used by adults).

Until the bill becomes law, the devices in these new categories remain subject to current statutes and regulations for various types of light motorized vehicles discussed in this Client Alert.

In a world of new technology, it pays to think outside the box.

by Erica Morris

February 27, 2019

Dickinson Wright

Aqua America CEO Sees Surge in Water-Related Deals.

Water deals are poised to pick up, according to the chief executive of one of the biggest publicly traded water investors, thanks to regulatory changes and critical infrastructure needs that weigh on municipal finances.

Water is a fragmented market. Some 85% of water is controlled by municipalities scattered across America—but that is slowly changing, according to the CEO of water and wastewater utility Aqua America (ticker: WTR), Chris Franklin.

Buyers like Aqua have been seeing more enthusiasm from local officials, in large part thanks to the squeeze on public finances and as new legislation allows more generous valuations. Six of the eight states where Aqua operates, including Illinois and Ohio, have passed "fair value" laws that let operators raise customer rates beyond just recouping the cumulative value of the utility's assets.

Because purchase prices can be higher than the sum of the parts, this change helps loosen deals out of municipal hands, as they can get much a higher price–"in their minds a much fairer price," Franklin says.

Last year Aqua did $130 million worth of municipal transactions, Franklin tells Barron's, and already has $100 million in signed agreements so far this year.

"That's big movement in the municipal sector," he says.

Deals related to water utilities in the U.S. spiked in 2018, to 33 from 14 in 2017, according to data provider Preqin, and five so far this year.

It's not just legislation: Many local governments are already under financial pressure, with looming pension payments and not enough money to meet them. The U.S. will need to spend $1 trillion over the next 25 years to meet water-related demands, according to the American Water Works Association.

The crisis of undrinkable water in Flint, Mich.,–which Franklin says was "100% preventable"–has forced local officials to consider their own capacity to address such issues.

"It's amazing how many people ask me about Flint," he says. "I think that really shook up a few municipal officials, who think, on a blue sky day, `I probably have the team to run this'–but what happens when something goes wrong?"

At the end of last year, Aqua announced it was buying Peoples, a natural gas company in Pittsburgh for $4.3 billion in an all-cash transaction. The two companies' functions are similar, Franklin says: conducting a natural resource through underground pipes to customers' homes, measured by a meter.

Aqua undertook this diversifying deal, Franklin says, in part because "elected officials often ask us to wait a few years 'till we can make the [water] investment, and raise the rates accordingly, because there are elections to deal with and everything else."

The resulting entity's asset mix will be 70% water, 30% gas, he says, "so it's largely a water utility owning a pretty good stake in a gas utility."

To finance the deal, Aqua will issue $2.5 billion of stock, Franklin says, in the coming months.

"We're doing so much equity because we want to keep the balance sheet strong so we have debt capacity to continue to buy municipals," he says. "Full speed ahead on muni transactions."

The acquisition added $14.2 million in costs last year, helping full-year expenses rise to $308.5 million from $282.3 million in 2017, Aqua reported this month. Net income sank to $192 million from $239.7 million, thanks to a wrong-way interest-rate swap it signed in October, along with other transaction-related expenses, the company said.

Muni deals do often meet local resistance. But the public is increasingly educated about the water they consume, and what they're paying for, Franklin says. They want clean, safe water, and realize they "probably pay less than they should," he says. "Those things aren't always in concert."

"Generally people understand: There is a bill coming; water is not free and wastewater services is not free," he says. "There was a time when people said it falls from the sky, it's in the lake or creek, why are you charging me for it? People today realize it has nothing to do with the cost of the raw material, and everything to do with how well you want to treat it, what does the pipe look like, and is it reliable to bring it to my home? These things are real costs."

Barron's

By Mary Childs

Feb. 27, 2019 11:11 a.m. ET

Why is Federal Infrastructure Policy So Difficult?

In an era of partisan strife, Americans of all political parties overwhelmingly agree on one issue: we need better infrastructure. Crumbling bridges, unsafe water, and communities without broadband threaten our nation's health, safety, and economic future. Yet the federal government's role has remained largely unchanged for generations. Why is it so hard to find consensus on such an obvious problem?

In my three decades of work with the federal government, including my time in the White House, I kept running into the same three challenges. Our path to a new federal infrastructure policy is blocked by irrational expectations around limited funding, a failure to appreciate the diversity of needs, and misaligned incentives.

Our path to a new federal infrastructure policy is blocked by irrational expectations around limited funding, a failure to appreciate the diversity of needs, and misaligned incentives.

Let's start with expectations.

Continue reading.

The Brookings Institute

DJ Gribbin
Nonresident Senior Fellow – Metropolitan Policy Program

February 28, 2019

Democrats Lay Down a Marker on Drinking Water and Sewer Funding.

But a bill introduced Thursday calling for billions in new spending and a tax increase is likely to be a tough sell with Republicans.

Raising federal taxes on corporate profits and funneling the revenue toward a new water and sewer infrastructure account—that's one of the proposals in a public works bill that Democratic lawmakers in Congress rolled out on Thursday.

The bill calls for hiking the corporate income tax rate to 24.5 percent from 21 percent and funneling up to $34.8 billion annually in proceeds toward a trust fund for waterworks programs. It lays out a framework where nearly 90 percent of that funding would go to what are known as state revolving funds, or "SRFs" for short.

"Drinking water, safe, clean, affordable drinking water, is a human rights issue," U.S. Rep. Brenda Lawrence, said during a press conference on Thursday. "We are treating it as if it's a luxury."

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

FEBRUARY 28, 2019

States Consider Asset Transfers As Way To Shore Up Plan Funding.

As many states grapple with massive unfunded pension liabilities, some are looking into transferring government-owned assets to their pension plans as a way to boost funding. And while asset transfers such as these could present issues of their own, more public pension plans are likely to explore this avenue.

"There's a depth where some governments find themselves in where they're so deep in the hole on underfunding that you cannot credibly tax your way out, you can't cut your way out and you can't grow your way out," said Michael Imber, a managing director at EisnerAmper LLP, an accounting firm based in New York. "Short of defaulting, the only way that I think you can change the math is if you start contributing hard assets."

Illinois, New Jersey and Connecticut — states that face perpetual funding issues — are publicly looking into transferring assets to their pension plans, while a few other states will likely follow soon, sources said.

Mr. Imber sits on Connecticut's Pension Sustainability Commission, which was created in 2017 and tasked with studying "the feasibility of placing state capital assets in a trust and maximizing those assets for the sole benefit of the state pension system," according to the state website. Connecticut Gov. Ned Lamont has proposed legislation that would restructure the state $18.7 billion Teachers' Retirement Fund and create the TRF Special Capital Reserve Fund, which would initially be funded with $381 million out of the state's current year general fund surplus and provided with a backstop funded by lottery proceeds.

In February, Illinois Gov. J.B. Pritzker created the Pension Asset Value and Transfer Taskforce to examine state assets and recommend how they can be used for the pension funds to help stabilize the state's finances.

Illinois' five state pension plans have a $134 billion unfunded liability. During a speech last month, Illinois Deputy Gov. Daniel Hynes likened the state pouring billions of dollars into its pension system in recent decades, while seeing its unfunded liability continue to grow, to the ancient Greek mythology of Sisyphus, who continually tried pushing a boulder up a mountain only to have it repeatedly roll back down.

In New Jersey, Treasurer Elizabeth Maher Muoio put out a request last month for qualification for financial advisory firms to help the state determine if certain state assets — such as roads, transit facilities and airports — could be used to help finance the $70.9 billion New Jersey Pension Fund, Trenton.

"While the idea of maximizing the value of state assets has been discussed for many years, little concrete action has ever been taken," Ms. Muoio said in a statement. "At the direction of the governor, we designed this RFQ to explore tangible, creative solutions to help maximize the state's assets in order to minimize the burden to taxpayers."

Trying to win big

New Jersey was the first state to transfer an asset to its pension plan. In July 2017, then-Gov. Chris Christie signed a law making the lottery a pension fund asset and providing about $1 billion a year for the pension fund through lottery revenue.

"The transfer has helped offset the amount that must be contributed from our general fund as we continue our commitment to ramping up payments by 10% each year until we meet the full actuarially required contribution by 2023," Jennifer Sciortino, a spokeswoman for the state Department of the Treasury, wrote in an email.

Michael D. Belsky, executive director of the Center for Municipal Finance at the University of Chicago's Harris School of Public Policy, said the basic theory behind an asset transfer is that pension funds have a fiduciary obligation to grow assets for their pensioners, so the funds are more likely to do a better job managing the asset than the government itself.

"If it's operating more efficiently, not only does its value go up, but whatever excess cash flows they have should increase too," Mr. Belsky said. "If you're operating a lottery or a toll road or something like that more efficiently, you should have an increase in cash flow, and that excess cash can go toward making pension payments."

But when a government transfers an income-producing asset like a lottery, it doesn't necessarily bring in more money, it simply moves the revenue in its books, said Todd N. Tauzer, San Francisco-based director of U.S. public finance at S&P Global Ratings. "It's state-owned revenue that's already

being used in the budget that they're now transferring to the pension system, but whatever holes that leaves in the budget they still have to fill them," he said. "It's not like they created a new revenue stream." The type of transfer that most excites EisnerAmper's Mr. Imber is a government taking undeveloped, non-income-producing assets and finding a way to have them produce revenue, such as putting raw land into a trust, selling it to a power provider for solar energy, and putting the revenues toward the pension plan.

But figuring out which assets to transfer is difficult. "The idea of parting with assets is as much a political decision as it is an economic decision," Mr. Imber said. "The trick is that if you're going to maximize the economic utility of assets contributed for the benefit of the pension, after you make the contribution you have to take the politics out of it, otherwise you won't unlock the hidden equity that might be sitting in the asset."

Australian example

A 2017 white paper from the Stanford Global Projects Center focused on an in-kind contribution in Queensland, Australia. In 2011, the Queensland government transferred a 40-year concession to operate a toll road to government-owned QIC Ltd. that manages its defined benefit fund. The pension fund received the toll road at a value of A$3.1 billion ($2.2 billion), then made improvements like adding lanes and new roads, and sold the asset three years later for A$7.1 billion.

Michael Bennon, managing director of the Stanford Global Projects Center, said the success in Queensland can be a guide for U.S. pension plans. It can also be a "two birds with one stone" arrangement — funding a pension plan with an asset that then encourages the plan to upgrade and optimize the asset — he said.

However, Mr. Bennon said that part of what made the Queensland transfer work was the fund's direct investment capability for its infrastructure allocation. It hired professionals capable of managing and structuring infrastructure investments. But most U.S. pension funds "go through infrastructure funds, so it's more difficult for them to do one of these direct investments from a capability perspective," he said.

Mr. Belsky said an asset transfer needs to be done in conjunction with other strategies, like potential increased participant contributions, raising the retirement age or raising taxes. "It's not a panacea."

For Mr. Tauzer, an asset transfer could be a net positive for a given state, but the "reason why they've got such a large unfunded liability in the first place has to do more with the funding discipline over time, and if they don't correct those issues, these one-time changes won't do much in the grand scheme of things."

PENSIONS & INVESTMENTS

BY BRIAN CROCE · MARCH 4, 2019

Can You Index Municipal Bonds?

Indexing has limitations. Some markets or market segments are easier to index than others. The degree of difficulty is largely a factor of the breadth, depth, standardization, and liquidity of the pool of assets in question. Nonstandard assets that are difficult to trade, like municipal bonds, can be difficult to index. Indeed, running an index-tracking municipal bond fund is a tricky proposition. The

managers of an indexed municipal bond portfolio have to strike a balance between tracking their index and the costs involved in doing so. Based on the performance records of many of the municipal bond index funds available to investors, these funds' managers appear to be capable of managing this balancing act.

Let's say you're a portfolio manager running a bond index fund. When your fund's target index rebalances, you'll likely need to do some trading so the fund's holdings match those in the index. This is a necessary maintenance activity that keeps your fund's portfolio and performance in line with its benchmark.

Now suppose the target index requires that you buy bond A following a rebalance. You go to the market, but there is only one willing seller of bond A. You make an offer to buy. But that lone seller knows he's the only show in town and attempts to take advantage of his status by counter-offering at a higher price. You're in a predicament. You can buy the bond, but it's going to cost you. And that cost is absorbed by the fund's shareholders.

Continue reading.

Morningstar

by Daniel Sotiroff

22 Feb 2019

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5 Steps to Maintain or Improve Your Municipal Bond Rating.

Maintaining or improving municipal bond ratings can be challenging, but there are steps finance leaders can take to be sure they are fully prepared for the review process.

Bond ratings are important to a government from both a perception standpoint as well as an economic one. They indicate how safe an investment in the city's or county's bonds are and serve much like an individual's credit score. Since a municipal bond rating holds such power, each government should understand what factors influence their bond rating and take the appropriate steps to either maintain or improve their bond rating.

Maintaining or improving municipal bond ratings can be challenging. Annual reviews can alter the rating and many government finance directors dread the review process.

What can finance leaders do to be sure they are fully prepared for the review process? It begins with a year-round proactive approach to address the factors that comprise a bond rating and own the conversation with the ratings agent.

In our latest webinar, Charlie Francis, a 45-year veteran of government finance and former CFO and finance director, presented steps that governments can take to ensure they achieve the best possible score.

Here are some highlights from the live webinar:

- Know that rating agencies measure quantitative and qualitative factors. When you know what is being measured, you can manage to those factors. Luckily, ratings agencies post all factors that

influence their ratings online. Factors that are scored include:

- Management
- Budgetary flexibility
- Budgetary performance
- Liquidity
- Debt and contingent liabilities
- Institutional framework

Qualitative factors influence the quantitative factors. The overall functioning of your government, as well as accountability and transparency play a key role in bond ratings. Owning this data and the story behind it will enable your government to make a case for a higher rating.

- **Build a relationship with your rating agency.** Get to know the people who review your government. Be sure to keep an ongoing dialogue going with them and share stories of what your government is doing to proactively manage issues. Share policies and keep them informed of what is happening and how it is being addressed.
- **Be able to back up information with data.** Every self-assessment score needs to be proven with data for it to be justified. Inflated scores will only cause damage and break down trust.
- **Prepare all year round.** Transparency, solid management practices, accountability, and leadership all influence ratings and can be improved continually. Know what each agency measures, add performance context with stories about how your government is making a difference in citizens' lives, and prepare a scorecard and keep it updated throughout the year. By taking a proactive approach, you own the factors that you can control and can be more prepared for official ratings reviews.

In addition, Charlie shared five steps municipalities can take to continually maintain or improve bond ratings:

1. Conduct a risk-based analysis of general fund reserve requirements and adopt a reserve policy.
2. Conduct a comprehensive review of factors affecting the government's ability to issue debt and adopt a debt affordability policy.
3. Formally monitor financial and economic conditions and implement financial/economic mitigation management plans.
4. Develop, adopt, and maintain an asset management policy, strategy, and plans.
5. Develop a model that evaluates the impact on revenues, spending, and reserve levels from various budget initiative and economic scenarios, and incorporate long-term financial planning in all policy decisions.

OpenGov can help governments strengthen their financial reporting and story presentation to continually be prepared for bond rating reviews.

For more ways on how to maintain or improve your municipal bond rating, and for a more in-depth discussion on the ideas and steps presented above, view the webinar on-demand or download our latest eBook, How to Maintain or Improve Your Municipal Bond Rating.

OPENGOV | FEBRUARY 20, 2019 AT 5:30 PM

Deutsche Bank Lost $1.6 Billion on a Bond Bet.

One of the banking industry's biggest soured bets since the financial crisis involved a complex municipal-bond investment. Warren Buffett was enmeshed in the deal.

Deutsche Bank AG DB -0.12% racked up a loss of $1.6 billion over nearly a decade on a complex municipal-bond investment that it bought in the runup to the 2008 financial crisis, and failed to confront head-on even as markets were upended and regulations tightened.

The loss, which hasn't previously been reported, represents one of Deutsche Bank's largest ever from a single wager—roughly quadruple its entire 2018 profit—and ranks as one of the banking industry's biggest soured bets in the last decade.

The prolonged struggle over how to handle the investment sheds light on cultural and financial challenges inside one of Europe's biggest banks that have hampered its ability to compete with stronger U.S. rivals.

Continue reading.

The Wall Street Journal

By Jenny Strasburg and Gretchen Morgenson

Feb. 20, 2019 2:31 p.m. ET

Mayors in Support of Advance Refundings.

Today, executive chair of the Municipal Bonds for America (MBFA) Coalition Steve Benjamin, Mayor of Columbia, S.C., submitted an opinion piece to the Bond Buyer advocating for the full reinstatement of advance refundings, while also explaining why this important financing tool is significant for local government infrastructure investment and local control. You can view his commentary online here.

An offline copy of his commentary is provided in pdf format here.

Continued Work and Advocacy on Advance Refundings:

In 2019, the MBFA Coalition will continue to advocate to preserve the tax-exempt status of municipal bonds as discussions and hearings begin on infrastructure next month. MBFA began holding meetings in earnest with key Congressional Members on the House Ways and Means and Senate Finance Committees early this year on advance refundings as its principle legislative advocacy item. With Mayor Benjamin's leadership on this issue at the national level as the president of the U.S. Conference of Mayors, the MBFA is positioned to have a significant influence in the process should technical fixes to the 2017 passed tax law arise this year.

The BDA will continue to keep you updated on legislative or technical fixes to tax laws and infrastructure proposals as they advance through Congress.

Additional Information:

For additional updates on activities of the MBFA Coalition, please visit our website here.

Bond Dealers of America

February 20, 2019

Fitch Introduces ESG Relevance Scores.

Read the Fitch report.

Bond Raters Advise on Fix to California Law that Doomed PG&E.

- **Legislators say they will seek input from credit-rating firms**
- **Utilities face junk ratings amid mounting risk from fires**

It's no secret that lobbyists help craft laws. But what about credit-rating companies?

As California lawmakers work on a plan to stabilize the state's biggest electric companies, which are facing increasing pressure from wildfire liabilities, they say they'll seek input from ratings analysts to help ensure the utilities can retain access to capital markets. In a statement Tuesday, S&P Global Ratings said "there was a relatively short window" for legislators to show "concrete steps" before it downgrades the companies again.

Senate Majority Leader Bob Hertzberg said in an interview that any legislative proposals would be "informed by Moody's, Standard & Poor's and Fitch." He wants to talk to the companies personally, the Democrat said.

"Once we come up with various structures, they're going to be very instrumental in determining whether or not they'll give credit so we can have borrowing by both investor owned and municipal-owned utilities," said Hertzberg, who was Assembly Speaker during the state's energy crisis almost two decades ago.

Fatal wildfires, which have intensified in severity because of climate change, have ravaged California in the past two years and helped push its biggest utility, PG&E Corp., into bankruptcy in January. The company's power lines are suspected of sparking last year's Camp Fire, the deadliest in state history, which killed 86 people and destroyed the Butte County town of Paradise. Utilities can be held liable for blazes sparked by their equipment, even if they followed safety rules, and credit-rating companies have cited that unique state rule in their downgrades of PG&E and its peers.

Junk Ratings

S&P last month cut Edison International's Southern California Edison Co. and Sempra Energy's San Diego Gas & Electric Co. closer to junk status and said it could lower the ratings more. Moody's Investors Service said it may downgrade them as well, and Fitch Ratings changed their outlooks to negative, indicating it could do so.

Downgrades to junk could limit the companies' access to capital, an outcome Edison Chief Executive Officer Pedro Pizarro warned would happen without any legislative action.

Shares of PG&E climbed Tuesday after Citigroup Inc. upgraded the stock on the prospect that legislation may be passed within three months to limit risk from future blazes. Governor Gavin Newsom in a speech last week said he gave his team working on the issue 60 days to map out a plan.

Legislators have said they are urgently reviewing options. But addressing the doctrine known as inverse condemnation, in which utilities are on the hook for damages, is “off the table,” Hertzberg said.

State Senator Bill Dodd, who guided legislation last year that helped utilities finance some of their wildfire liabilities, said in an interview that legislators are looking at other avenues beyond inverse condemnation that would satisfy the raters.

“We have to negotiate, and we have to understand what there is beyond that and what the cost to the ratepayers really is before making that decision,” the Democrat said.

Moody’s declined to comment. S&P said it doesn’t discuss interactions with market participants including elected officials. Fitch didn’t respond to requests for comment.

In its statement, S&P said “there is a window of opportunity to bring clarity to the regulatory construct that will start to close at the beginning of the 2019 wildfire season” this summer.

Bloomberg Markets

By Romy Varghese

February 19, 2019

— With assistance by Molly Smith, and Mark Chediak

S&P Pension Brief: Are Asset Transfers A Gimmick Or A Sound Fiscal Strategy?

To face persistent and growing pension challenges, some U.S. state and local governments have looked to develop creative solutions to help mitigate expanding liabilities and bolster wanting asset levels. Increasingly, they are considering asset transfers along with other revenue streams…

Continue Reading

Feb. 19, 2019

The Slow Housing Market Can Hurt Government Revenues, But Doesn't Have To.

How much home sales impacts a place depends a lot on its property tax policies.

Home sales have been ticking down for months. It’s been particularly bad in the West, where 15 percent fewer homes were sold in December compared to the previous December. The slowdown is widely expected to continue, but how it affects local governments will differ.

That's largely thanks to a government's property tax policies. According to a new analysis from Fitch Ratings, the places least vulnerable to a slow housing market have strong caps on property tax rates and have assessed property values that lag far behind market values.

That bodes well for places out West, such as California, which has one of the nation's toughest restrictions on property taxes. Thanks to Proposition 13, which caps property tax rates, counties in California were spared from severe drops in property tax revenue when the housing market collapsed in 2007 because that revenue was already artificially depressed, according to Fitch's analysis.

"You have a huge way to go for the market decline to affect the assessed value," says analyst Amy Laskey, who co-authored the report. "That's why in Los Angeles, you saw big home price declines, but there was no corresponding decline in assessed value."

By contrast, places without caps on property tax revenue have assessed values that trend closer to actual home values. That creates more volatility.

So while Los Angeles and Chicago had similar declines in home values — about 40 percent between 2006 and 2012 — assessed values in L.A. only dipped by 2 percent. In Chicago, they fell by a whooping 28 percent.

Reasons for the Slow Housing Market

Rising mortgage rates and home prices are largely being blamed for the current slowdown.

According to new data from the National Association of Realtors, the market is slowest in the West, which along with the Midwest, has shown minimal or zero gains in prices from a year ago. Nationally, prices are up nearly 3 percent from last December, but that's roughly half the average growth rate in 2017.

Some believe that the 2017 federal tax overhaul's new limits on mortgage interest and property tax deductions will create more downward pressure on home prices in certain places across the country. That will affect localities differently, too.

Cumberland Advisors CEO John Mousseau is watching places where wealth is concentrated and where taxes are high, including Boston, New York City and its suburbs in Northern New Jersey and Fairfield County, Conn. Homeowners in these places are no longer getting the tax breaks they used to on their properties. "As long as there's no recession," he says, "I think home prices in places like these will stagnate or maybe even decline a little." That could further hurt the local government's property tax revenues.

But declining home prices aren't necessarily a bad thing, Mousseau says. According to Fitch's data, several major markets — including many out West — are currently overvalued. "I think what you'll see is a realignment of house prices," he says. "The idea that house prices can go up 6 or 7 percent a year — I think that's going to go away."

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 21, 2019

Corps Engages Stakeholders for P3 Project Pilot Program.

On February 1, the U.S. Army Corps of Engineers announced a Request for Information (RFI) about the conceptual delivery of a Corps Civil Works program via a public private partnership (P3). The RFI, published in the federal register, opened a 60-day submission period for proposed P3 projects. The program will choose 10 pilot projects to inform future program policy and direction on P3 project delivery. Proposals must be submitted to Corps Headquarters by April 2.

The Corps said the announcement supports the administration's initiative on building U.S. infrastructure. "The Corps is trying to develop additional tools that may be used to deliver infrastructure more efficiently and effectively," said Aaron Snyder, Corps Infrastructure Team, funding and financing, and P3 program development team lead. Congress authorized funding in the fiscal year 2018 appropriations to start the P3 pilot program.

"The Corps has worked on a P3 program for a number of years, and this is really a continuation of those efforts with more of a focus on gathering input from stakeholders and our non-federal sponsors," Snyder said.

The Corps said in its announcement, "The goal of the pilot program is to demonstrate the viability of new delivery methods that can significantly reduce the cost and time of project delivery."

On January 8, Assistant Secretary of the Army for Civil Works R.D. James signed the implementation guidance for the P3 pilot program, which was originally drafted in September 2018. The program is part of the "Revolutionize USACE Civil Works Initiative," which follows a February 2018 administration report on better legislative principles for infrastructure. The administration's framework for rebuilding called for a $2 billion federal investment to stimulate at least $1.5 trillion in new investment over the next decade, where P3s and local non-federal project sponsors take on bigger project roles and responsibilities.

Criteria and Selection

In the original September memorandum, a P3 is defined as: "a long-term contractual relationship between a public sector contracting authority and a private sector entity for the financing and delivery of public infrastructure and/or the provision of public services." The goal, the Corps said, is to transfer the risk associated with the delivery and performance of a project to the private partner.

Federally led P3s are: "P3 contracts directly between the Corps and a competitively selected non-federal entity for the design, construction, financing, operation and/or maintenance of the federally authorized project."

Locally led P3s are: "contractual relationships executed between a non-federal project sponsor and a private entity for the design, construction, financing, operation and/or maintenance of an infrastructure asset over a stipulated period of time, whereby the non-federal project sponsor has a separate project-partnership agreement (PPA), memorandum of agreement, and/or a memorandum of understanding with the Corps setting forth the rights and responsibilities of both the Corps and non-federal entities with respect to the project."

The Corps Infrastructure Team will take the lead on implementation of the P3 pilot program. Snyder said the Infrastructure Team is made of individuals from across the Corps. "We have engineers, economists, planners and biologists, to name a few," Snyder said. "The team also represents all levels of the Corps from districts, divisions and headquarters."

During the initial screening process, the Corps Infrastructure Team will use the following criteria to evaluate P3 project proposals:

- Construction cost of more than $50 million;
- Non-federal sponsor support;
- Design, build, finance, operation and maintenance or some combination for federally authorized projects;
  Project delivery acceleration; and
- Ability to generate revenue or leverage non-federal funding sources.

The proposals must also be for projects with existing authorities that are sufficient to allow the P3 project to be completed. The project must also have an initial analysis demonstrating that a P3 contract structure will deliver the project faster and more cost effectively than traditional approaches to project delivery.

Snyder said the Corps does not have any formal requirements for the analysis. “We would like people to provide us with why they think this approach is better. Once a project has been identified as either a pilot or as a project that we need to further develop, we would collectively work on a Value for Money analysis,” Snyder said.

Once projects qualify based on the initial criteria, they will be evaluated and selected based on the following:

- Budget – P3 proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI).
- Replicability – P3s that are replicable, the structure or underlying concepts may be applied to other projects.
- Funding – P3s must identify reliable non-federal funding sources for the construction, operation and maintenance of projects.
- Risk Allocation – P3s must allocate delivery and performance risk to non-federal entities and minimize federal liabilities.

The Corps expects both internal and external applications. External applicants should complete a P3 project fact sheet. A copy of the fact sheet and other information on P3 projects and the program can be found here. For outside applicants, the Corps Infrastructure Team will evaluate the projects based on the initial set of criteria and complete the project screening matrix, used for evaluating projects.

Internal submittals from the Corps will include both project fact sheet and a completed matrix. Each Major Subordinate Command (MSC), which includes nine Corps divisions, will designate a P3 point of contact, who will make all submissions to the Infrastructure Team. Each MSC can evaluate and submit projects with no limits, but each will aim to identify at least two projects.

Funding and Long-term Budgets

The program will identify 10 P3 pilot projects, in addition to one the Corps already has in progress – the Fargo Moorhead Diversion Project, which provides flood protection to the area.

Once projects are accepted into the pilot program, they will need to compete for funding. If the project requires a new start, the Corps will conduct an affordability analysis to ensure it can meet future budget requests. The Corps will also maintain a life-cycle budget, which covers all future budget requirements. The life-cycle budget recommendation will be prepared with the final list of

projects and updated annually.

Snyder said the authorities for each of the selected projects will vary. “The Corps has a number of existing authorities that could be used to support the development and implementation of P3 projects. For instance, the Fargo-Moorhead project is using Section 221,” he said.

In general, the Corps said it will maintain oversight of the projects delivered under a P3 arrangement. Specific project management and controls will be project specific and clearly articulated in the PPA.

In early February, the Corps held two webinars for interested stakeholders. Snyder said the sessions were well attended with more than 100 participants. “The webinars were intended to focus on the RFI criteria, the known constraints from previous work, but most importantly to answer questions from stakeholders,” he said.

Information must be submitted to Corps Headquarters on or before April 2. Stakeholders may submit information by mail to: Headquarters U.S. Army Corps of Engineers, Directorate of Civil Works, Infrastructure Team, Attn: John Coho 3F65, 441 G Street NW, Washington, DC 20314; or by email to: CW.Infrastructure.Team@usace.army.mil.

BY ANNA TOWNSHEND

FEBRUARY 20, 2019

S&P: Is Marijuana Legalization The Answer To States' Budget Pressures?

While proposing and enacting their fiscal 2020 budgets, various states have looked to legalization, and subsequently, taxation of retail marijuana as an additional source of revenue. The governors of New York and Rhode Island have proposed budgets that include introducing taxes on retail marijuana.

Continue Reading

Feb. 21, 2019

Innovation Districts and Their Dilemmas With Place.

The global rise of innovation districts continues. In the United States alone, roughly 20 districts have reached a level of critical mass to warrant the name, concentrating a mix of research institutions, mature companies, start-ups and scale-ups, co-working spaces, and supportive intermediaries in close geographic proximity.

Brookings first described this new model of innovation in cities and urbanizing areas five years ago, and since then researchers and practitioners around the globe have been exploring how to help them thrive. Driven by broader economic and demographic trends, most districts emerge organically as established firms and start-ups choose to co-locate around universities, medical institutions and/or other anchors. But over time, as the number of actors increases, innovation district leaders often become much more intentional about working together to leverage their district assets,

applying a “collaborate to compete” approach.

Yet even with the best intentions, considerable resources, and unbridled ambition, many innovation district leaders are challenged in their efforts to create a balance between growing the innovation economy, enhancing social and professional networks, and creating a high quality physical environment that facilitates both.

Continue reading.

The Brookings Institute

by Julie Wagner
Nonresident Senior Fellow – Metropolitan Policy Program

February 21, 2019

Mall of America Water Park Plan a Deep Dive Into Creative Accounting.

Bloomington has spent months devising an intricate plan that officials say will both lower borrowing costs and shield property taxpayers from risk.

The Mall of America’s owners have long wanted a supersized water park to complement their shopping behemoth in Bloomington. But customers paying to sunbathe and cascade down giant slides wouldn’t generate enough cash for the mall to privately finance the $250 million facility.

Enter the city of Bloomington, which has spent months devising an intricate plan that officials say will both lower borrowing costs and shield property taxpayers from risk. The deal has little precedent in the state, but authorities on public financing say it fits a growing national trend of using tax-free debt in new ways for developments associated with for-profit companies.

The city will also spend public money as part of the water park deal, most notably $50 million to construct a parking ramp and skyway. The financing plan hinges on the option of hiking sales taxes on Mall of America customers if revenue at the water park fall short. The Legislature approved special laws making both arrangements possible.

Continue reading.

Star Tribune

By Eric Roper

FEBRUARY 17, 2019 — 5:45PM

Tax Reform Impacts Call Into Question Coastal Muni Values.

Over a year has passed since the implementation of federal tax reform and high tax states are just beginning to feel the implications. As tax returns are beginning to be filed, residents in the high tax coastal jurisdictions may face some unpleasant surprises, resulting in a realization that the

municipal bond tax-exemption is still an efficient way to shield taxable income. However, while limited supply in the municipal market has already led to a rise in bond valuations, budget impacts resulting from federal tax reform will call into question the relative value of bonds from respective high tax states.

The federal tax measure, which placed a $10,000 cap on SALT (State and Local Tax) deductions, led to a flurry of tax prepayments in late 2017, impacting the flow of taxes in states such as California, New York, New Jersey and Connecticut. A secondary impact, which has been the narrowing of bond spreads, has been a result of consistently strong separately managed account inflows and limited municipal new issue supply. For example, as evidenced in the chart below, the spread on 5-Year California General Obligation bonds narrowed from 7 basis points on November 2017 to -18 basis points in October of 2018.

What this means is that for residents seeking municipal bonds from these states, it has become a more expensive endeavor. However, for the go-anywhere investors less impacted by state taxes, like a Texas or Florida resident, the choice for assessing relative value has become cloudier at times. While the municipal market has thousands of unique obligors, bonds from California, Texas, New York and New Jersey make up a disproportionately large portion of the market. We believe portfolio construction should consist of credit diversification but also relative value calls.

For instance, when looking at the ratio of New York to California bonds, using the yield-to-worst for the Bloomberg Barclays state indices, New York bonds appeared to be a better buy as California paper continued to richen through late 2017 and much of 2018. The trend began to reverse in the back half of 2018 as municipal buyers seemingly voted with their wallets against sky-high pricing in California and helped push the ratio below the 3-year average of 102%.

Based upon recent fiscal news coming from Albany, we would not be surprised to see renewed trend of relative cheapening of New York paper versus California. While perceived weakness in the near term for state tax collections may widen New York spreads, we ultimately think that demand for New York municipal bonds will continue to strengthen as the tax season gets underway.

In Governor Cuomo’s latest budget update, he detailed that New York had a larger-than-anticipated decline in revenues that will approach almost $3 billion, citing the federal tax plan as a contributing factor. While some drop in revenues versus last year is attributable to a flurry of prepayments, the state, which derives over 40% of its revenues from less than 1% of the population, is also keeping a watchful eye on the equity markets, which are a large source of investment income for top earners. This puts the state in a bit of a bind in that they are unable to raise taxes fully on the wealthy without causing revenue to fall even further, leaving spending cuts as one alternative to budget balancing.

The impacts of the Tax Cuts and Jobs Act are wide ranging and will continue to be felt throughout this tax season and beyond as states adjust to new revenue levels and patterns of collections. The limitation on federal deductions should make the tax-exempt income from municipal bonds more valuable as munis become one of the last vestiges of a true tax shelter. We believe that continued active management can help insulate a portfolio from both extremes in pricing as well as excessive allocations to any one obligor. For example, should New York State budget issues trickle down to funding cuts on the local level, preference would be given to those local credits with strong fund balances, management, and trends of positive operations.

by CLARK CAPITAL MANAGEMENT GROUP

FEBRUARY 15, 2019

Public Pensions and Infrastructure: A Match Made in Heaven

During the State of the Union address, President Trump issued a renewed call for an infrastructure bill. Two days later, the House Committee on Transportation and Infrastructure held its first hearing of the new Congress to address the state of U.S. infrastructure.

Confronting the nation's infrastructure gap is one of the rare bipartisan issues in Washington today. It is a priority for the American public and for elected officials at the federal, state and local levels, all of which make it a likely legislative focus for both the 116th Congress and the administration.

That U.S. infrastructure needs improvement is not news. Any discussion about closing the $2 trillion 10-year investment gap quickly zeros-in on funding — revenue streams in the form of dedicated taxes or user fees — and financing solutions.

While there are perfectly suitable public finance tools, a large pool of untapped available capital resides in the retirement funds of public-sector workers.

In a new, detailed study of the $4.3 trillion U.S. public pension system, we've investigated the infrastructure investments undertaken by the largest public pension systems in the country.

Our findings suggest now might be the perfect time to match pension capital with infrastructure investment needs, creating winners on both ends of the financial chain.

Infrastructure assets have features that are appealing to pension investors. They are long-duration and offer some degree of inflation protection. They are not correlated with the other asset classes, so they offer much-needed diversification.

Best of all, they generate steady cash flows to meet the needs of current retirees. These are among the reasons pension funds have cited when establishing programs to invest in infrastructure, and our analysis bears out most of these benefits.

Still, infrastructure investment programs in big American public pension funds are relatively recent, and they remain small — averaging less than 1 percent of fund assets.

Implicit in public pensions' investment objectives is to accumulate cash flow-generating assets and hold them for a long time. Yet when pension funds invest in infrastructure, they typically invest in private equity-type funds that often have first-rate expertise but seek capital gains, not current income.

The funds usually buy infrastructure assets from other private owners. These investments have generated strong returns in the form of capital gains, benefitting substantially from rising valuations. Infrastructure assets now trade at multiples well in excess of those in other investment classes, such as real estate and private equity.

But these investments don't generate much in the way of the cash-flows pension funds need to support current retirees. The bottom line is that there has been insufficient investment in infrastructure as an asset class, using the wrong investment vehicles and for the wrong purpose. There are better solutions.

To explore ways in which pension capital might evolve into a financing solution for U.S. public infrastructure, we might look to models that have been successful in other countries.

In Australia, asset recycling is a financing tool that has been used successfully to “repurpose” infrastructure capital. Public-sector agencies sell long-term concession rights on existing infrastructure to investors (including pension funds) and use the proceeds to finance development of new infrastructure.

The public sector retains ownership of the legacy assets, receives cash proceeds to develop new infrastructure and avoids burdening its public finances with more debt. Private investors get a stream of proven cash flows from existing infrastructure over a fixed period of time. The federal government often provides an incentive in the form of a top-up of the proceeds from the concession sale.

True, institutional investors like pension funds are wary of investing in ground-up development. They are properly concerned about cost overruns, delays and unpredictability of revenue streams. But pension systems are uniquely positioned as informed and influential players in regional and local economies.

Just one example: The Quebec pension fund, CDPQ, developed and operates Montreal’s light-rail system and was able to assemble the financial and technical resources and muster the political support to pull it off.

Among the other ways to deal with infrastructure project risk is partnering pension capital with the knowhow of engineering, procurement and construction firms, which have extensive experience in designing and delivering new projects. Dutch pension funds, for example, have invested alongside engineering firms in new road construction projects.

Of course, using pension capital on public works requires strong governance to avoid waste and bloated costs. The presence of private capital can provide necessary transparency and discipline. And there is an argument for investing pension capital locally.

If done right, it can generate economic development, which in turn leads to more jobs and more tax revenues — ultimately favorable to sustainable pension finance. Additionally, when pension funds invest directly in infrastructure, they don’t introduce the political risk of transferring “crown jewels” to private investors.

Most important is to put in place mechanisms that will allow for an improved flow of investable U.S. infrastructure assets. When that becomes evident to pension fund administrators, they will become more comfortable expanding their allocations to this attractive asset class — perhaps to the 5-10 percent levels that are common in Canada.

This will provide hundreds of billions of dollars in incremental financing, which will go a long way to reducing our infrastructure gap.

THE HILL

BY INGO WALTER AND CLIVE LIPSHITZ, OPINION CONTRIBUTORS

02/14/19 05:30 PM EST

Ingo Walter is professor emeritus of finance at NYU’s Stern School of Business. Clive Lipshitz is managing partner of Tradewind Interstate Advisors, long-term institutional investing, infrastructure finance and policy consultants. Their study, “Bridging Public Pension Funds and Infrastructure Development,” will be released in the spring.

If You Wanted the Best Muni Trade, You're Three Hours Late.

- **BondWave analyzed every municipal bond trade in 2018**
- **It found the best time is when volume peaks around 10:50 a.m.**

When's the best time to buy municipal bonds? Around three hours ago, according to an analysis of daily trading patterns by BondWave LLC, a financial technology company.

The par volume of broker purchases from customers soars between 10 a.m. and 11 a.m. New York time and peaks around 10:50 a.m., when investors sell securities to free up cash for new issues that are being priced at 11 a.m., according to the Wheaton, Illinois-based firm's analysis of every municipal-bond trade in 2018.

The buildup in volume, especially on days with big new issues coming to market, can be a boon for buyers who can get better prices from brokers who don't want to hold the securities they've purchased in their inventory, said Paul Daley, a managing director of BondWave's Fixed Information Lab.

"If I'm in the market and I'm not buying a new-issue bond it seems to me to make a lot of sense that I would time my purchase for whenever everyone else is selling," said Daley. "I'm probably going to get better deals on average if I do that."

By contrast, investors like bond-fund managers looking to raise money to buy new issues should start selling sooner, before broker inventories rise, the analysis suggests.

Unlike stocks, which trade on exchanges, bid-ask spreads — the difference in price between the highest amount a buyer is willing to pay and the least a seller is willing to sell — aren't publicly available before trades in the fragmented and relatively illiquid state-and-local government debt market.

While the cost of trading bonds has declined since electronic trading expanded and regulators injected more transparency into the market, asset managers who seek market-beating returns are under pressure to reduce fees. Looking at volume patterns after trades occur can help then make educated bets on when bid-ask spreads tighten, signaling the odds of getting better deal, Daley said.

The average spread between what a seller receives and a buyer pays for a security with dealers acting as an intermediary dropped to 73 basis points in April, less than half what it was in 2005, according to an analysis by the Municipal Securities Rulemaking Board.

To be sure, the decline was most pronounced in retail sized trades of $25,000 or less, while spreads on trades of more than $1 million average about 18 basis points and have remained constant, according to MSRB data.

Experienced professionals may well know that the mid-morning is a good time to trade in a qualitative sense. But Daley, a former head of execution at an algorithmic equity trading technology firm and onetime head of derivative and portfolio trading sales at Merrill Lynch, is relatively new to the bond market and wanted to use his experience to understand it.

"My background is 100 percent in the equity market. I'm used to that level of data, clarity and granularity," he said. "How do I better understand the municipal marketplace?"

BondWave, a unit of closely held investment manager First Trust Portfolios LP, provides portfolio and trading analytics to traders and advisers. Bloomberg LP provides similar services.

Bloomberg Markets

By Martin Z Braun

February 14, 2019, 10:32 AM PST Updated on February 14, 2019, 11:18 AM PST

Fitch Ratings: If Home Prices Drop, Will U.S. Local Government Revenues Follow?

Fitch Ratings-New York/Chicago-13 February 2019: Despite recent investor concern, Fitch Ratings does not expect that local governments will be exposed to large revenue declines if home prices drop, according to a new report.

Property tax revenues barely declined in aggregate after the housing bust of the mid-2000s. And the housing market of today is very different with far less speculative construction and much more sustainable home price growth. However, not all local governments were immune to the precipitous home price declines during the last economic downturn.

“Weak housing market trends did create fiscal stress for some local governments during the last downturn so it’s reasonable to expect that this stress could return,” said Managing Director Amy Laskey.

A state to watch is California, where property tax revenues should be well protected if home prices were to fall again despite recent frothiness in some parts of the state. Offsetting a lack of tax rate flexibility, most areas have built up substantial cushion under Prop 13. This means assessed values would likely decline only mildly in the next downturn. Conversely, home prices in parts of Michigan, which has similar assessment and taxation restrictions, have not recovered from the last downturn. As such, some Michigan local governments are more susceptible to large revenue declines over time.

Recent caps on SALT deductions and mortgage interest deductibility are not likely to precipitate large, en masse home prices declines. “Employment, wage growth, consumer confidence, affordability and life events play a bigger role in home buying decisions than tax incentives,” said Director Robert Rulla. The ripple effect of housing disincentives, however, would be felt more acutely in housing markets with high home prices and/or high taxes.

A longer-term demographic worth keeping a close eye on over time will be millennials as they will represent a higher proportion of homebuyers. In fact, most homebuilders are already repositioning communities to target these first-time homebuyers by offering more affordable homes. This likely means median prices for new homes would decline while existing entry level homes would become more expensive. “The large number and high homeownership rate of baby boomers may put downward pressure on prices as this group ages and millennials and Generation Z do not pick up the slack,” said Rulla.

‘What Investors Want to Know: Housing Market Trends’ is available at ‘www.fitchratings.com’

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
300 W. 57th St.
New York, NY 10019

Robert Rulla
Director
+1-312-606-2311

Media Relations: Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: elizabeth.fogerty@thefitchgroup.com
Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch Ratings: Quiet 4Q Caps Stable 2018 for US Municipal Rating Actions

Fitch Ratings-New York-11 February 2019: Stable economic growth led to another solid year for U.S. public finance with annual upgrades exceeding downgrades for the year, according to Fitch Ratings in a new report.

Both upgrades and downgrades in total were down for the year. Fitch reports 89 muni downgrades in 2018 versus 166 downgrades in 2017. Upgrades finished lower year-over-year with 168 for 2018 from 293 in 2017. Ratings movement again largely emanated from not-for-profit hospitals and health systems.

Rating Outlook revisions, by contrast, increased slightly in 2018. U.S. public finance securities with Negative and Positive Outlooks both increased to nearly 3% at the end of last year. Positive Outlooks totalled 103 at the end of 2018 (up from 84 in 2017) while 108 credits carried a Negative Outlook (up from 94 at year-end 2017).

As in past years, affirmations dominated the sector with 90% of U.S. public finance rating reviews by Fitch resulting in no change to the rating. Furthermore, 93% of the ratings had a Stable Outlook at the end of the year.

‘U.S. Public Finance Annual Rating Actions 2018’ is available at ‘www.fitchratings.com’.

Contact:

Andrew O’Hara
Analyst
+1-646-582-4496
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Jessalynn Moro
Managing Director, Head of U.S. Public Finance

+1-212-908-0608

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

Additional information is available on www.fitchratings.com

Fitch Ratings Updates Report Defining Credit Opinions.

Link to Fitch Ratings' Report(s): Credit Opinions

Fitch Ratings-London-15 February 2019: Fitch Ratings has updated its special report that defines Credit Opinions (COs) and their limitations compared with the agency's credit ratings. The report also explains their purpose, the process under which they are assigned, how they are communicated and certain other considerations.

The report has been updated to provide greater clarity with respect to certain points, for example, by specifying that some COs provided as inputs to certain collateralised loan obligations (CLOs) may be assigned using a model-based approach. COs are provided by Fitch on its primary rating scale, but under a process that is narrower in scope than credit ratings.

The full report, Credit Opinions, is available at www.fitchratings.com, or by clicking on the link above.

Contact:

Stuart Jennings
Regional Credit Officer
+44 20 3530 1142
Fitch Ratings Limited
30 North Colonnade
London, E14 5GN

Katie Falconi
Regional Credit Officer
+1 212 612 7881

Additional information is available on www.fitchratings.com

Fitch Updates U.S. Public Finance Letter of Credit Supported Bonds and Commercial Paper Criteria.

Link to Fitch Ratings' Report(s): U.S. Public Finance Letter of Credit-Supported Bonds and Commercial Paper Rating Criteria

Fitch Ratings-New York-15 February 2019: Fitch Ratings has published the following updated report, "U.S. Public Finance Letter of Credit Supported Bonds and Commercial Paper Rating Criteria". This report updates the previous report dated Feb. 22, 2018. The key elements of Fitch's

letter of credit-supported bonds and commercial paper rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

Fitch Ratings: Updated U.S. Public Finance Structured Finance Criteria

Link to Fitch Ratings' Report(s): U.S. Public Finance Structured Finance Rating Criteria

Fitch Ratings-New York-15 February 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Structured Finance Rating Criteria." This report updates the prior report published on Feb. 22, 2018. The key elements of Fitch's public finance structured finance rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

Fitch Internal Liquidity Worksheet.

Access the worksheet.

Bloomberg Brief Weekly Video 2/14/19

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

Watch video.

Bloomberg

February 14th, 2019, 10:48 AM PST

S&P Credit FAQ: Criteria Considerations For Mass Transit Agency Ratings

In most cases, the obligor or related entity is also the issuer. However, in others–for instance, when the issuer is primarily a vehicle for issuing and servicing debt or has relatively little control over pledged revenues apart from payment of debt service–we may exercise analytic judgment to identify the obligor or related entity in evaluating the operating linkage.

Continue Reading

Nov. 14, 2018

S&P: U.S. States May See Negative Revenue Effects From Aging Demographic Trends.

In S&P Global Ratings' opinion, the aging of the U.S. population has significant implications for future state tax revenues. State governments will need to adapt their revenue structure and service levels to accommodate the growing elderly population.

Continue Reading

Feb. 14, 2019

S&P: Key Questions From The U.S. Not-For-Profit Health Care 2019 Outlook Webcast

On Jan. 17, 2019, S&P Global Ratings held a webcast to discuss its 2019 stable outlook on the U.S.

not-for-profit health care sector. Here, we answer the most frequently asked questions from the registration and the call, and provide results from our real-time polling questions.

Continue Reading

Feb. 4, 2019

CUSIP Request Volume Sends Mixed Signals to Kick Off 2019.

Corporate CUSIP Volume Trends Down While Municipal Volume Rises

NEW YORK, Feb. 13, 2019 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for January 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found significant year-over-year volume decreases in requests for new corporate identifiers and significant year-over-year increases in requests for new municipal identifiers.

CUSIP identifier requests for the broad category of U.S. corporate offerings, which includes both equity and debt, decreased 8% year-over-year versus January 2018. On a monthly basis, corporate identifier request volume through January 2019 was 27.4% higher than December 2018 levels. December 2018 volumes were historically low.

Municipal CUSIP requests increased in January after experiencing a volatile year in 2018. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – saw a 10.5% increase versus January 2018.

“Uncertainty over the future of interest rates has been visible in CUSIP request volume for the past several months and appears to be continuing into 2019,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “Overall, volumes are healthy as we kick off the new year, but we expect to continue to see continued swings in volume in the face of ongoing economic and geopolitical uncertainty.”

Requests for new international debt and equity CUSIP International Numbers (CINS) decreased on an annualized basis in January. International equity CINS were down 58.1% versus January 2019, while international debt CINS fell 40.7% during the same period.

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

CUSIP Request Volume Sends Mixed Signals to Kick Off 2019.

NEW YORK, NY, FEBRUARY 13, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for January 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found significant year-over-year volume decreases in requests for new corporate identifiers and significant year-over-year increases in requests for new municipal identifiers.

Read Report.

Corporate CUSIP Volume Trends Down While Municipal Volume Rises.

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Read Press Release.

Short-Term Rentals - A Tale Of Two Cases.

Courts across the country have been hearing cases about short-term rentals of homes and condominium units, and there is not much consistency in the decisions made. Sometimes, it is the homeowners’ association that is trying to enforce its covenants in a manner that prohibits short-term rentals, and sometimes it is a municipality trying to enforce its zoning ordinances. In the two cases discussed below, we have one of each—and in both cases, the language of the covenant and the ordinance made all the difference.

(1) HOA Seeking to Enforce its Covenants to Prohibit Short-Term Rentals of Homes

Facts. A homeowner advertised several properties he owned in a subdivision for short-term recreational use, placing ads on a local short-term rental website. In the ads, he described the properties as being available for “vacation rental per night,” and listed the rental fees he would charge. The short-term rentals got the attention of the HOA due to other residents’ complaints of occasional excessive noise, vehicles being parked on the street, and the renters’ damaging the subdivisions golf course, to name a few. The HOA’s Declaration of Covenants did not specifically prohibit short-term rentals, but it did say “No trade or business, or profession of any kind shall be carried out upon any residential lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood.” The Covenants also stated that the lots owned by this particular homeowner were to be “single family residential lots and shall be used only for residential purposes.” By contrast, the Covenants allowed one of the lots (not owned by this owner) to be used for commercial purposes, including a hotel.

Court Rulings. The court dug in to the plain or common meaning of the words used in the Covenant and determined that a “residence” is a “dwelling place or abode of a single person or family unit;” or, defined another way, a “personal presence at some place of abode with no present intention of definite an early removal and with purpose to remain for undetermined period…” Using these definitions, the court ruled that using these lots for one-night, two-night, weekend, or weekly rentals cannot fit within the requirements of the residential use required by the Covenant. As such, the Court found that the short-term rentals violated the Covenant.

(2) Municipality Seeking to Enforce its Ordinances to Prohibit Short-Term Rentals of Homes

Facts. A number of homeowners within a municipality were renting out their lake homes as vacation houses for short-term intervals, typically for about a week in duration. At first, the municipality had a long-standing zoning ordinance affecting these homes that simply required that they be used as “single-family dwellings.” The homeowners, wanting to continue their vacation rental practices,

argued that as long as it was just one family renting at a time, they were following the single-family dwelling ordinance. The municipality then decided to stop all the guess work and amended the ordinance to explicitly prohibit short-term rentals. The homeowners filed suit against the municipality, arguing that they had a "prior nonconforming use" right to rent their homes short term, because the previous zoning ordinance allowed short-term rentals as long as it was to one family at a time.

Court Rulings. The court again analyzed the language of the previous ordinance to determine if there was really a right to rent the homes short-term—and just like with the other case, the devil was in the definitions. The court found that the definition of "single-family dwelling" under the ordinances came down to the definition of "family" within the ordinances, which was defined as "relationships of a non-transient domestic character," excluding those "whose domestic relationship was of a transitory or seasonable nature or for an anticipated limited duration…" The court ruled that since short-term vacation rentals are inherently transitory, no matter who was renting they could not meet the definition of "family" under the prior zoning ordinance; therefore, the homeowners lost their case—and all the future vacation rental income they could have made.

Lesson. While these cases are interesting in how the various courts parse through the language used in the association documents and the ordinances, the lesson we can draw for Wisconsin Condominium and Homeowners Associations is that if you want to limit or prohibit short-term rentals in your community, it is best to specifically say so within your Declaration or Bylaws. These cases show us that relying on "single family" or "residential use" to justify prohibition of short-term rentals will only lead to lengthy litigation.

by Lydia Chartre

February 13, 2019

Husch Blackwell LLP

Asset Monetization and Public Facilities: New Ground for P3s

As municipalities, state agencies, and educational institutions look for creative ways to fund needed capital improvements, leveraging the value of underutilized public real estate assets through commercial development is a viable strategy. There is concern as to whether this type of project constitutes a Public-Private Partnership (P3) and is authorized or prohibited under states' P3 enabling legislation.

This concern hovers amidst the growth of the social infrastructure market, a class of public-facing facilities such as schools and courthouses, for which government agencies are increasingly seeking alternative funding sources. To address aging social infrastructure, some state and municipal governments are exploring P3 solutions, but many states' enabling legislation is either restrictive of or silent on the use of private capital and private delivery for social infrastructure projects. Even fewer states contemplate monetization of underutilized public assets as an allowable P3 structure.

Currently, 38 states have P3 enabling legislation, but few of these statutes allow monetization of public assets through commercial development. Legislators have assumed that P3 only applies to alternative delivery of an asset or service for public use through an availability payment or a concession model.

As an example, the State of Pennsylvania is delivering one of the nation's most significant transportation P3 projects, intended to replace over 500 aging bridges across the state, but its restrictive, transportation-focused P3 statute does not enable the delivery of social infrastructure, much less doing so by monetizing underutilized assets.

This limited approach to alternative financing, taken by so many states, results in missed opportunities to renew critical public facilities.

Asset Monetization as a P3

To demonstrate the viability of asset monetization projects as P3s, consider the alignment of a recent project in the City of Falls Church, Virginia and the definition of a P3, as promoted by the National Council for Public Private Partnerships (NCPPP). The City of Falls Church recently selected a team of private partners to develop a commercial economic development project on 10 acres of city-owned land, the proceeds of which are intended to offset the cost of delivering a new high school adjacent to the commercial site. NCPPP offers three primary criteria for any P3 project, each of which the City of Falls Church project meets:

- A contractual agreement between a public agency (federal, state or local) and a private sector entity.
- The City of Falls Church will enter into a Comprehensive Agreement and a 99- ground lease with its private partner, dictating the uses to be constructed and the terms of payments.
- The skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public.
- The City of Falls Church is contributing the land and assisting with entitlement; the private partner is contributing capital and real estate development and operational expertise. Additionally, the project will fund the development of the new high school and provide significant civic space.
- Each party shares in the risks and rewards potential in the delivery of the service and/or facility. The City of Falls Church and private partner share in development risk as the City of Falls Church receives payments over time and as phases of development are completed. The City of Falls Church also shares in the long-term upside of the project through on-going capital event fees. The City of Falls Church project is being executed under the authority of the Commonwealth of Virginia's Public Private Education Act (PPEA). Virginia was an early adopter of broad-sweeping P3 legislation, passing the PPEA in 2002.

Some states are following Virginia's lead to address mounting capital improvement and deferred maintenance needs. In August, the State of New Jersey expanded its P3 authority, previously focused exclusively on public higher education institutions, to include a broad set of local governments, school districts, public authorities, and state and county colleges. These entities can now enter into P3s for capital projects, including both social infrastructure and transportation. While regulations are still under development, New Jersey should look at the City of Falls Church's example and create regulations that support and encourage monetization of underutilized public assets as one of the P3 tools available to municipal and educational institutions seeking to raise funds for critical facilities.

Conclusion

At a time when states are increasingly considering alternative financing or revisiting existing laws, recognizing asset monetization transactions that generate significant public benefit, like the City of Falls Church project, may encourage legislators to broaden the scope of allowable alternative financing projects, thereby allowing more social infrastructure projects to be funded by monetizing underutilized public and institutional assets.

By Jay Brown

BY SOURCEMEDIA | MUNICIPAL | 02/06/19 09:00 AM EST

EPA Accelerates Investments in America's Water Infrastructure.

LENEXA, KS, FEB 8, 2019 — As highlighted in President Trump's State of the Union address and in support of the President's Infrastructure Initiative, the U.S. Environmental Protection Agency (EPA) has accelerated investment in the nation's aging water infrastructure.

"EPA is delivering on President Trump's promise to jump-start critical infrastructure projects that will not only enhance environmental protections but also grow the economy," said EPA Acting Administrator Andrew Wheeler. "Under President Trump, EPA has issued seven WIFIA loans to help finance over $4 billion in water infrastructure projects that will improve water quality and create up to 6,000 jobs. By clearly defining where federal jurisdiction begins and ends, our new proposed Waters of the U.S. definition will provide states and the private sector the regulatory certainty they need to develop and streamline projects that will modernize our nation's aging infrastructure."

Over the past year, EPA has moved President Trump's infrastructure agenda forward by working to get the financing, tools and resources EPA's state, local, tribal and other partners need to modernize outdated water infrastructure while improving local water quality, creating jobs and better protecting public health.

"Supporting states in their efforts to modernize and upgrade water infrastructure is key to providing Americans with clean and safe water and protecting public health and the environment," said Region 7 Administrator Jim Gulliford. "The SRF programs have historically been the primary source of funds to support states and needed infrastructure improvements. With the addition of WIFIA, significant additional funding has been made available. EPA is committed to supporting the states and their public and private infrastructure programs and assuring that the highest health and environmental standards possible are achieved."

Together with the agency's state, local, tribal and other partners, EPA achieved the following major water infrastructure accomplishments in 2018:

WIFIA

Established by the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014, EPA's WIFIA program is the agency's newest water financing program, which provides long-term, low-cost supplemental loans for regionally and nationally significant projects. In 2018, EPA issued seven WIFIA loans totaling nearly $2 billion to help finance over $4 billion for water infrastructure projects and create up to 6,000 jobs. In November 2018, EPA invited 39 additional projects in 16 states and Washington, D.C. to apply for a WIFIA loan. Together, these selected borrowers will receive WIFIA loans totaling approximately $5 billion to help finance over $10 billion in water infrastructure investments and create up to 155,000 jobs.

Omaha, Neb. and St. Louis, Mo. were two communities in Region 7 awarded WIFIA loans in 2018. The Metropolitan St. Louis Sewer District received $47.7 million to help construct a new pump station and replace or rehabilitate sewer pipes to address overflows and improve the water quality in Deer Creek. This project will provide storage for excessive inflow and infiltration during wet weather events, alleviate basement backups, and save the district an estimated $15 million by financing with

a WIFIA loan compared to a bond issuance. The City of Omaha's Saddle Creek Retention Treatment Basin Project received $69.7 million to help finance the construction of a wastewater pump station. This project will decrease the number of overflow events into Little Papillion Creek and reduce the volume of untreated combined sewer overflow and E. coli bacteria entering the waterway, all while saving the City of Omaha nearly $20 million in interest costs.

Five additional projects in EPA Region 7 have submitted letters of interest in applying for WIFIA loans as well: Kansas City, St. Louis, and Joplin, Mo., and Wichita and Frontenac, Kan. EPA has offered these communities the opportunity to discuss and negotiate loans supporting up to 51 percent of their project costs. Combined, these five projects could receive WIFIA loans totaling approximately $513 million in water infrastructure investments serving a population of more than 2.3 million.

State Revolving Funds

The Clean Water and Drinking Water State Revolving Funds (SRFs) play an integral role in EPA's efforts to help communities replace or upgrade aging or inadequate drinking water and wastewater infrastructure through low-interest loans. Together, in 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure. This level of funding was facilitated through EPA's contribution of $2.2 billion to the state revolving funds in 2018.

Region 7 EPA works closely with the states of Kansas, Missouri, Iowa and Nebraska in the implementation of the SRF program. In 2018, Region 7 states received over $150 million in SRF funding from Congress that helped finance 339 loan agreements for water quality projects totaling $408 million.

In addition to funding large-scale infrastructure projects, EPA has also taken a leading role in the administration's initiative to promote greater efficiencies in the infrastructure permitting process. These actions include working to provide a clear and predictable approach to identifying waters that are subject to federal authority through the Department of the Army's and EPA's proposed "Waters of the United States" rulemaking, implementation of the administration's One Federal Decision initiative and through other improvements to the Clean Water Act permitting process. EPA will take these actions by cooperatively working with its state and tribal co-regulators with a goal of streamlining environmental permitting and increasing investments in critical water and other infrastructure projects.

Learn more at epa.gov.

WATER WORLD

February 8, 2019

`Question Everything': Puerto Rico Hits $3.8 Trillion Market

- **Bankruptcy case casts doubt on bonds backed by revenue pledges**
- **Judge approves deal that shifts sales-tax money to government**

America's local governments frequently pledge a slice of their revenue to investors to make their bond deals more attractive by adding an extra layer of security. But Puerto Rico's record-setting

bankruptcy has cast that safety in doubt.

That's because bondholders who were promised a dedicated share of the island's sales-tax revenue have seen that rolled back in court, where creditors since 2017 have been squaring off over who has the highest claim to the distressed government's cash.

On Monday, U.S. District Judge Laura Taylor Swain approved a restructuring of more than $17 billion of sales-tax-backed bonds that will leave owners of the securities with the lowest claim receiving about 56 cents on the dollar. While investors supported the deal because it gives them far more than what the debt was once trading for, it rests on an agreement that steers nearly half of the revenue that was pledged for the securities to the central government instead.

That's left some investors worried the approach could be used by other distressed governments. "It makes us question everything," said Jonathan Mondillo, head of municipal securities at Aberdeen Standard Investments, which owns insured Puerto Rican debt.

Puerto Rico's bankruptcy is the latest to trigger a reassessment of which bonds are the most iron-clad in the $3.8 trillion state and local government debt market, a haven where bankruptcies are rare enough that each one is closely watched for possible clues to how creditors will be treated the next time a government goes broke.

Detroit's bankruptcy undermined investors' faith in general-obligation bonds, which were once seen as the safest since they are backed by the unlimited ability of a government to raise taxes. That led some to favor bonds backed by dedicated revenues like sales taxes instead — a view that's now being challenged by what's happened in Puerto Rico. Last year, S&P Global Ratings began pushing the ratings on so-called priority lien debt closer to those of the underlying governments, reflecting the risk that officials could try to tap the funds if they experience distress.

Such bond issues are used by issuers because it allowed them to borrow at lower costs. The Puerto Rico sales-tax bonds, known as Cofinas, are similar to those issued by Chicago's Sales Tax Securitization Corp., which says it's insulated even if the city were given the power to go bankrupt.

While those Chicago bonds have AAA ratings from Fitch Ratings and Kroll Bond Rating Agency, investors demanded yields of as much as 4.79 percent on debt due in 2048 when the city sold the securities last month, according to data compiled by Bloomberg. That was about 1.7 percentage points more than benchmark debt, nearly twice the premium investors demanded a year earlier.

"Ultimately if the municipality gets into a distress situation, it's my belief, much like the Cofinas, they would be brought into the bankruptcy proceeding, or there would be a possibility" of that, said Mondillo.

In some ways, though, the outcome of the Cofina ruling — if not the precedent — is a win for investors who favor revenue-backed deals over general-obligation bonds. The most-senior Cofina bondholders will recover an estimated 93 cents on the dollar when they exchange their debt for new securities. They're trading for around 85 cents.

That's well above the current price for Puerto's general-obligation bonds, with those due in 2026 at about 57.5 cents. Owners of those securities have yet to reach such a restructuring deal, leaving potential recoveries uncertain. Some complained in court that the sales-tax deal was too generous, diminishing what other creditors stand to gain.

James Spiotto, managing director of Chapman Strategic Advisors LLC, said Puerto Rico's bankruptcy may also be a unique case, given the severity of the island's financial and economic strains, that may

not apply elsewhere. Municipal bankruptcies have also been extremely unusual, with only a few cities seeking court protection from creditors even after the big financial hit of the last recession.

“They used tried, true and well-accepted structures but they’re not going to fulfill what those structures represent,” Spiotto said of Puerto Rico. “That’s not indicative of the market and not indicative of the history.”

Puerto Rico’s bankruptcy may lead to still more reckonings over the protections municipal-bondholders have as it restructures the rest of its $74 billion debt load. The island’s federal oversight board is seeking to invalidate more than $6 billion of general-obligation bonds sold since 2012 on the grounds that it was issued illegally. If the judge agrees, that could heighten already-existing concerns around the safety of the pledge and prompt another round of reassessments.

“This is a near-term headline — we don’t know how it’s going to play out over the next one, two or five years,” said David Ashley, a portfolio manager at Thornburg Investment Management, which holds $10 billion in municipals. “You’ve made the sales tax folks fairly happy, you still haven’t addressed the other part of the debt waterfall.”

Bloomberg Markets

By Amanda Albright

February 6, 2019, 5:30 AM PST Updated on February 6, 2019, 7:50 AM PST

— With assistance by Michelle Kaske

XBRL US CAFR Taxonomy Released for Review.

XBRL US recently released its draft CAFR taxonomy for public comment.

NAST Sends Letter to New Congress.

Read the Letter.

National Association of State Treasurers

February 1, 2019

S&P Public Finance Outlook Sees Slower Growth Impacting Muni Market.

Robin Prunty, head of analytics and research at S&P Public Finance, discusses how an expected economic slowdown may impact state spending and municipal bonds. She speaks with Bloomberg’s Taylor Riggs in this week’s “Muni Moment” on “Bloomberg Markets.”

Watch video.

Bloomberg Markets TV Shows

February 6th, 2019

Stakes are High for Cities and Regions Ahead of an Unsettled 2020 Census.

A little over one year from now, the United States will participate in a democratic tradition that stretches back to the founding of the republic: the once-a-decade census of its population.

From 1790 (U.S. population: 3.9 million) to 2010 (U.S. population: 309 million), the decennial census has changed alongside the nation itself. From the territory it covers, to the questions it asks, to how it collects the information, the census has reflected evolution in technology, the role of the federal government, and the size of the country itself.

As we approach 2020, however, both technical and political changes in the census are introducing unprecedented new challenges. The stakes are high for cities and regions, which depend on a full and accurate count of their populations to ensure their fiscal health and political strength. Three areas of concern stand out.

Continue reading.

The Brookings Institute

by Alan Berube
Senior Fellow and Deputy Director – Metropolitan Policy Program

February 7, 2019

North Carolina Court of Appeals Takes Insurer to Task For Sloppy Drafting.

Last month, the North Carolina Court of Appeals released its decision in *Meinck v. City of Gastonia*, — S.E.2d —, 2019 WL 114054 (N.C. Ct. App. Jan. 2, 2019), holding a policy exclusion to be ambiguous because of poor drafting by the insurer.

The case started in 2013, when plaintiff Joan Meinck fell while walking down the steps of a historic building owned by the City of Gastonia, suffering injuries including a broken hip. While the city owned the property and was responsible for maintaining the exterior of the building, it had leased the property to the private non-profit Gaston County Art Guild, which had subleased the building for use as an art gallery and gift shop.

In 2015, Meink sued the city, alleging specifically that the city was not entitled to governmental immunity because it was engaged in a proprietary (not governmental) function, and alternatively, if the City had governmental immunity, it had been waived by the purchase of liability insurance. Under North Carolina's doctrine of governmental immunity, a county or municipal cooperation is immune from suit for the negligence of its employees in the exercise of governmental functions absent waiver of immunity. *Evans ex rel. Horton v. Hous. Auth.*, 602 S.E.2d 688 (N.C. 2004). However, a city may waive its government immunity in tort by the act of purchasing liability insurance. N.C. Gen. Stat. § 160A-485(a).

The trial court granted summary judgment in favor of the city, finding that the city's use of the building was a governmental function and that therefore the city was entitled to sovereign immunity. The trial court also held that the city had not waived that immunity by purchasing liability insurance because the city's insurance policy contained an "express non-waiver provision."

In a 2017 decision, the Court of Appeals reversed, holding that the city was not engaged in a proprietary, not governmental function in renting the building, and therefore was not entitled to governmental immunity. Based on this holding, the Court did not address any insurance coverage issues. *Meinck*, 798 S.E.2d 417 (N.C. Ct. App. 2017).

However, the Supreme Court granted the City's petition for discretionary review and reversed on the governmental function issue, remanding the case to the Court of Appeals to determine if the City had waived governmental immunity by purchasing liability insurance. *Meinck*, 819 S.E.2d 353 (N.C. 2018).

In an opinion written by Judge Tyson and joined by Judges Elmore and Dietz, the Court of Appeals concluded that the non-waiver provision in the city's insurance policy, issued by Argonaut Insurance Company, was ambiguous and must be construed in favor of coverage, and that therefore, the city had waived its governmental immunity.

The relevant policy endorsement read as follows (emphasis supplied):

> 12. Sovereign Immunity and Damages Cap
>
> ***For any amount for which the Insured would not be liable under applicable governmental or sovereign immunity but for the existence of this Policy***; the issuance of this insurance shall not be deemed a waiver of any statutory immunities by or on behalf of any insured, nor of any statutory limits on the monetary amount of liability applicable to any Insured were this Policy not in effect; and as respects to any "claim", we expressly reserve any and all rights to deny liability by reason of such immunity, and to assert the limitations as to the amount of liability as might be provided by law.

The Court of Appeals concluded that the italicized portion of the endorsement was ambiguous. Judge Tyson called the clause "ungrammatical" and wrote that it did "not clearly convey whether governmental immunity is waived under the policy. It is not a complete sentence of clause, and does not convey any clear meaning on its own." Further, Judge Tyson noted that of fourteen provisions in the "North Carolina Common Policy Conditions" endorsement, only this provision did not begin with a complete, grammatical sentence.

The Court of Appeals then set out a hypothetical clause which, in its view, would suffice to preserve the city's governmental immunity, replacing the italicized language in the actual policy with the following: "This policy does not apply to any amount for which the Insured would not be liable under applicable governmental or sovereign immunity but for the existence of this Policy."

The Court of Appeals then reviewed three prior decisions in which it had concluded that policy language preserved governmental immunity: *Hart v. Brienza*, 784 S.E.2d 211, rev. denied, 793 S.E.2d 223 (N.C. 2016), *Estate of Earley v. Haywood Cty. Dep't of Soc. Servs.*, 694 S.E.2d 405 (N.C. Ct. App. 2010), and *Patrick v. Wake Cty. Dep't of Human Servs.*, 655 S.E.2d 920 (N.C. Ct. App. 2008), concluding that in each case "the relevant language was unambiguous . . . and those policies did not cover claims for which sovereign immunity would otherwise be waived by the purchase of

insurance." By contrast, the court stated, "[u]nder the endorsement at issue, it is unclear whether the exclusion for coverage applies to claims for which sovereign or governmental immunity would apply." Accordingly, the policy must be "strictly construed" in favor of coverage.

by Joshua Davey

February 7, 2019

McGuireWoods LLP

Why Green Bonds May Be Our Best Hope For Tackling Climate Change.

- **Green bonds appeal to investors who are looking for a safe place to park their money and do some good for the world.**
- **Investors are willing to accept a lower rate of return in exchange for the environmental benefits.**

Municipalities have been selling bonds to pay for public works projects—fire stations, parking garages, sewage treatment systems—for 200 years. It's only in the past decade or so, however, that they've been selling them with an extra perk: helping the environment.

In the absence of a global carbon pricing scheme, bond markets will be central to financing climate change and other environmental interventions. Green bonds appeal to investors who are looking for a safe place to park their money and do some good for the world.

Harvard Business School professors George Serafeim and Malcolm Baker have long been interested in investor motivations that go beyond pure financial return to include environmental, social, and governance (ESG) criteria. With the recent uptick in green bonds, they wondered how that might improve municipalities' ability to help the environment by accessing finance at better terms.

"The whole idea of ESG investing is predicated on the notion that by tilting their portfolios towards securities that have better ESG properties, investors might be able to change who has access to lower-cost capital," says Baker, Robert G. Kirby Professor of Business Administration at HBS. "In the process, they jump-start investing in areas that might be important for the environment."

They examine the phenomenon in a new paper for the National Bureau of Economic Research, Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds, written with Daniel Bergstresser of Brandeis University and Jeffrey Wurgler of NYU's Stern School of Business.

While green bonds have been issued by banks and corporations as well, the researchers focused on municipal bonds, which are the most ubiquitous green bonds historically in the United States, and the easiest to track thanks to the availability of government data.

For starters, determining what bonds truly qualify as green—as opposed to just greenwashing—wasn't straightforward.

"There isn't a crisp definition about what is a green bond and what isn't," says Serafeim, a professor in the Accounting and Management Unit. "The test we used was to look at how the money from the bond flows into actual projects, and whether those projects are going to deliver environmental

benefits."

The projects include efforts to create alternative energy by building solar panels and wind turbines, as well as projects to improve water efficiency, control pollution, create sustainable agriculture and forestry, or provide infrastructure for electric vehicles.

While not all projects have a climate-change benefit, many help reduce future carbon emissions or even remove carbon emissions from the atmosphere. In addition to looking at bonds self-labeled as green by municipalities, the researchers also considered certification by the nonprofit Climate Bonds Initiative, which provides a Climate Bond Standard (CBS) rating.

Green bonds priced at a premium

In the past eight or nine years, they found, the green bond market has gone from nonexistent to $160 billion. (The first green bond was issued in 2007 by the European Investment Bank.) When the researchers compared green bonds with other bonds issued by the same municipality, they found a slightly lower yield of 6 basis points (.06 percent) for self-identified green bonds, and up to 20 basis points (.2 percent) for certified green bonds. Investors are willing to accept a lower rate of return in exchange for the environmental benefits.

"The story is supply and demand," says Baker. "If there is an element of a security that the investor desires for nonfinancial reasons, it will trade at a higher price than other securities."

In addition, the researchers found that green bonds were more concentrated in their ownership in a small group of investors—reflecting the smaller subset of investors who place value on environmental benefits, such as funds that have some green or social investing orientation.

While the difference in return is admittedly small, it could be a factor in tipping the scales for municipalities favoring green bonds.

"If I'm an entrepreneur or state government and I have to choose between a project that is green and one that isn't, one factor in that decision will be the terms at which I can finance it," Baker says. "That is the sense in which green bonds can theoretically push firms and municipalities in the direction of doing something environmentally friendly."

HBS Working Knowledge

by Michael Blanding

Feb 8, 2019

Verizon Has Bond Market Seeing Green After Billion-Dollar Deal.

- **Green bond drew orders for eight times offering amount**
- **U.S. companies sluggish to tap $600 billion green-bond market**

Verizon Communications Inc.'s billion-dollar entrance into the green-bond market this week is fueling optimism that more U.S. corporations will begin tapping into the growing pot of money seeking to invest in sustainable projects.

The telecommunications giant on Tuesday issued $1 billion of 10-year green bonds in a deal that

drew orders for eight times the amount offered, a person with knowledge of the matter said. The sale was one of the most oversubscribed corporate-bond offerings this year and allowed Verizon to lower its borrowing cost as investors jockeyed for a piece of the debt. Bank of America Corp. and Goldman Sachs Group Inc. managed the sale.

“This really opened up a whole new investor base and funding source for us,” said Jim Gowen, chief sustainability officer at Verizon.

Continue reading.

Bloomberg Markets

By Emily Chasan

February 6, 2019, 7:43 AM PST

BDA Participates in U.S. Chamber National Infrastructure Forum.

On February 5, 2019, the U.S. Chamber of Commerce hosted a major policy event titled, “America’s Infrastructure: Time to Invest,” in partnership with the Bond Dealers of America, at the Chamber Headquarters in Washington, D.C. The forum focused on encouraging federal investment in infrastructure, specifically to increase economic growth while updating the country’s lagging infrastructure systems.

The full webcast of the event can be viewed here. ***BDA’s participation begins at the 2:09:42 mark.***

BDA Participation

BDA member Alan Polsky, SVP, Dougherty & Company, LLC, participated in a panel discussion alongside Councilwoman Melanie Piana, City of Ferndale, Michigan and Jennifer Aument, President, Transurban. The panel titled, “Utilizing Public-Private Partnerships” focused on the P3 model and how it can be successful in the United States and on how bonds can be used more efficiently to supplement infrastructure investment in the U.S., including within the P3 model and other cost-savings they may present to local, state, and federal government.

Chairman Peter Defazio (D-OR) of the House Transportation and Infrastructure Committee spoke briefly before the panel and set the stage to discuss the need for variety in financing mechanisms needed to tackle our nations infrastructure deficit. Mr. Polsky built off these remarks and expounded on BDA priorities as cornerstones to any federal infrastructure package.

Mr. Polsky’s remarks focused primarily on the reinstatement of tax-exempt advance refundings, expansion of private-activity bonds, direct-pay bonds and the continued protection of the tax-exempt status of municipal bonds. Also highlighted was the ability for bonds to finance infrastructure at little to no cost to the federal government, an important point as the national debt continues to climb.

Bond Dealers of America

February 6, 2019

P3 and Your Tax Dollars: Federal Government Makes Next Foray into Public Private Partnerships.

In an interesting turn, the U.S. Army Corps of Engineers (the "Corps") published a Request for Information On Conceptual Public Private Partnership Delivery of Specific Corps Projects. 84 Fed. Reg. 1084-85, Feb. 1, 2019, here. Under this RFI Notice, the Corps has been directed to create a pilot program on P3s to try and determine the viability of different and new (at least new to the Government) delivery methods. It is the hope that these "new" methodologies will result in reduced cost and time impacts to project deliveries.

P3s, like the name suggests, are partnerships between, in this instance, a federal agency and private/commercial sector partners in which the agency retains ownership of the facility or system, but the private partner invests capital to design, develop and operate the facilities, typically with a revenue stream in mind. *See e.g.*, GAO GGD-99-23. These may relate to operate and maintain ("O&M"); operate, maintain, and manage ("OM&M"); or other types of lease/develop/operate vehicles, to name just a few. Typically, the private partner builds, maintains, and operates the facility for a fixed number of years through a contract vehicle in return for part of the revenue stream. At the end of that term, the asset is either returned to the agency, or the contract vehicle is renewed or replaced.

While the Government has dabbled with P3s in the past, particularly with base housing in which private entities build, operate, maintain and oversee military family housing on federal land, the Government has largely taken a very hands-off approach to P3s. In the past the Office of Management & Budget frowned upon P3s as they, in effect, give away (albeit temporarily but for a long term) federally-owned property. With the turn of the century, however, Congress provided statutory authority for certain agencies to enter into P3s (including the National Park Service, Veterans Affairs, and others).

In summary, this initial foray by the Corps is seeking submission of proposals to develop the program in which the Corps identifies up to ten P3 pilot projects. The initial screening criteria consist of:

(1) The P3 proposal:

(a) Has a construction cost in excess of $50 million;

(b) Has non-Federal sponsor support;

(c) Includes design, build, finance, operation and maintenance (DBFOM) or some combination thereof for Federally authorized projects;

(d) Accelerates project delivery; and

(e) Has the ability to generate revenue or leverage non-Federal funding sources.

(2) Existing authorities are sufficient to allow the P3 project to be completed.

(3) A qualitative assessment demonstrating that the P3 will deliver the project faster and/or more cost effectively than traditional delivery.

The Selection Criteria consist of the following:

(1) Return on Federal Investment.

> (a) P3 project proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI). ROFI will be calculated by annualizing the total project benefits and Federal costs utilizing the current discount rate, and applying the formula: (Benefits & Federal Costs)/(Federal Costs).
>
> (b) For any P3 project where it has been determined that a reduction in the non-Federal share is warranted with authority provided in 33 U.S.C. 2213, the ROFI calculation will be adjusted to account for those modifications and address concerns pertaining to equity.

(2) Replicability: Project proposals that are replicable, meaning the proposed P3 structure or underlying concepts may be applied to other prospective projects.

(3) Reliable Funding Sources: Reliable non-Federal funding sources for the design, construction, operation and maintenance of Federally authorized water resource projects are identified.

(4) Risk Allocation: Project effectively allocates delivery and performance risk to non-Federal entities and minimizes Federal direct and contingent liabilities associated with the project.

Interestingly, based on prior research, the Corps recognizes certain "key known challenges", which are typical to most government programs. These include: "(1) [i]nability to collect, retain and reinvest fees; (2) inability to make commitments on future appropriations; and (3) enabling framework and authorities to implement P3 projects."

The Corps' Notice keeps the type and size of the projects sought open, but notes some examples, including hydropower, navigation systems, ecosystem restoration, flood management, and the like.

While this is both an interesting and strong next step for the Corps (and presumably, by extension, the government as a whole), it is not without significant potential problems and questions that remain. Some fundamental questions and concerns exist from a plain reading of the Notice.

For example, seeking proposals on contracts in excess of $50 million but only providing about 1½ pages of notice and related data is highly problematic. The Notice itself is quite vague and lacks the sort of details that one might expect associated with the sort of spend these projects anticipate. There is also little in the way of investment information, how evaluation will occur (there is reference to an evaluation matrix but it is not included) and what the end deliverable or outcome will be. As a pilot program, there appears to be much asked, but little told. Some pressing questions:

- What is the likelihood of the Corps pursing the projects submitted (recognizing that the offerors/responders are not reimbursed for their proposal responses)?
- How is proprietary information disclosed to be truly protected (recognizing that there are methods under the FAR and FOIA exemption (b)(4) for trade secret and competition sensitive information)?
- Perhaps most vital, is how will the government develop P3 programs given its relatively small experience in both commercial work and in P3s in particular? Where will it develop that expertise?

Hopefully this pilot program creates the first step in learning about the "ins and outs" of P3s; and while this appears to be a good effort, the Corps needs to tread carefully. We will continue to watch

and report as further developments occur.

For further insight go to the Corps P3 homepage here.

by Lawrence Prosen

February 11, 2019

Kilpatrick Townsend & Stockton LLP

State and Local Lawmakers Pitch How to Pay for a Big Infrastructure Package.

Congress has little time to reach consensus on ideas like increasing the gas tax and phasing in vehicle miles traveled before the 2020 election cycle shuts their window to fix and modernize everything from roads to water pipes.

WASHINGTON — State and local officials continued to lobby federal lawmakers Thursday on hiking the gas tax in order to help close the nation's $2 trillion infrastructure investment gap over the next decade.

That number comes from the American Society of Civil Engineers, with surface infrastructure accounting for more than $1 trillion of the shortfall. The group estimates $249 billion is necessary to shore up water and port-related infrastructure, while airports need about $100 billion in investment.

The bipartisan National Governors Association has not taken an official position on increasing the gas tax from 18.4 cents per gallon, or 24.4 cents per gallon for diesel, for the first time in 26 years. But Minnesota Gov. Tim Walz joined Los Angeles Mayor Eric Garcetti, both Democrats, in appearances Thursday before Congress supported a phased approach to fixing the federal Highway Trust Fund.

The Highway Trust Fund is sustained by the gas tax, which hasn't been increased since 1993. Without an injection of billions in additional dollars annually on top of expected user fee revenue, the fund will be broke by 2022, according to the Congressional Budget Office.

Like many others who have looked at the country's infrastructure needs, Garcetti emphasized that a gas tax increase would just be a first step. Eventually, he said the country would need to transition to what is being called "vehicles miles traveled," or a way of taxing how much a car actually drives on the road.

"I would put in a gas tax, find a formula to get a pilot in for vehicle miles traveled and then wean from the first to the second over time as we electrify every vehicle in this country, which is going to happen," Garcetti told the House Committee on Transportation & Infrastructure.

State and local officials in recent weeks have repeatedly underscored that getting Congress to pass an infrastructure package is their main priority. Despite some support from President Trump—who referred to the country's "crumbling infrastructure" briefly in his State of the Union address this week—it is not yet clear what the path forward for a major plan would be. Trump did not outline a particular agenda during his speech, while deep philosophical differences remain in Congress about how to pay for any package. Republican lawmakers in particular have been resistant over the past

two years to calls to increase the gas tax.

Both the U.S. Conference of Mayors and National League of Cities support increasing the gas tax, which Garcetti estimated would be needed another five to 10 years.

Vehicle miles traveled, or VMT, measures a vehicle's distance traveled on public roads during a set period, in order to charge drivers a user fee for wear and tear on driving infrastructure. The measure would also capture electric vehicles, whose drivers currently avoid paying the gas tax that feeds the Highway Trust Fund.

ROUTE FIFTY

By Dave Nyczepir,
News Editor

FEBRUARY 7, 2019

Feds Launch New Source for Information About Major Transportation Projects.

Have you ever wished there was a comprehensive, easily accessible project cost database for major US transportation projects? It would be populated following an in depth review of information available from State DOT's and would capture not just the capital cost of the project, but it's operation and maintenance cost and delivery and financing approach. The information could be valuable in many ways, including assessing the project performance outcomes for P3's and non P3's.

As I found out a couple of weeks ago at the Transportation Research Board annual meeting, now there is an internet based, open- source database for this information courtesy of the FHWA's office of Innovative Program delivery housed in the USDOT Build America Bureau. With assistance from researchers at the University of Maryland, FHWA conducted a rigorous data collection effort for over 130 US transportation projects covering development, procurement, design, construction and operation and maintenance costs. Projects are categorized by type, such as tunnel, bridge, managed lanes and location by region and delivery and financing approach (DB, DBF, DBFOM, CM/GC).

As you can imagine this was a labor intensive effort on the part of the researchers, not just to gather and catalogue the information, but to develop a searchable, user friendly database. Here is the link to the database which you should immediately add to your "favorites" list.

By Barney Allison on February 5, 2019

Nossaman LLP

Some Love for the Infrastructure We Already Have.

Deferred maintenance is beginning to get the attention it needs.

Leaders in Washington, in both the executive and legislative branches, cite infrastructure as a top priority for the new Congress. All agree that the case for serious investment has been made. But

while federal policymakers prepare to debate how they might provide more funding for new or improved infrastructure, state and local governments are beginning to tackle the long-neglected issue of deferred maintenance with money, muscle and spreadsheets.

This is an important development after decades of postponing scheduled upkeep and routine repairs on roads, schools, bridges and water lines as pleas for additional funding to maintain these critical workhorse assets were drowned out by the allure of new shiny-pony assets. More and more, public finance officials are taking stock of their existing assets, their condition and the costs to address the consequences of deferred maintenance. These efforts mark a profound change in focus.

One of the forces driving this change is the realization that current accounting practices do not require governments to recognize deferred maintenance obligations as liabilities on their balance sheets. This is similar to the dawning that took place about unfunded public pension obligations, which governments did not begin to book as liabilities until after Government Accounting Standards Board guidance to that effect was issued in 2012.

Like pension debt before, the cost of deferred maintenance has largely gone unmeasured and unreported, with staggering multi-trillion-dollar estimates repeated again and again. No one really knows, though, because there is no standard practice for defining, measuring and reporting deferred maintenance. This led credit ratings agencies to announce last summer that they would begin to focus on deferred maintenance in reviews of municipal debt levels.

Instead of waiting for regulatory directives, some state and local governments are already taking action. At the state level, Alaska, California, Hawaii, Tennessee and Utah, along with the District of Columbia, are among governments that are disclosing deferred maintenance obligations on their balance sheets and in annual financial reports.

To do so, they developed asset inventories and condition-assessment practices — the building blocks for tracking deferred maintenance needs — to make regular calculation of the costs they face in repairing and replacing the assets they own. While more work is needed to standardize how deferred maintenance is assessed, jurisdictions like these are leading the way toward clearer depictions of maintenance liabilities and more accurate municipal financial reporting.

Even better, credit agencies are rewarding governments for taking charge of deferred maintenance. Case in point: the District of Columbia. All three of the major credit rating agencies raised the District's credit rating on the strength of its plan to fund deferred maintenance, which was developed using D.C.'s centralized system for managing asset inventories, condition assessments and needs prioritization across all departments.

Infrastructure maintenance may never get its due beyond the credit rating agencies' lens — unless John Oliver does a sequel to "Infrastructure: The Movie" — but it is one of government's most critical obligations. Awards and fanfare are rare; maintenance projects are not often given names or tracked by industry market data providers. And our public finance officials are more used to fielding complaints about inconveniences caused by maintenance work than receiving thanks or credit for tackling it.

But there are plenty of deferred maintenance projects that deserve recognition. Here are just a few:

• Libraries: Against an accumulation of $100 million in deferred maintenance needs, the Denver library system is using a $31 million voter-approved bond issue to modernize the central library and the 10 of its 25 regional branches that have gone the longest without renovation. Soon, the some 2,600 patrons who use those branches every day will enjoy updated HVAC systems, elevators,

computer access and other basics.

• Roads: The Louisville, Ky., Metro Council developed a "fix it first" strategy expressly to address deferred road maintenance needs. It resulted in 130 roads being repaved, besting all previous efforts. An additional $190 million in street and sidewalk repairs is on deck.

• Levees: In addition to a $100 million repair program dedicated to through-levee conduits that had been compromised by deferred maintenance, the California Department of Water Resources funded an experimental flood control project for the Dos Rios floodplain to test a methodology that reconnects rivers with natural floodplains. It changed hearts and minds not only in California but also in Mississippi and Missouri, where similar projects are now underway.

Notable projects across more infrastructure sectors can be found here. These projects show that in an era of diminished budgets, public finance officials are making the case to taxpayers to take care of the assets we already have. They are increasingly advocating for using tax dollars to fix potholes, dredge port channels, replace pipes, modernize HVAC systems, paint schools, rehabilitate bridges, service parks, green wastewater systems, strengthen levees and fortify dams. Experience has shown that a hundred routine-maintenance projects will yield a much higher return on taxpayer money than any single big, new project ever will.

By taking responsibility for the assets that are delivering services taxpayers need and those that are no longer performing, public officials will be able to make smart decisions about which assets should be repaired, replaced or recycled based on long-term asset management strategies. More importantly, they will be better able to help taxpayers differentiate between fiscal responsibility and political folly in the dialogue on infrastructure.

GOVERNING.COM

By Jill Eicher | Contributor
Director of the Infrastructure Lab at the Bipartisan Policy Center

FEBRUARY 4, 2019 AT 6:15 AM

Rust Belt Cities Should Try Embracing the Suburbs.

Merging aging urban centers with surrounding municipalities shows promise as a path to revival.

Some U.S. cities have seen their fortunes rise in the new economy. Technology hubs such as San Francisco and Seattle, as well as coastal metropolises like New York and Los Angeles, are thriving. But some less-glamorous cities — especially in the Midwest — have been struggling. St. Louis isn't the worst off, but it's definitely in the latter category.

The numbers aren't all bad. Unemployment in St. Louis is low — only about 3 percent. Poverty in the city has fallen slightly, though at 25 percent it's still very high. But people are still streaming out of the city (which may be one reason for the low unemployment rate:

Continue reading.

Bloomberg Opinion

By Noah Smith

February 5, 2019, 7:37 AM PST

Plans to 'Fix the Damn Roads' May Help U.S. Hold Off Recession.

- **States and cities gave expansion biggest tailwind in two years**
- **Tax revenues for states soared 8.8% in the first half of 2018**

Minnesota leaders are starting work on a $2 billion light rail project, the state's largest infrastructure project — and the kind of spending that may help keep recession risk at bay.

Spending by cities and states is a bright spot that could help to extend the expansion, now in its 10th year and within months of becoming the longest ever. Economists see it helping to offset other drag from the trade war, slowing global growth and a fading boost from federal fiscal stimulus and the effects of the longest government shutdown in U.S. history.

States and municipalities contributed 0.22 percentage point to annualized growth in the third quarter, the most in two and a half years, Commerce Department data show. State and local spending will add as much as 0.3 percentage point to growth in 2019 and the first half of 2020, estimates Neil Dutta, head of U.S. economics at Renaissance Macro Research LLC.

Continue reading

Bloomberg Economics

By Steve Matthews and Margaret Newkirk

February 3, 2019

State, Local Leaders Urge Congress to Act on Infrastructure Plan.

SPEED READ:

- **Minnesota Gov. Tim Walz and Los Angeles Mayor Eric Garcetti testified on Capitol Hill Thursday, pleading with lawmakers in Congress to pass legislation that would provide new revenue for infrastructure improvements.**
- **Both the governor and the mayor have pushed for tax increases to fund transportation needs in their own jurisdictions — and have emerged unscathed.**

As the new Congress looks to reignite a national conversation on investments in infrastructure, two politicians — a governor and a mayor — pressed lawmakers Thursday on the importance of raising revenues to fund necessary transportation improvements across the country. Both officials, Minnesota Gov. Tim Walz and Los Angeles Mayor Eric Garcetti, have at points staked their political careers on raising taxes for infrastructure improvements and emerged victorious.

"It's usually pretty good advice: Don't run on raising people's taxes," Walz told members of the House Transportation and Infrastructure Committee, "except in the case of infrastructure."

Walz, a Democrat who served in the U.S. House before becoming governor last month, called for raising the gas tax in Minnesota by 10 cents a gallon as part of his campaign. When his opponent ran TV ads attacking him for the proposal, Walz said his own polling numbers actually went up. “People aren’t begging you to raise their taxes, but the way I framed it was, what is your alternative?” Walz said. Voters, he said, “know they’re spending [the money] anyway” in lost time on congested roads and on car repairs.

Congress has struggled for more than a decade to find money to pay for highways, bridges and other surface transportation infrastructure. Both Republicans and Democrats have shied away from raising the gas tax, the traditional way of funding those improvements. Other areas, including locks and dams on rivers, port dredging, and investments in new air traffic control technology, have languished as well.

But industry experts and their allies in Congress hope infrastructure is one area where Democrats, who now control the House, and Republicans, who control the Senate, can find common ground in the new Congress.

President Donald Trump made a similar point during his State of the Union address on Tuesday.

“Both parties should be able to unite for a great rebuilding of America’s crumbling infrastructure,” Trump said. “I know that the Congress is eager to pass an infrastructure bill, and I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting-edge industries of the future. This is not an option. This is a necessity.”

But Trump’s brief mention of infrastructure did not give lawmakers any guidance as to what the president wanted to see in an infrastructure package, or what, if anything, he would accept as a way to fund the new spending. The White House released an infrastructure plan last year that would have relied on states and local governments to pay for the vast majority of its spending, but that idea went nowhere in Congress. Meanwhile, Senate Majority Leader Mitch McConnell has been skeptical of calls from Democrats to pass a major new infrastructure spending legislation.

That leaves the task of fashioning a new infrastructure plan to the House Transportation and Infrastructure Committee. But the most politically dicey question of any new infrastructure plan – how to pay for it – would be up to the House Ways and Means Committee.

How to Rally Voters Around Tax Hikes? ‘Keep It Visceral.‘

Walz and Garcetti, along with former U.S. transportation secretary Ray LaHood, talked with lawmakers about the nuts-and-bolts of infrastructure concerns, including everything from airport landing fees to state revolving funds to finance local water infrastructure.

But the key to selling the idea to the public, Garcetti said, is to translate all of those policies into real-world changes in people’s lives.

“Keep it visceral. Keep it human,” he urged. “Don’t talk about policies and statistics.”

Garcetti noted that he was re-elected even after pushing a half-cent sales tax hike in 2016 to expand rail lines, fix streets and make other transportation improvements in Los Angeles County. The $120 billion ballot measure was the largest local transportation funding measure in U.S. history. But it very nearly failed.

California law required the measure to pass by a two-thirds vote to take effect, because it called for raising taxes. Polling showed that only about 63 percent of potential voters supported it before the

campaign launched TV ads. “It was going to be a tough lift,” Garcetti told U.S. Rep. Greg Stanton, a former Phoenix mayor. (Stanton successfully ran for re-election as mayor on the same day he pushed a tax increase for light rail expansion and road improvements.)

Garcetti said the Los Angeles ad campaign included the “typical” images and arguments in favor of big infrastructure initiatives: new trains, new roads, workers paving streets and people moving around the city. They explained how many jobs would be created and how much time people would save on their commutes. After two weeks and $5 million worth of ads, support for the measure had dipped to 61 percent, Garcetti said.

“I said, ‘Oh no, this thing is going down,’” Garcetti told the committee. “I’d put all my political capital on the line.”

Then his campaign consultant suggested a different tack. He told the mayor to get in the car and drive, while the consultant filmed him on his phone. There would be no script.

Not surprisingly, the mayor ran into traffic on the interstate. “Here we are stuck in rush hour traffic,” Garcetti says in the video. “The only problem is, it’s Saturday afternoon.”

The message intrinsically resonated with voters, he told the committee. “Everybody in Los Angeles got that.… They got being stuck in traffic.” The measure was approved by 72 percent of voters.

Urging Lawmakers to Act

When it comes to shaping a new federal infrastructure plan, Garcetti encouraged Congress to fund projects that bring in money from a variety of sources, including states, local governments and private investors. He said that programs should reward agencies that innovate, whether by using new technology or creative financing. And the mayor said federal lawmakers should consider paying part of the cost of maintenance for existing infrastructure, to prevent it from decaying further.

LaHood, a former Republican congressman from Illinois who served in the Obama administration, said lawmakers should not settle for little plans.

“It’s got to be big and it’s got to be bold. It can’t be chintzy,” he said. “Everybody knows what the problem is: America is one big pothole.”

To get a new plan signed into law, LaHood urged the House members to get a signal from the White House about what Trump would agree to in the plan. “If President Trump is not with you on this, it will be very difficult to pass through the Senate. [If president is with you] I think he will sell it in the Senate,” LaHood said.

Earlier this week, transportation committee chair Rep. Peter DeFazio told reporters he had not received a commitment from the White House about what it would support. Further complicating matters, many members on the committee from the greater New York area want the plan to include replacements to the century-old rail tunnels between New Jersey and New York’s Penn Station. But Trump has fought the so-called Gateway Program at every turn.

LaHood urged the lawmakers to move quickly with their plans. “We have a very short window,” he said. “If it doesn’t happen this year, folks, it doesn’t happen until after another presidential campaign.”

BY DANIEL C. VOCK | FEBRUARY 7, 2019

Association Press Congress for Bipartisan Infrastructure Revamp.

A day after President Trump called for improvements to the nation's infrastructure in his State of the Union address this week, a coalition of more than 150 associations appealed to Congress for a bipartisan infrastructure bill, noting wide support for such a measure.

Even in an era of divided government, common ground can be reached on some of the nation's priorities—in particular, a wide range of needed infrastructure improvements, a coalition of associations told congressional leaders in a letter this week.

More than 150 organizations signed on to the letter, calling for a "bipartisan, comprehensive package that transforms U.S. infrastructure systems beyond the status quo and maintains U.S. competitiveness in a 21st-century economy." The Infrastructure Working Group, led by the National Association of Manufacturers and the Associated General Contractors of America, warned that a failure to invest risks increasing an already present "infrastructure deficit."

"As this challenge persists and worsens, we encourage you to develop and advance a bipartisan infrastructure investment package that will improve the safety, reliability and efficiency of our nation's infrastructure," the coalition said in the letter [PDF].

Other groups signing the letter included the American Beverage Association, the American Society of Civil Engineers, the International Association of Fire Chiefs, the National League of Cities, and the U.S. Travel Association.

The group called for legislation to address six specific needs: an increase in direct federal infrastructure investment; a remedy for shortages in existing funds; stronger financial tools used for infrastructure investment, such as municipal bonds; more opportunities for private investment in infrastructure projects; an easier federal permitting process; and greater collaboration among all levels of government and between the public and private sector.

In a post on NAM's Shopfloor website, Robyn Boerstling, the association's vice president of infrastructure, innovation, and human resources policy, noted that all sides understand the need for action.

"Manufacturers, Congress, and the president all agree the failure to upgrade U.S. infrastructure threatens U.S. economic competitiveness," she wrote. "Now is the time for the business community, labor organizations, Republicans, and Democrats to work together to pass an infrastructure bill."

It's widely perceived that 2019 offers the best opportunity to pass infrastructure legislation during the current administration—though it faces many hurdles—and it was a key point in President Trump's State of the Union address this week, though his speech was light on details.

ASSOCIATIONS NOW

BY ERNIE SMITH / FEB 8, 2019

Highway Backers Seek Proposals, Revenue for Trump Infrastructure Plan.

President wants Congress to unite to fix 'crumbling infrastructure,' but advocates say questions over revenue sources persist

Transportation advocates said they are happy to see President Trump raise the need for infrastructure investment in his State of the Union speech, but they also are anxious to see concrete plans and funding for improvements to U.S. roads, bridges and ports.

"It's time to stop talking about investing in infrastructure and get to work fixing it," said Dave Bauer, chief executive of the American Road & Transportation Builders Association, one of several trade groups that have been frustrated by the inaction in Washington despite broad bipartisan support for infrastructure spending.

The president in his address Tuesday night told lawmakers both parties should "unite for a great rebuilding of America's crumbling infrastructure."

"I know that Congress is eager to pass an infrastructure bill," Mr. Trump said. "And I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting edge industries of the future. This is not an option, this is a necessity."

Mr. Trump, who has said he supports spending $1 trillion on infrastructure, offered no details, however, and didn't mention the spending plan for transportation programs his administration submitted in 2018.

An early draft of the address contained a line in which the president would urge Congress to "pass my proposal" for rebuilding the nation's infrastructure, an administration official familiar with the drafting process said before the speech. When other officials saw the draft, they urged that the line be deleted because the president doesn't actually want Congress to pass the only infrastructure proposal his administration has produced.

Mr. Trump has continued to tell aides and officials that he "hates" central elements of the 2018 infrastructure plan, especially public-private partnerships, according to two people familiar with the speech drafts. The plan would have required cities and states to put up at least 80% of the cost of the plan, likely pushing local government into the arms of private financiers.

That will leave Congress to wrestle with the gap between anticipated revenue and plans for a new spending once the existing $305 billion highway bill passed in 2015 expires next year. Many building programs are supported by the Highway Trust Fund, which gets its revenue from federal fuels taxes, but the flow of money into that fund has lagged behind needs, highway groups say, because the fuel taxes haven't been raised in nearly 25 years while improved vehicle efficiency has cut into gasoline and diesel consumption.

Congress has periodically pushed general government revenues into the trust fund to make up for shortfalls, and spending advocates believe the fund will need another infusion as soon as next year.

Chris Spear, chief executive of the American Trucking Associations, said lawmakers must address the revenue gap to meet the country's needs. "A win on this issue will require real investment, not budgetary gimmicks as tried in years past," Mr. Spear said in a statement.

The Wall Street Journal

By Paul Page

Feb. 6, 2019 11:14 a.m. ET

—Ted Mann contributed to this article.

Fitch Ratings Publishes Updated Criteria for US Variable-Rate Demand Obligations & Commercial Paper.

Fitch Ratings-New York-31 January 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria". This report updates the report published on Jan. 22, 2018 titled "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria". The key elements of Fitch's external liquidity rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

GFOA Releases Primer on Infrastructure Financing.

Understanding Financing Options Used for Public Infrastructure

Report CoverUnderstanding Financing Options Used For Public Infrastructure ("the Primer") provides an overview of tax-exempt bond and other financings used by state and local governments and entities.

The Primer covers numerous issue areas related to tax-exempt financings. These sections include:

- The fundamentals of tax-exempt bonds and other financing tools that are available to state and local governments and related entities;
- The role tax-exempt bonds play in infrastructure financings and as an investment product; and
- Congressional actions over the past fifty years related to this market.

This Primer was prepared in coordination with several members of the Public Finance Network (PFN). The PFN is a coalition of organizations interested in preserving the tax-exempt status of state and local government bonds.

Download the report.

About the Public Finance Network

Formed in 1988, the Public Finance Network is a coalition of organizations united to preserve state and local government use of tax-exempt bonds. The Network represents the wide array of local and state government financing and infrastructure activities. The Public Finance Network is administered by the GFOA and its Director of the Federal Liaison Center, Emily Brock. For information about the Network and financing issues, contact any of its members, call (202) 393-8467 or write to 660 North Capitol St., NW, Suite 410 Washington, D.C. 20001.

GFOA Report: Infrastructure Funding in the New Budget Environment.

Infrastructure Funding in the New Budget Environment

Federal grants have helped maintain a quality standard of living for communities across the country for over a century. There are over a thousand federal grant programs that transfer funds to state and local governments in support of a multitude of policy issues. State and local governments rely on the funds from federal grants to assist in providing what the citizens of their localities need. Over the years, the federal grant system has grown and changed to accommodate the constantly shifting priorities of American communities. Transportation, healthcare and education initiatives are all supported in some way by federal grants. Today, federal and local lawmakers meet the challenges of updating and enhancing our nation's infrastructure through collaborative efforts; underlining the importance of federal transfers to state and local governments.

This report provides information on trends, key issues, and case studies related to infrastructure funding.

Download the report.

The Pros and Cons of 'Target Maturity' Bond Funds.

These new products combine the benefits of a traditional bond fund with a fixed maturity date. They have their critics.

There's a new type of bond fund that aims to solve a shortcoming of traditional bond funds. But the jury is out as to whether they are worth buying.

Bond funds offer investors broad diversification, professional management and regular income—benefits tricky to achieve with a collection of individual bonds. But they also have a

downside: no fixed maturity date. Investors can't simply wait out a downturn, knowing the price will move toward face value as maturity approaches, as they can with an individual bond.

To address that perceived shortcoming, some fund providers in recent years have introduced a hybrid product offering the benefits of a traditional fund plus a fixed maturity date. Though some experts disdain these "target-maturity bond funds," others say they can be a good choice for some investors in today's volatile market, especially those looking for steady income and a return of principal for an expected need—such as paying for college, buying a home or starting retirement.

"In today's market, these target-maturity funds are especially appealing," says Jay Srivatsa, chief executive officer at Future Wealth, a wealth-management firm in Los Gatos, Calif. "It takes the volatility and randomness out of the equation and, most importantly, takes out the investor's emotional reactions to the stock-market gyrations. Knowing that X amount will be available on year X gives peace of mind."

Target-maturity funds are easier to research and purchase than individual bonds, he says, and they appeal to investors who don't want to face long-term interest-rate risk.

Older investors may find this option worth a look in today's environment, says Ankur Patel, vice president at Lenox Wealth Advisors' New York office.

"As we continue to see baby boomers enter retirement, an entire generation of investors will be looking to reduce risk, generate income and invest more in bonds," he says.

How they work

Investors who buy individual bonds know that, barring a default, they will receive a predictable income and a return of principal on the maturity date. Earnings in bond funds are less predictable because the fund must constantly buy and sell individual bonds to maintain an average maturity promised investors.

That means the fund can suffer a loss if it must sell bonds when prices are down. That's because rising rates drive down prices of older bonds that pay less than new ones. While falling rates can lift bond prices, they can be harmful if the fund must replace older bonds with new ones that pay less, reducing the fund's yield.

Target-maturity funds—not to be confused with target-date funds, which gradually shift assets from stocks to bonds to increase safety as the target date approaches—tackle these problems by purchasing bonds maturing at about the same time. When the fund's maturity date arrives, the fund closes and investors receive their principal just as they do with individual bonds, though the amount isn't guaranteed up front and can be subject to market conditions. Income is relatively dependable—but, again, not guaranteed—because the fund doesn't need to replace holdings along the way.

The two big players are Invesco, which offers a series of BulletShares corporate and emerging-markets "defined maturity" exchange-traded funds maturing every year from 2018 to 2028, and BlackRock Inc.'s BLK 0.42% iShares, which has corporate and municipal bond ETFs maturing from 2020 to 2028.

Fees are modest, typically below 0.5%, though that can add up over time. Of course, an investor owning individual bonds would have no annual fees. Investors also face commissions on ETF trades, though that can be minor for the buy-and-hold investor these funds are designed to serve.

Critics weigh in

Despite their appeal to some, these funds do have critics. “I do not typically recommend target-maturity bond funds because their annual costs are significantly higher [than index bond funds] for a buy-and-hold investment, and there is a lack of flexibility,” says Debra Taylor, founder of Taylor Financial Group, a wealth-management firm in Franklin Lakes, N.J.

“The benefit is that the funds are packaged up in one place, and they do provide diversification for the smaller investor,” she says. “However, the more-sophisticated investor may be better off purchasing the individual bonds and creating their own ladders.” (A ladder is an assortment of bonds with various maturities.)

Most experts seem to agree that these funds are best for investors with an expected cash need at the maturity date, rather than those who will reinvest. The principal may be returned at an inconvenient time for reinvestment—when yields are low, for instance. Because the fund won’t replace its holdings, you can’t expect the fund yield to rise as rates go up, as it would with an ordinary fund that gradually adds new bonds that pay more.

In today’s market, many experts recommend funds with short maturities of under three to five years, since longer-term bonds don’t currently pay enough extra to justify their greater risk.

Young people with long investing horizons are especially unsuited to these funds, Ms. Taylor says, because they can ride out bond-price dips. With maturities out to only 2028, target-maturity funds serve investors who expect to need their money in 10 years or less.

Dennis Shirshikov, a financial analyst at FitSmallBusiness.com in New York, warns that many bonds in these funds will mature months before the fund closes, leaving cash to sit idle. And Mr. Patel of Lenox Wealth Advisors says investors should expect fund yields to drop in the final year to the level of bank savings. Also, many of these funds own bonds that can be called early, worsening the problem of cash buildup even before the year of maturity.

Getting out early

Investors also should know that they can lose money if they unload one of these funds before maturity. That could happen if rising rates drive down bond prices. Also, since these ETFs are traded like stocks, there’s no guarantee an investor will find a buyer if he or she wants to get out early, though experts say lack of liquidity hasn’t been a serious problem.

“These are generally not a great short-term trading option,” Mr. Shirshikov says. “In fact, you will likely be better served with other bond products if you are interested in trading on bond volatility or interest-rate movements.

“However, if you are considering locking your money away in a CD or purchasing government bonds with set maturity with the hope of taking the money out at a later date and earning some interest in the process, this is a great product to invest in,” he says.

The Wall Street Journal

By Jeff Brown

Feb. 1, 2019 4:26 p.m. ET

PG&E Bankruptcy's Ripple Effects Will be Felt Beyond California.

- **Investors, utilities across the U.S. could share the pain**
- **Settlements for wildfire victims may be later and smaller**

PG&E Corp., owner of the largest electric utility in America's most populous state, plans to file for bankruptcy Tuesday, and the ripple effects are likely to stretch far beyond California and the company's stakeholders.

Power-plant operators that sell electricity to its utility are already being downgraded to junk. Federal taxpayers may get stuck with the bill for government loans to renewable-power projects in California if they can't be repaid. And the shape of the Golden State's electricity industry could fundamentally change, with delays to a clean-energy mandate and a bigger role than ever before for public power.

More directly affected, of course, are stockholders, bondholders and thousands of PG&E retirees and their families who are casting nervous eyes on the pension fund. Wildfire victims suing the company — PG&E's stated main reason for bankruptcy -- also risk later, smaller settlements.

Continue reading.

Bloomberg Markets

By David R Baker

January 28, 2019

Shutdown Dashes Wall Street's Hope Trump Would Boost Bond Sales.

- **'You would have to be crazy to think they could help at all'**
- **At conference, little chance seen for infrastructure bill**

If Wall Street's municipal-bond departments are looking for Washington to help them drum up business, the prospects appear bleak.

Big underwriters would have liked for President Donald Trump to make good on his campaign promise to enact a major infrastructure plan, since states and cities would likely issue debt to cover their share of the projects.

But sales of new state and local government bonds tumbled 22 percent last year, and the record-long shutdown that tarnished Trump's relationship with the new Democratic majority in the House of Representatives left those at a Bond Buyer conference in New York pessimistic.

"Can you rely on the federal government for help at all?" asked Howard Cure, director of municipal-bond research at Evercore Wealth Management. "Based on what happened with the shutdown you would have to be crazy to think they could help."

There's certainly a need for help: The American Society of Civil Engineers estimates the country needs to increase its spending by $2 trillion through 2025 to get its roads, schools and other

infrastructure in adequate shape. Trump spoke disparagingly of the state of affairs before taking office.

Dan Tomson, co-head of public finance at Citigroup Inc., the second-largest municipal bond underwriter, said it was “unlikely” that a federal infrastructure bill would be passed this year.

So the industry seems to have settled around a much more modest agenda in Congress, like expanding the use of so-called private activity bonds, issued on behalf of businesses, or resurrecting advance refundings, a refinancing tactic that was essentially killed off by Trump’s tax bill. That was a big driver of the bond-sales slowdown last year.

“Our agenda as an industry — first and foremost, we have to keep what we have,” said Bob Spangler, co-head of public finance at RBC Capital Markets. He said the preservation of the tax break for municipal bonds is crucial. “It is painfully aware to all of us that Washington’s actions do matter in terms of our marketplace.”

Bloomberg Markets

By Danielle Moran

January 29, 2019, 2:35 PM MST

A Few Lessons About Public-Private Partnerships in Higher Ed.

As many institutions look to public-private partnerships as a financing solution for their biggest and most important projects, Charles G. Renner describes some of the ins and outs.

It has been more than a decade since a report by the Institute for Higher Ed Policy first noted a worldwide shift away from public funding sources and toward private capital to finance higher education projects. The report appeared just months before the eruption of the global financial crisis that left an indelible scar on state and local public finances still seen today. The long-term effects of that crisis have only reinforced the logic that made private capital an attractive financing option in the first place.

The cold, hard fact is that available public funds for higher education have been shrinking. The Center on Budget and Policy Priorities, a Washington-based research and policy institute, reported that 46 of 50 states “are spending less per student in the 2015-16 school year than they did before the recession.” Nine of those states have seen inflation-adjusted spending declines of greater than 30 percent. On average, states are spending 18 percent less per student than before the crisis. This trend has provided little evidence of reversing.

To compensate for the funding shortfall, colleges and universities have a limited range of options. Many have decided to raise tuition, but tuition costs had been outpacing inflation for a generation prior to the crisis, and the market can bear only so much. Indeed, many institutions, particularly private ones, are already offering significant discounts off of their sticker prices to entice students to enroll. Others have opted to curb their academic programs and offerings; over the past year, many have announced downsizing and consolidation initiatives, including the elimination of majors and degree programs, intercollegiate athletic teams, and faculty and administrative positions. But such measures, too, have limited use. An institution can cut only so much without jeopardizing its ability

to fulfill its mission and attract students.

Finally, some colleges and universities have increased drawdowns on their endowments, but this is more a short-term act of desperation, not the application of a long-term, sustainable financing solution. Besides, despite the cachet of the larger endowments — Harvard University sports an endowment over $37 billion — most institutions have fairly modest endowments that are little more than rainy-day funds. Last year, in a study by the National Association of College and University Business Officers, the median endowment value of an American higher education institution was $127.8 million, and 44 percent of all endowments were valued at $100 million or less.

One should also consider that the financial and risk profiles of the average American college or university have changed significantly in the past generation. Notably, many institutions have seen their debt-to-endowment ratios increase because of poor investment performance, increased drawdowns on the endowment itself or larger amounts of debt. And even those with the largest endowments are confronting new threats and challenges. For instance, in the spring of 2016, members of the Connecticut Legislature sought to tax Yale University's endowment. The idea was quickly scotched a few weeks later, but the proposal gives context to the discussion over higher education funding — colleges and universities are being squeezed because the states themselves are under financial stress.

These are the factors that have created the difficult circumstances in which higher education finds itself. It is also the reason so many institutions are looking to public-private partnerships as a financing solution for their biggest and most important projects.

The P3 Delivery Model

A public-private partnership, or P3, is long-term agreement between a public entity and a private industry team that is tasked with designing, building, financing, operating and maintaining a public facility. The past decade has seen a steady increase in the use of P3 structures, both inside and outside higher education. In 2016, something of a watershed year for P3, multiple high-profile projects came online in response to a variety of public needs, including a $1-billion-plus water infrastructure project servicing San Antonio, and a $300-million-plus renovation of the Denver International Airport's Great Hall.

The emergence of the P3 option is happening where it matters most: projects that would be otherwise unattainable under the traditional public-improvement delivery models. For instance, 10 years ago, only a handful of higher education P3 projects were up and running; today, we are approaching three dozen such projects.

The biggest challenge is, of course, the financing component, but P3 teams bring much more to the table than money — they give public entities access to expertise and innovation that can add significant value to projects at each phase of development.

Several recent higher education P3 projects demonstrate how the P3 delivery model and team approach can enable colleges and universities to take on projects they might not have otherwise been able to pursue.

Wayne State University student residential facility.

Wayne State sought out private partners for a project to demolish an existing 407-bed apartment building and replace it with new and renovated residential space. It went from issuing a request for proposals to obtaining financing in relatively record time and began leasing new beds in August

2018. To expedite construction, the private partner secured bridge financing as part of the overall capital stack, enabling the project to tap into generally favorable financing for the larger private placement of debt.

The university not only locked in favorable financing terms and paid off existing debt, but it also moved much of the worry and risk from operations onto the private partner by engaging in a full P3 approach. That includes design, construction, financing, operations and maintenance of the project over a 40-year life cycle, freeing up university resources to focus on academic and other needs.

University of California, Merced, 2020 campus expansion.

While residential projects have long been the focal point of higher education P3s, we are beginning to see more ambitious uses of the model. UC Merced 2020 is one example: a campuswide expansion covering some 219 acres and almost two million square feet of new facilities. The $1.2 billion project is likely the largest and most comprehensive P3 in American higher education. The mix of uses features academic learning, administration, research, residential and utilities, among others.

The project includes all project phases and employs an “availability” method of payment whereby the university will compensate a concessionaire directly according to a predetermined formula and schedule for the postconstruction operations and maintenance of the facilities over a 39-year life cycle.

Needless to say, a partnership of this size and scale requires solid relationships, as well as an agreement capable of accommodating changing conditions. The agreement contained flexible provisions to account for a variety of outcomes, including a 50/50 split among partners for any future refinancing gains, as well as a 50/50 split regarding potential cost-saving measures introduced by the developer.

Even when a college or university decides not to use a full P3 model, contemplating such a project often leads to a better result than only considering more traditional options. In 2014, the University of Kansas solicited private partners for a planned $350-million P3 that sought to add some 55 acres of academic, recreational, residential and utilities space to the campus. Ultimately, the university opted to create a nonprofit corporation and borrow the full project outlay from an out-of-state public finance entity rather than tapping private finance. But because the procurement process followed best practices for P3 selections, university stakeholders received the benefit of risk analyses and financial projections from multiple potential private partners, and an innovative debt-only financial approach was selected for the project.

Lessons for Other Institutions

The success of these projects suggests a few lessons for other higher education institutions. First, tapping into the full potential of the P3 model depends greatly on assembling the right partners. A well-rounded P3 team includes people with high-level expertise in private-development equity, architecture, engineering, contracting and law. Aside from the access to innovation and best-in-class skills, the team concept is important because P3 projects are long-term in nature. The relationships on which P3 projects depend will necessarily span many years; therefore, higher education participants need to carefully develop criteria for evaluating potential partners.

Also, few large-scale projects are finished without some kind of unanticipated challenge arising, so it is important to select partners who have demonstrated the stability and commitment required to see projects through to completion. Higher education administrators should study carefully their potential partners’ portfolio of projects and evaluate how each dealt with the inevitable

circumstances that challenge a team's ability to finish a project or to operate and maintain it afterward.

In addition, each of the foregoing projects had institutional champions who advocated for the P3 solution and oversaw the process through to completion. The role of champions in the P3 delivery model cannot be understated. They play a crucial role in securing buy-in for the project at the earliest possible stage and developing strategies to overcome obstacles. Establishing consensus on the campus also provides potential private partners the needed assurance to commit fully to a P3 project and helps to secure the best possible pool of P3 talent.

It is unlikely that the fiscal circumstances facing America's colleges and universities will improve greatly over the next decade, and the competition for students is fierce. When applied competently and in the right manner, a public-private partnership allows administrators to create solutions that differentiate their campuses and brand them as places capable of getting things done. More institutions should seriously consider this option.

Inside Higher Ed

By Charles G. Renner

January 28, 2019

Bio
Charles G. Renner is a partner in the Kansas City, Mo., office of law firm Husch Blackwell LLP and is the leader of the firm's public-private partnerships practice group.

S&P Global Ratings Clarifies Its Rating Action And Display Of Ratings Following Various Credit Enhancement Rating Withdrawals.

Recently, S&P Global Ratings withdrew various credit enhancement program ratings. In this report, we address frequently asked questions we have received from market participants to provide greater clarity on how we proceeded with the withdrawals.

Continue Reading

Jan. 29, 2018

Report: 63 Out of America's Largest 75 Cities Can't Pay their Bills, Acquired $330 Billion in Unfunded Debt.

According to a recent analysis of the 75 most populous cities in the U.S., 63 of them can't pay their bills and the total amount of unfunded debt among them is nearly $330 billion. Most of the debt is due to unfunded retiree benefits such as pension and health care costs.

"This year, pension debt accounts for $189.1 billion, and other post-employment benefits (OPEB) – mainly retiree health care liabilities – totaled $139.2 billion," the third annual "Financial State of the Cities" report produced by the Chicago-based research organization, Truth in Accounting (TIA),

states.

“Many state and local governments are not in good shape, despite the economic and financial market recovery since 2009,” Bill Bergman, director of research at TIA, told Watchdog.org.

The top five cities in the worst financial shape are New York City, Chicago, Philadelphia, Honolulu, and San Francisco. These cities, in addition to Dallas, Oakland, and Portland, all received “F” grades.

In New York City, for example, only $4.7 billion has been set aside to fund $100.6 billion of promised retiree health care benefits. In Philadelphia, every taxpayer would have to pay $27,900 to cover the city’s debt; in San Francisco, $22,600 per taxpayer.

TIA analyzes state and city data to make it more accessible and easy to understand for taxpayers and citizens, who TIA argues, “deserve easy-to-understand, truthful, and transparent financial information from their governments.”

By the end of Fiscal Year 2017, 63 cities did not have enough money to pay all of their bills, the report states, meaning debts outweigh revenue. In order to appear to balance budgets, TIA notes, elected officials “have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers.”

In order to determine the “taxpayer burden,” TIA divides the amount of money needed to pay bills by the number of city taxpayers. The Taxpayer Burden equals the amount of money each taxpayer would need to pay to pay off their city’s entire debt. Cities that can’t pay their bills are identified as “sinkhole cities.”

The Taxpayer Surplus is the amount of money left over after all bills are paid, divided by the estimated number of taxpayers in each city. Cities that have a surplus and or can pay their bills are called “sunshine cities.”

This year, there were 63 sinkhole and 12 sunshine cities. The top five cities in the best financial shape are Irvine, Charlotte, Washington, D.C., Lincoln, and Fresno.

Despite the majority of cities’ low rankings, financial conditions improved for most of the cities analyzed, TIA states.

“A favorable investment environment helped improve results, particularly in government pension funds [leading to a lower net pension liability],” Bergman said. “This helps illuminate a need for improving the timeliness of government financial reporting, and we’ve had a reminder in recent months that stocks can go down as well as up.”

One major problem area TIA identifies is that city leaders have acquired massive debts despite the balanced budget requirements imposed on them.

“Unfortunately, some elected officials have used portions of the money that is owed to pension funds to keep taxes low and pay for politically popular programs,” TIA states. “This is like charging earned benefits to a credit card without having the money to pay off the debt. Instead of funding promised benefits now, they have been charged to future taxpayers. Shifting the payment of employee benefits to future taxpayers allows the budget to appear balanced, while municipal debt is increasing.”

As part of the ranking, TIA graded each municipal government with scores of “A” through “F.” Governments that received a C grade came close to meeting their balanced budget requirement. “A”

or “B” grades were given to governments that met their balanced budget requirements and have a Taxpayer Surplus. “D” and “F” grades apply to governments that did not balance their budgets and have significant Taxpayer Burdens.

No cities received an “A” grade. Twelve cities received a “B;” 24 a “C;” 31 a “D;” and eight failed.

TIA is a nonprofit, politically unaffiliated organization composed of business, community and academic leaders interested in improving government financial reporting.

By Bethany Blankley | Watchdog.org Jan 30, 2019

America's Largest Cities Are Practically Broke.

Sixty-three, out of America’s most populous seventy-five, cities do not have enough money to pay all of their bills. Chicago-based municipal finance watchdog, Truth in Accounting (TIA) revealed these stark news in its third annual, Financial State of the Cities. According to TIA, “This means that to balance the budget, elected officials have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers.” TIA divides the amount of money needed to pay bills by the number of city taxpayers to come up with what it calls Taxpayer Burden™.

Based on TIA’s grading methodology, for the second year in a row, not a single one of the 75 cities received an ‘A’. TIA, however, was unable to rank and grade two of the most populous cities, Newark and Jersey City in New Jersey, because unfortunately, they do not issue annual financial reports that follow generally accepted accounting principles, GAAP.

A grade: Taxpayer Surplus greater than $10,000 (0 cities).

B grade: Taxpayer Surplus between $100 and $10,000 (12 cities).

C grade: Taxpayer Burden between $0 and $4,900 (24 cities).

D grade: Taxpayer Burden between $5,000 and $20,000 (31 cities).

F grade: Taxpayer Burden greater than $20,000 (8 cities)

Continue reading.

Forbes

Jan 29, 2019

by Mayra Rodriguez Valladares
Contributor – Banking & Insurance

TIA 2019 Financial State of the Cities.

On January 29, Truth in Accounting released its third *Financial State of the Cities* report, a comprehensive analysis of the fiscal health of the nation’s 75 most populous cities based on fiscal

year 2017 comprehensive annual financial reports.

This year, the study found that 63 cities do not have enough money to pay all of their bills, and in total, the cities have racked up nearly $330 billion in unfunded municipal debt. The study ranks the cities according to their Taxpayer Burden or Taxpayer Surplus™, which is each taxpayer's share of city bills after available assets have been tapped. Check out the data for your city at the State Data Lab.

Download the new report here.

January 28, 2019

Municipal Liability Under the ADA for Website Inaccessibility.

Executive Summary: Many business owners have faced litigation under the Americans with Disabilities Act (ADA) by disabled individuals who claim the businesses' websites are inaccessible. Now, many plaintiffs are turning their attention to municipalities and their websites.

Websites and the Americans with Disabilities Act: The ADA was enacted decades ago, before companies or municipalities even had websites. Yet courts across the country repeatedly have held that the law applies to internet accessibility, resulting in an increasing trend in ADA litigation over websites. Serial plaintiffs visit a multitude of websites and then pick a niche. Some sue art galleries without screen readers that enable the visually impaired to navigate the site, or hotels whose websites do not list their accessible accommodations. Lately, though, these plaintiffs and their attorneys have begun targeting cities, towns, and counties, alleging that their websites are inaccessible, most often for the visually or hearing impaired. Although the ADA offers a plaintiff only injunctive relief, the real damages come in the form of excessive attorneys' fees, which usually make it more prudent to simply settle a case as soon as possible. Yet in New York and California, two of the states with the largest volume of ADA lawsuits, local laws also offer plaintiffs monetary damages.

Implications for Municipalities: As a result, New York, California, and Florida lead the country in volume of website litigation. The trend is spreading to other states. Title II of the ADA prohibits a "public entity" from discriminating against "a qualified individual with a disability," on account of the individual's disability. The ADA regulations state that "a public entity shall take the appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." Further, "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 C.F.R. § 35.160(a). Such auxiliary aids and services may include, but are by no means limited to, qualified interpreters on-site or through video remote interpreting services; real-time closed captioning; and closed caption decoders. 28 C.F.R. § 35.104. The specific type of auxiliary aid needed will vary on a case-by-case basis, as people with various disabilities will need different accommodations.

Among the issues raised by recent lawsuits are a plaintiff's inability to attend or otherwise participate in a town board or city council meeting due to that person's disability, and the need to watch the meeting on the town's website. Without closed captioning, for example, a hearing impaired person would not be able to participate in the meeting. Although there is no explicit requirement to livestream or simulcast a municipality's council meetings, a municipality does have a

duty to provide auxiliary aids to disabled persons attempting to take part in the meetings.

In Minnesota, a disability advocate who suffers from autism has brought multiple website lawsuits against towns and counties in that state. He alleges that, as a result of his condition, he has muscular problems that impede his use of a mouse to navigate a website. Serial plaintiffs in Florida have filed dozens (if not more) of lawsuits alleging website inaccessibility, including against municipalities. One plaintiff frequently claims that videos on municipalities' websites are inaccessible to people such as himself who are hearing impaired. Still other serial plaintiffs have begun virtually crossing state lines. For example, one Florida serial plaintiff has sued Nassau County, New York over the alleged inaccessibility of its website.

Bottom Line: In sum, although there is no blanket requirement that every city needs to livestream and provide real time captioning for their meetings, or to provide any specific auxiliary aides to use its website, the proliferation of municipal website lawsuits presents a real risk of liability. Municipalities are advised to work with their IT departments or otherwise to take proactive steps to ensure that their websites are accessible to those with visual, hearing, and muscular impairments.

January 30, 2019

FordHarrison

Along the Coasts, Communities Gird for Rising Seas.

Facing the threat of extreme weather, coastal regions of the U.S. are stepping up protection efforts

BOSTON — State officials along the East and Gulf Coasts are pushing for projects worth billions of dollars to protect populous coastal regions from rising oceans and extreme weather.

In Maine, Democrats are seeking a public vote on a $50 million bond to fund a steel waterfront infrastructure to protect against rising sea levels. Florida's new Gov. Ron DeSantis, a Republican, recently proposed investing $2.5 billion to protect the Everglades and the appointment of a chief science officer to address environmental concerns. Louisiana's Democratic Gov. John Bel Edwards pledged $55 million in state surplus and about $300 million in offshore oil revenue for coastal and levee improvements.

In Massachusetts—where a tidal surge last year pushed the water level at Boston Harbor to the highest ever recorded, causing flooding—Republican Gov. Charlie Baker proposed raising the tax on real-estate transfers by 50% in much of the state to generate more than $1 billion over the next decade. The funds would help local communities fortify infrastructure from sea walls to flood-control systems.

Continue reading.

The Wall Street Journal

By Jennifer Levitz and Cameron McWhirter

Feb. 3, 2019 11:00 a.m. ET

Infrastructure – Stays In the USA (Please Help)

According to the Federal Trade Commission's website, only products made with "all or virtually all" U.S. parts that are processed in the U.S. may bear the cherished *Made in the USA label*. In addition, according to the FTC's guidelines, products that include foreign parts, but that are assembled in the U.S., may bear an *Assembled in the USA* label. Although the FTC does not appear to have guidelines on a *Stays in the USA* label, or a *Comprises the USA* label, we can think of at least one sort of item that might qualify – our country's infrastructure – its roads, airports, hospitals, schools and utilities. (And if we tried to print up labels to slap on all of those, we would need to add "labelmakers" to that list, too.)

It will not surprise you that this blog will then make what is for you, our readers, an obvious progression – in order to have solid infrastructure, however, we will need for the #1 financing tool for infrastructure – tax-exempt bonds – to be strong. For more than a century, tax-exempt municipal bonds have provided a significant portion of all infrastructure financing. Let's keep it that way. In an effort to nip in the bud any future flirtations with the idea of eliminating or taking a road-grader to tax-exempt bonds (if you need a reminder of what happened in the fall of 2017 click here, here or here), Rep. Dutch Ruppersberger (D-MD) and Rep. Steve Stivers (R-OH), who are the co-chairs of the Municipal Finance Caucus, drafted a letter to the House Committee on Ways and Means highlighting the benefits of tax-exempt municipal bonds. There's something for everyone in the letter ("an expression of fiscal federalism . . . freeing up resources for other needs. . . "), which is all of one page (clear ideas don't require too many words, after all). We ask that you (yes, you) contact your Congressional representatives and ask them to sign onto the letter and, if you are feeling ambitious, also ask them to consider joining (if they are not already a part of) the Municipal Finance Caucus.[1]

Letter to House Committee on Ways and Means

[1] Extra credit for artistic renderings of your favorite local infrastructure with the "Stays in the USA" label.

The Public Finance Tax Blog

By Cynthia Mog on January 28, 2019

Squire Patton Boggs

'Green Bonds' May Be Our Best Bet for Environmental Damage Control.

The popularity of green bonds as a way to finance environmentally friendly projects is on the upswing, say Malcolm Baker and George Serafeim.

Municipalities have been selling bonds to pay for public works projects—fire stations, parking garages,s ewage treatment systems—for 200 years. It's only in the past decade or so, however, that they've been selling them with an extra perk: helping the environment.

In the absence of a global carbon pricing scheme, bond markets will be central to financing climate change and other environmental interventions. So-called green bonds appeal to investors who are looking for a safe place to park their money, as well as doing a little bit of good for the world.

Harvard Business School professors George Serafeim and Malcolm Baker have long been interested in investor motivations that go beyond pure financial return to include environmental, social, and governance (ESG) criteria. With the recent uptick in green bonds, they wondered how that might improve municipalities' ability to help the environment by accessing finance at better terms.

"The whole idea of ESG investing is predicated on the notion that by tilting their portfolios towards securities that have better ESG properties, investors might be able to change who has access to lower-cost capital," says Baker, Robert G. Kirby Professor of Business Administration at HBS. "In the process, they jump-start investing in areas that might be important for the environment."

They examine the phenomenon in a new paper for the National Bureau of Economic Research, Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds, written with Daniel Bergstresser of Brandeis University and Jeffrey Wurgler of NYU's Stern School of Business.

While green bonds have been issued by banks and corporations as well, the researchers focused on municipal bonds, which are the most ubiquitous green bonds historically in the United States, and the easiest to track thanks to the availability of government data.

For starters, determining what bonds truly qualify as green—as opposed to just greenwashing—wasn't straightforward.

"There isn't a crisp definition about what is a green bond and what isn't," says Serafeim, a professor in the Accounting and Management Unit. "The test we used was to look at how the money from the bond flows into actual projects, and whether those projects are going to deliver environmental benefits."

The projects include efforts to create alternative energy by building solar panels and wind turbines, as well as projects to improve water efficiency, control pollution, create sustainable agriculture and forestry, or provide infrastructure for electric vehicles.

While not all projects have a climate-change benefit, many help reduce future carbon emissions or even remove carbon emissions from the atmosphere. In addition to looking at bonds self-labeled as green by municipalities, the researchers also considered certification by the nonprofit Climate Change Initiative, which provides a Climate Bond Standard (CBS) rating.

Green bonds priced at a premium

In the past eight or nine years, they found, the green bond market has gone from nonexistent to $160 billion. (The first green bond was issued in 2007 by the European Investment Bank.) When the researchers compared green bonds with other bonds issued by the same municipality, they found a slightly lower yield of 6 basis points (.06 percent) for self-identified green bonds, and up to 20 basis points (.2 percent) for certified green bonds.

That means that investors are placing a premium on green bonds and are willing to accept a lower rate of return in exchange for the environmental benefits. Given the typical duration of municipal bonds, this yield difference amounts to a green bond price that is in the range of 0.6 percent to 2 percent higher than a comparable brown bond.

"The story is supply and demand," says Baker. "If there is an element of a security that the investor desires for nonfinancial reasons, it will trade at a higher price than other securities."

In addition, the researchers found that green bonds were more concentrated in their ownership in a

small group of investors—reflecting the smaller subset of investors who place value on environmental benefits, such as funds that have some green or social investing orientation.

While the difference in return is admittedly small, it could be a factor in tipping the scales for municipalities favoring green bonds.

“One way to make them more appealing to issuers is to offer them at more favorable terms,” Baker says. “If I’m an entrepreneur or state government and I have to choose between a project that is green and one that isn’t, one factor in that decision will be the terms at which I can finance it. That is the sense in which green bonds can theoretically push firms and municipalities in the direction of doing something environmentally friendly.”

That would make green bonds attractive as part of the solution to improving the environment and combatting climate change. “It’s one of the many different actions in a larger menu of potential solutions, that would include investor engagement with corporate management and more powerful political interventions such as regulation and taxation,” Serafeim says.

As green bonds continue to gain in popularity, the researchers are interested to see if they continue to command a premium price. As more green bonds are issued, especially by government entities in Europe and China, their price could fall due to an increase in supply. On the other hand, as they continue to gain in popularity, more investors could value green bonds, pushing up price due to increased demand.

“It is a bit of a battle between the number of investors who place extra value on green bonds versus the total supply of these types of bonds,” Baker says. Either way, the positive trend towards seeing more interest in green bonds from both municipalities and investors can only help in the battle to address climate change.

29 JAN 2019 | by Michael Blanding

Harvard Business School

Infrastructure Must Be the Top Priority for Congress this Year.

With fresh crops of lawmakers on Capitol Hill, infrastructure is a popular topic again. Will the conversation change or will urgent infrastructure needs knotted with unending debate over failed delivery plans continue to go unaddressed? Lasting positive economic benefits require aligning public financial incentives with compelling projects. Thoughtful dialogue is necessary on risks, returns, operations, maintenance, state and local responsibilities, and the mix of sector funding for the coming decades.

Infrastructure is a broad subject area with a leading purpose to increase nationwide economic productivity and social welfare. Our occasional infrastructure disruptions offer blunt reminders that essential services cannot be taken for granted. It is easy to project the long term fallout of critical infrastructure failure when it results in depressed productivity, stunted economic growth, and perhaps lower quality of life. Reducing federal regulatory red tape may no longer be the largest impediment.

While the federal government plays an important role, state and local governments are best positioned to advance new innovative solutions. Reinvigorating our infrastructure can be achieved

through introduction of an updated process for the value over a full life cycle of the project including design, building, finance, operation, and maintenance. Better interagency coordination is also required. The challenges remain the same today as they always are with voluminous needs spread across multijurisdictional projects with far ranging levels of financial flexibility.

Greater consumption of data driven insights combined with changing economics, glaring upfront costs, dangling phantasmagoric federal incentives and impediments, and insufficient government interagency coordination make it virtually impossible to craft good policy addressing the nationwide needs in the short term. Finding the balance within legal and business frameworks to bring the best value to all regions, parties, citizens, and investors will be evolutionary rather than revolutionary.

Ideas embrace more than transportation, renewable energy, or water projects. Social infrastructure is ripe with opportunities such as health care, housing, and education. New construction is not required for every project. Years of pent up demand combined with innovative materials, engineering, and information can allow a publicly sponsored enterprise to provide a quality product while exhausting possibilities of each revenue stream, along with creating and capturing some value previously lacking.

Information technology can now precisely measure operational services including toll road use and electricity consumption. Many elements run under separate public agencies or governance structures. Exploiting value from existing operations through analytics can help achieve optimal utilization. Innovative financing strategies will also surface, but public private partnerships are establishing a strong beachhead. Diverse capital is available with many investors seeking to finance or take on projects.

In a public private partnership, the government transfers economic risks to the private sector for a set period while maintaining the ownership of public assets. Significant capital is available to finance viable projects through public private partnerships. Incentives are needed for projects with unclear economics such as rural broadband. Traditional municipal bonds remain reliable vehicles for financing costs. Publicly sponsored enterprises can create value previously lacking, but advancements offer their own challenges such as cyber threats to advanced infrastructure.

Public policy must keep the focus on cyber protections as we modernize our infrastructure. Incentives should include performance contracts and maintenance plans. Projects should use time tested financing options such as municipal bonds and incorporate public private partnerships. Regional initiatives may prove to be better investments than shovel ready multijurisdictional national projects. Lawmakers should streamline and expand interagency coordination and employ new technology to operate and maintain infrastructure. The process of aligning incentives must be updated to refocus on value over a full life cycle of the project. Congress should take up this important work. The conversation needs to change.

THE HILL

BY ROBERT AMODEO, OPINION CONTRIBUTOR — 02/01/19 06:00 PM EST

Robert Amodeo is the head of municipal investments at Western Asset Management, which is a subsidiary of Legg Mason. His opinions are not meant to be viewed as investment advice or a solicitation for investment.

State of the States 2019: Getting America Connected.

The nation's governors are laying out policy priorities for the coming year — some for the first time. Many are focused on technology-driven economic and workforce development as paths to prosperity.

The influx of new governors across the country cast a slightly different tone in this year's State of the State addresses. Typically the most notable policy speech given by each state's top elected official, veteran governors often make the address equal parts retrospective and prospective, pointing to their successes during their terms thus far, while hinting at their plans to take on issues that continue to need attention. But new governors don't have a record to point to just yet, so their speeches tend to be more forward-looking. Government Technology editorial staff reviewed each speech and rated it from 1 to 5 based on the strength of its technology initiatives.

Based on early speeches, common themes predominate, with most governors laying out plans to strengthen state education systems with a parallel focus on job creation. Technology factors heavily into both. Many speeches refer to specific programs aimed at injecting more resources into things like coding and other science, technology, engineering and math (STEM)-related curriculum. Likewise, luring and growing tech-related industry to their states is high on the list of many leaders who are eager to rattle off the names of new investments from familiar tech giants with footprints throughout the country.

In easily the most often discussed tech-related priority, about half of governors got specific about the importance of continuing to work on extending the benefits of high-speed Internet to every corner of their state. Incoming Virginia Gov. Ralph Northam said it was the top issue identified by his constituents, while many others included specific budget requests for broadband in their speeches. Colorado Gov. Jared Polis offered a familiar sentiment on connectivity: "In the 21st-century economy, broadband is critical infrastructure that everyone must have access to," he said, asking the Legislature to join him in delivering for Coloradans.

Connecticut Gov. Ned Lamont lamented the state's budget shortfall, and pointed to some specific ways technology could help address it. Advocating for a one-stop-shop-style experience for citizens interacting with government, he called on policymakers to support the creation of "the first all-digital government" in Connecticut, with an emphasis on shared services and tech-powered efficiencies throughout the enterprise. North Dakota Gov. Doug Burgum again delivered a tech-heavy speech, asking lawmakers to support nearly $200 million in IT infrastructure improvements to strengthen cybersecurity and modernize key programs with updated tools. Burgum was also one of a few state leaders to specifically talk about the potential of emerging technologies, asking for an additional $30 million for infrastructure to support the development of the drone industry in North Dakota.

See our analysis of how the rest of the nation's governors fared below. Evaluations will be added as additional speeches are delivered.

Continue reading.

GOVTECH.COM

BY NEWS STAFF / JANUARY 31, 2019

Policy and Politics Program Director Talks Effectiveness of Public-Private Water Systems.

On Monday, the Ford School of Public Policy hosted an event featuring Manny Teodoro, director of the Policy and Politics Program and associate professor at Texas A&M University, who has conducted significant research on the nation's water systems. The event, titled "Water System Finance: the Political Pitfalls of Public-Private Partnerships," covered the effects of public-private partnerships on water systems.

Teodoro started his talk by introducing a unique caveat in the water market — the disparity in the visibility of the price of water and its quality in the market.

"With water, the cost is much more visible than quality," Teodoro said. "Most of the contaminants in water are invisible to us. However, the price of water is very easily and readily observable."

As such, Teodoro argued if a water system is run by the local government, then it will naturally focus on reducing the price of water to appease residents — a stance that will also inadvertently lead to lower water quality.

"The goal of every politician who wants to get re-elected wants to minimize price and maximize quality," Teodoro said. "However, because of how much more visible prices are than quality for water, the long-run outcome is low prices and low quality."

Alternatively, in private-run water systems, the price companies are allowed to charge for water is limited by how much they invest in their water infrastructure, which is a limit enforced by the public utilities commission. Because of this, they are incentivized to over-invest in their water infrastructure, which will lead to high quality water but also high prices.

"The goal of every company is to make profit," Teodoro said. "As such, they are incentivized to maximize investment so that the public utilities commission will allow them to raise prices in conjunction with their higher investments. As such, private water tends to be high price and high quality."

However, Teodoro also argued public-private partnerships are not the solution to this dilemma.

"In public-private partnerships, the local government sets the price for the water and the private company has to figure out how to maximize its profits within that," Teodoro said. "As such, the incentive for these private companies is to reduce operating costs. This results in low-priced water but also low-quality water."

Furthermore, Teodoro disputed the perception that public-private partnerships are a solution for financially constrained water markets, emphasizing how they are a mechanism, not a self-sufficient source of revenue.

"Privatization of public partnerships are not sources of capital. In the end, the money's coming from the same people," Teodoro said. "The rate increases are still going to be needed to upgrade infrastructure, or else they will continue to fail."

After the talk, Sheny Puspita, a Public Policy graduate student, reflected on her views of the water systems and her main takeaways from the talk.

She discussed how more successful systems tend to be small, privately-owned water plants, but

improvements are needed in larger, public water systems.

“The private-owned model only works with small-scale water plants, but we need to improve number of larger-scale water plants,” Puspita said.

Puspita also acknowledged private water plants do tend to produce higher quality water and operate more efficiently.

“I believe that private water plants will enhance the quality of water and efficiency of water plants,” she said.

Puspita spoke of her concern of how politicians would use public-private partnerships to shield themselves away from their responsibility for their constituencies’ water systems.

Marc Jaruzel, a Public Policy graduate student, echoed some of the skepticism for public-private water system partnerships.

“Public-private partnerships aren’t necessarily the fix-all,” Jaruzel said. “There is some evidence that it may be beneficial, but we just can’t say definitively whether P3s will be beneficial or not.”

Jaruzel commented on how having competing public water systems would not be a feasible solution either.

“I think public competition would be really challenging because you would have to have different pipes laying in the ground from different companies,” Jaruzel said. “I think it would take a really creative solution to get utilities to compete in a similar way as other businesses.”

THE MICHIGAN DAILY

MICHAEL ZHANG
Daily Staff Reporter

Monday, January 28, 2019 – 8:38pm

Tracking the Unequal Distribution of Community Development Funding in the US.

Abstract

There are clear winners and losers in the competition to attract this capital, including resources coming from the federal government, with some areas drawing more capital than others, even after adjusting for relative needs. Using our recently developed tool, Community Development Financial Flows, we measured flows of federally sponsored or incentivized community development capital to all US counties with more than 50,000 residents. We found that large counties received disproportionately more funding than small counties, and that the level of distress a county experiences does not directly relate to level of funding.

Download report.

The Urban Institute

by Brett Theodos & Eric Hangen

January 31, 2019

FINRA Bond Facts.

How much do you really know about buying and selling bonds? Although "bond" seems like a simple word, trading bonds is anything but simple, and vastly different from trading stocks. Wouldn't it be nice if there were a tool that could give you the most important facts about a particular bond in an easy-to-digest package? FINRA has you covered.

To educate investors about their bond investments, FINRA recently introduced a new investor tool: FINRA Bond Facts. The tool helps investors understand common bond terminology and provides bond-specific information about corporate and agency bonds, including recent trade data. Bond Facts also provides sample questions that can help investors start a conversation with their brokers so they are in a position to make informed investment decisions.

What Bond Facts Will Tell Me

Bond Facts lays out the essential facts to know about any corporate or agency bond you are considering purchasing (or have already purchased) in a section called "This Bond at a Glance." For example, who is issuing the bond? What is the maturity date? What are the coupon rate and yield? What is the credit rating? Is the bond callable-and when?

However, these essential facts don't mean much to an investor who doesn't have a basic understanding of what these key terms mean. To some bond investors, these terms might be new or unfamiliar. So, Bond Facts provides straightforward explanations to help educate investors to make informed decisions.

For example, investors might wonder what a 4.122% yield to worst means for their investment. Bond Facts provides a brief definition of the term yield (total return on the money you invested) and describes the differences between three common types of yield as shown below.

Talk To Your Broker

Bond Facts also creates an important action step for investors who use the tool. All of the key bond term explanations are followed by sample questions to ask your broker. In the yield example, Bond Facts provides three questions an investor can pose to their broker, such as "what is the yield for this bond and what type of yield is it?" You can use these questions to start a conversation with your broker and make sure you understand important information about your investment. You should never hesitate to ask questions about investments a broker is recommending to you.

Getting To Bond Facts

FINRA rules require that brokers include a link to Bond Facts on the trade confirmation you receive following a corporate or agency bond transaction. This means you can click on a link to the Bond Facts site on an electronic trade confirmation or type in the URL from a paper confirmation. If you are accessing Bond Facts from your trade confirmation, the link will take you directly to information about the specific bond involved in your transaction.

If you want to research bonds before making a trade, you can use the bond's 9-digit CUSIP on the Bond Facts search page to pull up information about a particular bond. If you type in a CUSIP for a municipal security, Bond Facts will redirect you to the Municipal Securities Rulemaking Board's EMMA website, which provides investors with similar information to that available in Bond Facts.

For investors who want more information, Bond Facts provides a link to FINRA's Market Data Center where you can find additional information about a bond, including an extended trade history. Bond Facts also directs investors to more detailed investor education resources on FINRA's website for each of the key concepts covered.

January 25, 2019, 03:45:00 PM EDT By FINRA Staff (FINRAInvestorEducation@finra.org)

FINRA is dedicated to investor protection and market integrity. It regulates one critical part of the securities industry – brokerage firms doing business with the public in the United States. FINRA, overseen by the SEC, writes rules, examines for and enforces compliance with FINRA rules and federal securities laws, registers broker-dealer personnel and offers them education and training, and informs the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers a dispute resolution forum for investors and brokerage firms and their registered employees. For more information, visit www.finra.org .

S&P U.S. Public Power And Electric Cooperative Utilities 2019 Sector Outlook: Ratings Stability Persists In A Difficult Era

S&P Global Ratings expects that public power and electric cooperative utilities will continue facing significant uncertainties in 2019. Nevertheless, we believe that these utilities will maintain sound credit quality, as they have in recent years.

Continue Reading

Jan. 22, 2019

S&P Global Not-For-Profit Higher Education 2019 Sector Outlook: Credit Pressures Proliferate

S&P Global Ratings' outlook for the U.S. not-for-profit higher education sector in 2019 is negative. Supporting the negative outlook is rating performance over 2018 that showed a significantly higher level of downgrades (20) and ratings placed on negative outlook than upgrades (three) versus prior years.

Continue Reading

Jan. 24, 2019

S&P Health Care Credit Beat: It's Looking Like Another Down Year For Ratings

Happy New Year! We hope everyone had a good holiday season. The past year, 2018, was an active one for corporate health care ratings in terms of ratings activity. Following two years in which health care rating downgrades outnumbered upgrades (3 to 2 in 2018 and 5 to 1 in 2017), 2019 is already looking like another year of credit quality deterioration in the sector.

Continue Reading

Jan. 18, 2019

Chapter 9 Bankruptcy: An Overview

As investors familiarize themselves with their respective issuer's credit profile, they are essentially looking to ensure that the debtor is financially strong enough to pay back its obligations in a timely manner. Now, what happens when a municipality is unable to meet its financial obligations? The simple answer is the reorganization of municipalities, which includes cities, towns, counties, taxing districts, municipals utilities and school districts, under Chapter 9 of the Bankruptcy Codes.

Although Chapter 9 cases are rare and the restructuring laws can be very different for every state, recent local government's bankruptcies like Detroit, Michigan (2013); Jefferson County, Alabama (2011); Stockton, California (2012); and San Bernardino, California (2012), were few of the major examples in recent times that served as a rude awakening for many municipal debt investors who originally thought that municipal debt was the safest investment option out there and showed full faith in the taxing power of each local government.

In this article, we will take a closer look at the purpose of municipal bankruptcy, the eligibility requirements for municipalities, plan of adjustment and, finally, how it impacts the bondholders.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jan 23, 2019

New House Budget Chair Champions Bond Proposals.

WASHINGTON – The new Democratic chairman of the House Budget Committee wants Congress to consider two proposals that would have a significant impact on the municipal bond industry.

Rep. John Yarmuth of Kentucky wants to end automatic across-the-board budget cuts that include a reduction in the subsidy for direct-pay Build America Bonds, he told The Bond Buyer this week.

He also favors creating a new category of 40-year Treasury bonds to capitalize a new national

infrastructure bank with an infusion of $300 billion.

Both proposals are big lifts politically. But Yarmuth – a former Republican turned Democrat – thinks they are worth consideration.

“Nobody likes sequestration,” Yarmuth said in an interview, referring to the automatic spending cuts that are part of the Budget Control Act of 2011. This forced austerity on federal spending is disliked by members of both major political parties.

The Bipartisan Budget Act of 2018 suspended many of the automatic spending cuts for fiscal 2018 and 2019, but not the BABs cuts which are 6.2% in fiscal 2019.

“The absolute elimination of the risk of sequestration of direct pay bonds would be a step in the right direction,” said Emily Brock, director of the federal liaison center for the Government Finance Officers Association. “I think his statement goes a long way to show that lawmakers understand the next iteration, if successful, should fully address the risks that accompanied Build America Bonds for issuers as a result of sequestration.”

Yarmuth also plans to introduce legislation next month to fund a national infrastructure bank with a new category of bonds he is calling Rebuild America Bonds.The $300 billion in 40-year bonds would be sold by the federal government at a two percentage point premium over Treasuries for purchase by only pension funds to help them reduce their underfunding problems. The bonds would have to be held a minimum of 10 years.

The idea for Rebuild America Bonds came out of a discussion Yarmuth said he had with a businesswoman in his hometown of Louisville about infrastructure and the crisis faced by state pension funds. Kentucky’s state pension plan is among the 10 most underfunded in the nation.

The biggest problem in creating the bonds, according to Yarmuth, will be the cost. “Legislatively the one big problem we face is that in our initial talks with CBO Congressional Budget Office they would score it as a huge cost,” he said.

Build America Mutual released a one-page commentary on Jan. 7 saying that the attractiveness of Rebuild America Bonds will vary based on the status of each pension fund.

“While the option to invest in higher-yielding risk-free securities could improve the average risk profile of public pension funds nationwide, it would not be a universal benefit,” wrote Les Richmond, BAM’s vice president and actuary. BAM would still view the holding of the new RABs “in the context of an individual plan’s investment risk and liquidity needs,” he wrote.

How much support it will get among lawmakers in Congress is unknown. Much of the initial attention on infrastructure financing has been on House Transportation and Infrastructure Committee Chairman Peter DeFazio’s attempt to build political support for an increase in the federal gasoline tax.

Mayor Steve Benjamin, of Columbia, S.C., who is president of the U.S. Conference of Mayors and the Municipal Bonds for America Coalition, said he wants to learn more about Yarmuth’s proposal.

“We encourage innovation, but not to the detriment of tax exempt municipals,” Benjamin said, adding that he “would be happy to provide advice and counsel” to Yarmuth on his proposal.

The House Budget Committee will begin work in the coming weeks on a fiscal 2020 budget resolution which Yarmuth hopes will include an end to sequestration and also will include fiscal

2021.

Yarmuth earlier this month told the newspaper Roll Call the budget resolution will call for raising the corporate tax rate to 28% from 21% to claw back some of the tax revenue lost under the 2017 Tax Cuts and Jobs Act.

Yarmuth said he expects his fellow Kentuckian Mitch McConnell, the Senate Republican Majority Leader, to support a two-year budget resolution. But Senate Republicans are virtually certain to oppose a budget resolution calling for partial repeal of their tax cuts.

A spokesman for Senate Budget Committee Chairman Mike Enzi, R-Wyo., declined comment on the sequestration issue.

Budget resolutions are a blueprint for spending that are used by the appropriations committees in the House and Senate to set budgets for each department and agency.

The last round of negotiations over a joint congressional budget resolution involving both the House and Senate began in 2017 didn't end until early 2018.

His proposal is under the jurisdiction of the Ways and Means Committee and is expected to compete with other proposals for improving the nation's infrastructure.

Yarmuth said he wants to pattern the infrastructure bank component of his Rebuild America Bonds bill after a bill authored by Rep. Rosa DeLauro, D-Conn., which had 87 cosponsors in the previous legislative session. All of the sponsors were Democrats and the Republican-controlled House did not consider it.

DeLaurore introduced her bill earlier this month. It's modeled after the European Investment Bank and would leverage private sector investment from institutional investors and pension funds. The infrastructure bank would issue Public Benefit Bonds to fund projects, and make payments to help states and localities cover their bond interest payments.

Earlier bipartisan discussions about capitalizing a national infrastructure bank centered on using the revenue from the repatriation of overseas profits made by U.S. companies. But that possibility was eliminated when Republicans used the repatriation revenue to help pay for the 2017 tax cut.

Yarmuth hopes his Rebuild America Bonds will be considered as an alternative financing option.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/24/19 07:02 PM EST

Guide to Understanding an Official Statement for Municipal Debt.

Prior to structuring or issuing any form of debt, the municipal issuer (local government) typically forms a team of experts to assist them with complying with all the legal requirements and structuring the issuance. While each issuance can be unique, this team typically includes an underwriting firm, bond counsel, financial adviser, rating agency, an insurer, etc.

One of the important tasks of the issuance process is preparing an Official Statement – which is prepared by or on behalf of a state or local government in connection with a new issue of municipal

securities. This statement is quite comparable to a fund prospectus that is often used in the sale of equities of mutual fund sales.

In this article, we will take a closer look at the use of an Official Statement in debt issuances and how investors can use this information in their investment decisions.

Continue reading.

municipalbonds.com

Jayden Sangha

Jan 09, 2019

Fitch Ratings: Teacher Labor Actions Hamper Spending Flexibility

Fitch Ratings-New York-24 January 2019: Recent and ongoing labor actions by teachers in California, Colorado and Illinois highlight the challenges facing school districts in maintaining flexibility over their most significant expenditure, says Fitch Ratings. Material erosion of spending flexibility caused by protracted labor disputes can affect a school district's credit profile.

A six-day strike by teachers in the Los Angeles Unified School District (LAUSD) ended on Tuesday with an agreement that appears to be a compromise between the district's offer and the union's demands. The terms of the contract have yet to be clarified but once they are, we will evaluate whether they have a meaningful negative impact on the district's already limited expenditure flexibility. Fitch's Issuer Default Rating (IDR) on LAUSD is 'A' with a Negative Rating Outlook.

Oakland Unified School District's teachers' union has also been gearing up for a potential strike. The district and its teachers are in a fact-finding stage that is expected to conclude at the end of the month. Teachers are then expected to vote on whether to authorize a strike rather than accept the recommendations of a neutral fact-finding panel, as did teachers in Los Angeles.

Recent 'sick outs' by teachers in Oakland highlight a trend for labor, with or without the backing of unions, to challenge management. The sick outs, in which a subset of teachers participated, were not sanctioned by the union. As in Los Angeles, teachers in Oakland are demanding both increased pay and additional personnel to reduce class sizes and increase support services. This is despite the district's announcement that it intends to cut $30 million in the fiscal 2020 budget. The district's 'BBB+'/Stable IDR reflects solid spending flexibility but only adequate gap-closing capacity owing to a lack of control of revenues and limited financial reserves.

Teachers at Denver School District No. 1, known as Denver Public Schools (DPS), have voted to strike after negotiating with the district for over a year. DPS' teachers are seeking pay hikes above the amount the district is offering and changes to the district's incentive compensation system. The district and union leaders are reportedly seeking the state's intervention in resolving the strike. While state intervention could help resolve the impasse, we believe it would reduce the district's control over the outcome. Fitch's IDR of 'AA'/Stable reflects the district's very strong gap-closing capacity, including solid expenditure flexibility and sound reserves.

Unionized teachers at four Chicago charter schools affiliated with Chicago International Charter School and managed by Civitas Education Partners announced last week that they plan to strike on

Feb. 5 if no agreement with management is reached. This would follow the first-ever charter school teacher strike, a four-day strike by teachers at the Acero charter school network in December that resulted in increased pay and smaller class sizes. Fitch does not rate any of the schools threatening to strike.

Unionized charter school teachers are unusual. A study by the National Alliance of Public Charter Schools indicates that 11% of charter school teachers were bound by collective bargaining agreements in the 2016-2017 school year.

Contact:

Amy Laskey
Managing Director, USPF
+1 212 908-0568
Fitch Ratings Inc.
300 West 57th Street
New York, NY 10019

Jose Acosta
Senior Director, USPF
+1 512 215-3726
111 Congress Avenue Suite 2010
Austin, TX 78701

Karen Ribble
Senior Director, USPF
+1 415 732-5611
1 Post Street Suite 900
San Francisco, CA 94104

Justin Patrie, CFA
Senior Director, Fitch Wire
+1 646 582-4964

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

Additional information is available on www.fitchratings.com

$400 Billion Is Looking For A New Home In Muni Land (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on PG&E and muni flows. Hosted by Abramowicz and Paul Sweeney.

Listen to Audio.

January 25, 2019

Citi Announces Inaugural Green Bond Issuance.

NEW YORK–(BUSINESS WIRE)–Citi today announced the issuance of the firm's first green bond, further enhancing its commitment to environmental and climate finance. The bond will fund renewable energy, sustainable transportation, water quality and conservation, energy efficiency and green building projects financed as part of Citi's $100 billion Environmental Finance Goal.

In the deal, which priced on 22nd January 2019, Citi issued €1 billion 3-year fixed rate notes. The transaction marks the first green bond offering from Citigroup Inc.

"We are proud to start the year with the launch of our inaugural green bond," said Jamie Forese, President of Citigroup and Head of the Institutional Clients Group. "This transaction represents an important next step in expanding Citi's commitment to sustainable growth. This bond also further enhances our green bond expertise, strengthens our partnerships with clients around the world and responds to increasing investor interest in sustainable finance."

In 2015, Citi announced a $100 Billion Environmental Finance Goal to finance and facilitate $100 billion within 10 years to support environmental solutions and accelerate the global transition to a low-carbon economy. Citi also recently announced that it will source renewable power for 100 percent of its global energy needs by 2020. Both initiatives are part of Citi's contribution to advancing the United Nations Sustainable Development Goals (SDGs). They are also key goals of Citi's Sustainable Progress Strategy, which sets out Citi's guiding principles, priorities and ambitions in environmental finance, environmental and social risk management, and the firm's own operations and supply chain.

"Since we co-founded the Green Bond Principles in 2014, Citi has played a leading role in the development of the green bond market, and we look forward to maintaining our commitment as this market continues to grow," said Michael Verdeschi, Treasurer of Citi.

Under Citi's Green Bond Framework environmentally eligible criteria have been defined as renewable energy, energy efficiency, sustainable transportation, water quality and conservation, and green buildings. The consultancy Sustainalytics has reviewed Citi's Green Bond Framework and has confirmed in their Second Party Opinion that it is aligned with the overall sustainability objectives of Citi and with the ICMA Green Bond Principles.

Citi

Citi, the leading global bank, has approximately 200 million customer accounts and does business in more than 160 countries and jurisdictions. Citi provides consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, transaction services, and wealth management.

January 22, 2019

Another Study Blames Uber and Lyft for Public Transit's Decline.

Ride-hailing services drive down bus and rail ridership in urban markets, a new University

of Kentucky paper claims.

When Uber and Lyft arrived on the urban scene a decade ago, they claimed to pair well with buses and trains. By shuttling riders to train stations, guaranteeing late-night returns, and plugging in as paratransit, on-demand transportation could encourage travelers to abandon private cars and use public modes, they said. A lot of people believed them.

But now, transit systems are in crisis. Some 31 of 35 major metropolitan areas in the United States lost passengers in 2017, including the cities with largest ridership bases. There are numerous factors at play, but a small mountain of research singles out the rise of Uber and Lyft. A new paper by University of Kentucky scholars piles on: For every year after ride-hailing companies enter an urban market, rail ridership can be expected to fall by 1.3 percent, and bus ridership by 1.7 percent, it shows.

“We are starting to piece together multiple parts to the story,” said Gregory Erhardt, a University of Kentucky civil engineering professor and the lead author of the study. “For a long time it’s been about ride-hailing complementing transit in different ways. That is true to a degree. But it’s a question of whether it’s happening enough.”

Continue reading.

CITYLAB

LAURA BLISS JAN 24, 2019

BlackRock Can Blame One Investor for Record Muni ETF Outflow.

- **After-hours trade yanked $163 million from biggest muni ETF**
- **Outflow contrasts with mutual funds, which have seen big gains**

BlackRock Inc. can blame one investor for a record outflow from the largest municipal-bond exchange-traded fund.

The company’s $11.5 billion iShares National Muni Bond ETF, which trades off the ticker MUB, saw an outflow of $163.6 million on Wednesday, the most since the fund launched in 2007.

The culprit? One investor who sold 1.5 million shares worth about $163 million in after-hours trading yesterday, accounting for all but a tiny fraction of the big pullback from the fund.

This year hasn’t been off to a good start for the BlackRock fund. It has recorded $393 million in outflows so far in 2019, more than any other municipal-bond ETF tracked by Bloomberg.

The identity of the investor hasn’t been disclosed. At least 11 firms held more than 1.5 million of the ETFs shares by the end of September, according to regulatory filings compiled by Bloomberg.

The pullback is curious, given that state and local debt is headed for a positive monthly return, and may be more about routine portfolio adjustments than a judgment call about the fund. There are no signs of a larger investor exodus from the $3.8 trillion municipal-bond market, with mutual funds reporting the biggest weekly inflow in a year, according to the Investment Company Institute.

Bloomberg Markets

By Amanda Albright

January 24, 2019, 7:24 AM MST Updated on January 24, 2019, 8:26 AM MST

— With assistance by Carolina Wilson

New Data Suggests Regulated Water Companies Deliver Higher Quality Water Than Publicly-Run Systems.

An expanded analysis of the largest and most comprehensive study conducted on Safe Drinking Water Act (SDWA) compliance suggests that community water systems owned by regulated water companies are less likely to violate the SDWA than water systems owned and run by local governments. The new analysis was funded by the National Association of Water Companies (NAWC), which represents regulated water companies.

The original study, published in the Proceedings of the National Academy of Sciences in February 2018, reviewed U.S. Environmental Protection Agency (EPA) data from 1982 to 2015 and found that "private ownership" of a water system was "significantly associated with higher compliance." The dataset included the compliance records of 17,900 community water systems from across the continental United States. The full study is available here.

A further analysis of the dataset was conducted by Dr. Justin Adams of Encina Advisors, an economics research and statistical analysis consultancy based in California. The finding that water companies have higher rates of SDWA compliance was evident both nationally and in each of the four states analyzed: California, Texas, Pennsylvania and New Jersey.

This marks the first time a state-level analysis comparing drinking water compliance records of regulated water companies and local governments has been conducted using this dataset.

"We wanted see how the ownership of water systems impacted drinking water compliance rates in different states," said Adams. "The data show very clearly that water systems owned by regulated companies strongly outperform water systems owned and run by local governments on Safe Drinking Water Act compliance."

"Flint provides an unfortunate example of how a government-run system was unable to ensure the delivery of safe water to its citizens. As a former state utility regulator, I have seen firsthand the harsh realities of what happens when communities are unable to properly manage their water systems, jeopardizing public health and safety," said Robert Powelson, CEO and president of the National Association of Water Companies. "The results of this study further confirm that regulated water companies nationwide are doing a better job than their municipal counterparts in delivering the highest quality water possible.

"Local governments across America face urgent water system infrastructure and operations challenges," continued Powelson. "That is, no doubt, one of the key contributors to what we see in this study as some small and midsized municipalities struggle to provide safe water to residents. NAWC member companies are well-positioned to bring the expertise and investment troubled systems need to ensure Americans can count on safe and reliable water service."

The initial study published in the Proceedings of the National Academy of Sciences was authored by Dr. Maura Allaire, University of California Irvine; Haowei Wu, Columbia University; and Dr. Upmanu

Lall, Columbia University. The state-level analysis of EPA data conducted by Encina Advisors was funded by the National Association of Water Companies.

The National Association of Water Companies (NAWC) represents regulated water and wastewater companies, as well as ones engaging in partnerships with municipal utilities. NAWC members provide 73 million Americans with safe and reliable water service every day and have an exceptional record of compliance with federal and state health and environmental regulations. Ensuring this high standard of quality requires extraordinary amounts of capital investment. NAWC estimates that its six largest members alone are collectively investing $2.7 billion each year in their water and wastewater systems. For more information about NAWC, please visit NAWC.org or follow on Twitter, Facebook and YouTube.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

JANUARY 16, 2019

Mayors Express Support for Incentives.

Menino Survey of Mayors asked 110 US mayors for their opinions on economic development, recruitment competition and financial incentives.

- 84% stated that "recruiting economic investments with financial incentives is good policy."
- 44% believe that incentives are unpopular with constituents but are good for the city.
- 40% believe that incentives are popular with constituents and are good for the city
- Yet 61% believe other cities offer too many incentives, and 62% believe it would be good for cities to refrain from offering incentives.

> "Essentially, most mayors see their own cities' use of incentives as measured and effective, while also seeing others' use as excessive."

- 55% agree that cities see net benefits in the long run when they recruit a company or facility; 23% disagree.
- Cities promote workforce skills and perceived quality of life when recruiting new investment; only 16% mayors primarily emphasize incentives.
- 59% would prefer a new employer within the city's borders even if it employs people who live outside the city (prioritizing tax base), while 41% would prefer a new employer outside the city that employs people who live in the city (prioritizing jobs).

While we are not surprised that most mayors see incentives as a good policy, it is interesting that so many perceive incentives as unpopular. Many surveys have shown high levels of popular support for incentives, including a recent poll in Virginia indicating 68% of registered voters support the announced Amazon HQ2 deal.

It is also not surprising that incentives play a secondary role in recruitment strategies. All good efforts focus first on location-specific factors that support company operations and strategy, with incentives playing a valuable but supporting role.

The most intriguing finding is that 84% consider financial incentives to be good policy, yet only 55% believe cities see “clear net benefits” from recruitment. Given the question’s wording, city leaders may believe it is the other cities that fail to see clear net benefits. It may also point up the political disconnect between the immediate gains perceived from a successful recruitment versus the difficulties of documenting actual longer-term economic benefits when new investment occurs.

The Menino Survey of Mayors is conducted by the Boston University Initiative on Cities with support from Citi Community Development and the Rockefeller Foundation. You can download the Summary of Findings or access the full report here.

SMART INCENTIVES

by Ellen D. Harpel | Jan 22, 2019

Mayors Eye Two-Pronged Attack on FCC’s Preemptive 5G Order.

The latest effort is a new bill in Congress that would overturn the agency on its rule that strictly limits how much local governments can charge providers and how long officials can take to process applications.

WASHINGTON — Mayors expressed optimism Thursday a new House bill could provide an alternative path to overturning a Federal Communications Commission order preempting local authority over fifth-generation wireless deployments.

H.R. 530, authored by U.S. Rep. Anna Eshoo, a California Democrat, would undo rules that went into partial effect on Jan. 14 requiring cities to move on wireless providers’ small cell applications within set timeframes while capping fees to access public rights of way.

FCC restrictions on the aesthetic limits cities can impose on providers take effect April 15, unless Congress acts or cities led by Portland, Oregon, are successful in their lawsuit against the commission pending in the 9th U.S. Circuit Court of Appeals asserting irreparable harm.

Portland Mayor Ted Wheeler told his U.S. Conference of Mayors colleagues at their winter meeting in D.C. that the city’s right of way—access to which is at the heart of its lawsuit—was its largest asset, costing taxpayers millions of dollars to establish and millions more to maintain and manage. Companies shouldn’t just be able to take advantage of this public property without paying their fair share, he said.

“[Digital equity] can’t be achieved without reliable, high-speed broadband to access essential services like education, employment opportunities and health care,” Wheeler said. “But I will never ask Portland residents to subsidize multi-billion-dollar companies, who currently have no obligation whatsoever to serve low-income communities.”

While the suing cities’ attempt to stay the FCC order failed in the 10th Circuit, their cases were shifted to the 9th Circuit. The move should give cities “home-field advantage” because the FCC order overturned two long-standing rulings by that court, said Gerry Lederer, partner at the law firm Best Best & Krieger.

If the order is overturned, the FCC would be back to square one, said Alex Hoehn-Saric, chief counsel with the House Subcommittee on Communications and Technology.

U.S. Rep. Frank Pallone, a New Jersey Democrat, is the newly appointed chairman of the House Energy and Commerce Committee and believes in swift 5G deployment in collaboration with state and local officials, Hoehn-Saric said.

“Congress did not authorize or empower the FCC to trample on localities and effectively usurp our property rights, yet this is what they’ve done,” said Piscataway, New Jersey Mayor Brian Wahler, whose city is in Pallone’s district.

The FCC commissioners who backed the order, all Republicans, argued it would save $2 billion in the U.S.’s race to deploy 5G, the faster wireless service expected to boost economic opportunity, before other countries—thereby dictating the technology’s applications.

Route Fifty

By Dave Nyczepir,
News Editor

JANUARY 24, 2019

S&P Priority-Lien Criteria Updates.

In this location we will provide links to reports that we publish as we implement our Priority-Lien Tax Revenue Debt criteria, published Oct. 22, 2018.

Continue Reading

Jan. 15, 2019

S&P Expected Completion Dates For U.S. Local Government Ratings Within Priority-Lien Criteria Scope.

BOSTON (S&P Global Ratings) Jan. 14, 2019–On Oct. 22, 2018, S&P Global Ratings published its revised criteria for Priority-Lien Tax Revenue Debt (Priority-Lien, on Oct. 22, 2018, on RatingsDirect). In accordance with our stated policies, we assess the rating impact of the revised criteria for credits within its scope within a reasonable period…

Continue Reading

Jan. 14, 2019

S&P List Of Rating Actions Due To Priority-Lien Revenue Debt Criteria.

DALLAS (S&P Global Ratings) Jan. 15, 2019–S&P Global Ratings has published a list of credit rating actions taken through Dec. 31, 2018, following the application of our Priority-Lien Tax Revenue Debt criteria. We expect to update this list monthly.

Continue Reading

Fitch Ratings Updates U.S. Public Housing Authority Capital Fund Revenue Bonds Rating Criteria.

Fitch Ratings-New York-18 January 2019: Fitch Ratings has published an updated criteria report titled 'U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Rating Criteria.' The report replaces Fitch's 'U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Bespoke Rating Criteria' dated Jan. 29, 2018. No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

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

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

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

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

Additional information is available on www.fitchratings.com

S&P U.S. Transportation Infrastructure 2019 Sector Outlook: Mostly Stable, Despite Expected Slower Growth And Unlikely Investment Package

S&P Global Ratings' 2019 outlook for business conditions and credit quality across most U.S. public transportation infrastructure sectors, including airports, ports, federal grant-secured, and parking, is stable. We are maintaining our positive outlook for the toll road and bridge sector and revising our outlook for the mass transit sector to negative from stable.

Continue Reading

Jan. 17, 2019

S&P U.S. Municipal Water And Sewer Utilities 2019 Sector Outlook: Stable,

Although Potential Disruptions Are Not Making Planning Easy

As the calendar flipped to 2019, many market participants did not use the word “happy” to precede “new year.” January unfolded with a federal government shutdown, the uncertainty related to a new Congress, and a potential debt ceiling due date by August. This comes on the heels of a rising interest rates (which S&P Global Ratings believes will continue in 2019).

Continue Reading

Jan. 15, 2019

S&P: Five U.S. State And Local Government Pension And OPEB Trends To Watch For In 2019 And Beyond

In this economic recovery period since the Great Recession a decade ago, many state and local governments faced rising costs and risk further increases related to funding long-term pension and other postemployment benefit (OPEB) obligations.

Continue Reading

Jan. 16, 2019

S&P U.S. Charter Schools 2019 Sector Outlook: Despite A Stable Outlook, Disruptions Could Leave Their Mark

For U.S. charter schools, rating performance in 2018 resulted in fewer upgrades and downgrades compared with both 2016 and 2017, and S&P Global Ratings believes the sector’s outlook for 2019 will continue being stable.

Continue Reading

Jan. 16, 2019

More Than Half of the U.S.’s Largest Cities are Issuing Bonds to Protect Against Climate Change.

Less federal and state assistance could lead to more cities turning to debt issuance to fund climate change protection

A majority of the U.S.’s biggest cities are now selling debt specifically to mitigate the impact of climate change as flooding from rising sea levels, extreme heat and natural disasters threaten to hurt the credit ratings of municipalities.

In a survey of the U.S.’s largest cities based on total debt outstanding, 54% of the respondents said they would issue bonds for funding projects on building up resilience against climate change,

according to Moody's Investors Services, in a Thursday report.

"Cities are increasingly adopting plans that detail specific projects designed to strengthen infrastructure and minimize economic disruption from natural disasters and long-term climate change. The increased focus on climate risks is a credit positive, particularly as climate change is forecast to increase the frequency and severity of extreme weather events," said Michael Wertz, senior analyst for Moody's.

Climate change bonds could benefit from the growing shift among money managers to include environmental, social and governance, known as ESG, criteria when making investment decisions, prompting more municipal bond issuers to label their debt as "green" to draw demand from socially conscious investors.

More participants in the municipal bond market have also called for credit ratings firms to acknowledge the growing risks from extreme weather events induced by climate change. They point to examples of S&P and Moody's slapping gold-plated credit ratings on flooding-afflicted municipalities like Charleston County, S.C., and Palm Beach, Fla.

Moreover, efforts to limit the impact from climate change have gained urgency after several natural disasters in recent years.

The vulnerabilities of low-lying areas to climate change were brutally exposed after Hurricane Harvey and Hurricane Florence devastated the Eastern coastline in 2017, inflicting around $175 billion of damage. The five most expensive hurricanes in U.S. history have all taken place since 2005, according to the National Hurricane Center.

As a result, most of the climate-mitigation efforts undertaken by cities were focused on flooding, with such measures accounting for nearly 60% of the efforts. The Fourth National Climate Assessment found that counties near the coastline held more than 40% of the U.S. population.

Last November, voters in Miami approved $400 million of bonds, with $192 million set to be diverted for spending on protection against rising sea levels and flooding.

Moody's recognized that climate change projects, though beneficial in the long term, were expensive and could present a strain on a city's spending. The surveyed cities reported that around $47 billion of projects were either in planning or in progress, with New York City contributing to the brunt of the amount.

The financial burden will be eased by assistance from federal and state governments, leaving only $21 billion of this total costs to be borne by city authorities. With less coming out of the pockets of city governments, many could avoid resorting to selling bonds for climate change projects.

"However, if the level of federal aid were to wane, cities would be more reliant upon state funds and their own money to finance substantial project costs and be more likely to turn to debt issuance to finance climate mitigation plans," the Moody's analysts wrote.

MarketWatch

by Sunny Oh

Published: Jan 18, 2019 1:04 p.m. ET

Are High-Yield Municipal Bonds 'High Yield' Or 'Junk'?

Summary

- High-yield municipal bonds typically offer higher yields than investment-grade munis, but carry additional risk.
- A small allocation to high-yield munis can make sense for more aggressive muni investors – but today's yields are low relative to alternatives.
- If you choose to venture into this part of the market, we suggest you do so via an exchange-traded fund (ETF), mutual fund, or separately managed account, to help with diversification and ongoing credit monitoring.

Continue reading.

Seeking Alpha

By Cooper J. Howard

Jan. 16, 2019

CUSIP Request Volume Dips in December.

NEW YORK, NY, January 10, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for December 2018. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found significant monthly volume decreases in requests for new corporate and municipal identifiers.

Read Report.

CUSIP: Monthly Decline in New Issuance Requests Drags Down Full Year 2018 Volumes.

"The second half of 2018 has been marked by a great deal of month-to-month volatility in CUSIP request volume, which is consistent with market uncertainty over the future of interest rates," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "On the whole for 2018, total CUSIP request volumes trended down from the previous year, consistent with new security issuance activity over the course of the year."

Read Press Release.

Fitch Ratings: PG&E Bankruptcy Not Likely to Affect US Public Finance Ratings

Fitch Ratings-New York-17 January 2019: PG&E Corporation's planned bankruptcy filing is not likely to adversely affect the credit quality of the state of California, its local governments or publicly owned utilities (POUs), according to Fitch Ratings.

PG&E Corporation announced on Monday that it intends to file a petition for Chapter 11 bankruptcy protection on or about Jan. 29. The utility provides power to about 16 million natural gas and electric customers over 70,000 square miles in northern and central California and is among the largest taxpayers in several cities and counties that Fitch rates. Following the announcement, Fitch downgraded PG&E's Long-Term Issuer Default Rating (IDR) to 'C' from 'BBB-'. In addition, the company failed to make a scheduled interest payment on senior notes on Tuesday.

The imminent bankruptcy filing reflects the impact of potential enormous wildfire-related liabilities related to the 2017 Tubbs and 2018 Camp Fires without a clear path to timely recovery of such costs under California law. California applies the doctrine of inverse condemnation to privately-owned utilities. Inverse condemnation typically holds governmental agencies responsible for compensating property owners for the damage to or taking of property by the government.

Purchased Power Agreements Affected
Fitch has downgraded to 'C' from 'BBB-' trust certificates issued by Genesis Solar LLC and Topaz Solar Farms, LLC's senior notes as a result of PG&E's erosion in credit quality and pending bankruptcy filing. In addition to its own generating fleet, PG&E serves its load by purchasing power from numerous independent power producers (IPP) under power purchase agreements (PPAs), including Genesis and Topaz. Many of these IPPs are renewable generators – wind and solar projects – which depend on revenue from PG&E.

Project ratings are typically constrained by the rating of the revenue counterparty under fixed-price PPAs. PG&E's bankruptcy would not necessarily trigger a downgrade of the rated project debt if the projects are deemed critical vendors and PG&E continues to honor its revenue contract commitments. However, any attempt by PG&E to reject PPA commitments would be considered significant credit deterioration as prevailing power prices, either merchant or newly contracted solar PPAs, are lower than the current legacy prices and would lead to deterioration of project's coverage metrics.

Long-Term Concerns for POUs
California's POUs are not expected to see material erosion in credit quality as a result of PG&E's ongoing financial and legal challenges. That said, issues driving PG&E's current challenges, the state's wildfire risks and California's inverse condemnation rules remain a long-term risk for the state's POUs. A potential PG&E bankruptcy should be manageable for POUs in the short to medium term due to the nature of the relationship between most POUs and PG&E, POUs' generally healthy liquidity levels, and the market and operational constructs within the state.

Fitch-rated POUs have many connections to PG&E ranging from physical interconnections between systems, joint projects, operational agreements, and others. However, POUs have few direct contracts with PG&E for power supply and generally are not reliant on PG&E-owned generation to meet their system loads. Potential slowdowns in PG&E projects, some of which are joint projects with POUs, could result in delays and additional costs. However, Fitch views them as unlikely to significantly impact POU credit ratings. Indirect effects from a potential PG&E bankruptcy include market volatility that could increase the cost of purchased power for some POUs and, longer term, potential changes in market tariffs or operational rules and financial requirements that could increase the cost of operations. At this point, Fitch does not expect potential rule changes to materially affect POU cost of operations.

Minimal Impact to State and Local Government Revenue and Operations
Fitch's analysis of the potential impact on the state and local governments indicate minimal threat to revenues and financial operations. If the utility were unable to emerge from a bankruptcy, the state would likely step in in some fashion to ensure service continues without interruption. Fitch expects that either rates (if PG&E emerges from bankruptcy) or taxes (if the state steps in and the utility assets become non-taxable, which Fitch understands would likely take several years) would have to increase to fund legal liabilities. In either scenario, the increased cost of running the utility would not be enough to affect either the state's ability to remain economically competitive or its credit quality. Fitch also does not foresee a meaningful impact on employment or earnings as the utility would continue to function in some form.

Fitch assumes that as a regulated utility, PG&E will continue to provide service and be required to pay property taxes throughout a Chapter 11 bankruptcy as it did during its 2001-2004 bankruptcy. According to the company website, PG&E paid $461 million in property taxes and another $137 million in franchise fees in the tax year ended June 30, 2018 to the 50 counties and 247 cities in which it owns and operates infrastructure throughout the state.

A handful of Fitch-rated local governments have PG&E as a major taxpayer. The largest are San Luis Obispo County (AAA IDR), in which PG&E is the largest taxpayer at about 5% of assessed value (AV) in fiscal 2018 and Fresno County (A+ IDR), in which PG&E (also the largest taxpayer) makes up about 3% of AV in fiscal 2017 (latest data available).

San Luis Obispo County reports it received about $10 million in property taxes from PG&E in fiscal 2018 (about 2% of governmental revenues). Even if PG&E failed to pay any property taxes going forward or the assets in the county eventually became non-taxable, Fitch does not believe such a loss would affect San Luis Obispo County's credit quality. The county retains solid expenditure flexibility and the highest gap-closing capacity with approximately $260 million in unrestricted fund balance (52.5% of spending) as of the end of fiscal 2018. PG&E AV in San Luis Obispo County is comprised mainly of the Diablo Canyon Nuclear Power Plant. PG&E plans to close the plant by 2025. In September 2018, the Governor of California signed legislation directing the PUC to fully fund a community mitigation settlement meant to soften the decrease in taxes.

If PG&E failed to pay property taxes to Fresno County or the assets became non-taxable, Fitch estimates the impact would be even smaller at about 0.5% of governmental revenues based on 3% of the $255 million (roughly 17% of governmental revenues) in property taxes the county received in fiscal 2017. The county retains solid expenditure flexibility and adequate gap-closing capacity to address a moderate revenue decline. The county had about $157 million in unrestricted fund balance at the end of fiscal 2017, equal to almost 12% of spending.

Total fiscal 2017 license, permit and franchise fee revenues from all payers in San Luis Obispo County were $11 million, or 2% of governmental revenues; franchise fee revenues were $17 million or 1% of governmental revenues in Fresno County.

Contact:

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

Andrew Joynt
Director
+1-212-908-0594

Kathryn Masterson
Senior Director
+1-512-215-3730

Matthew Reilly
Director
+1-415-732-7572

Karen Ribble
Senior Director
+1-415-732-5611

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

Additional information is available on www.fitchratings.com

How New Governors May Impact the Municipal Bond Market.

Jamie Iselin, managing director of muni fixed income at Neuberger Berman, examines the municipal bond market in states with new governors. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

January 16th, 2019

Libor's Heir Hindered by Repo Volatility in Battle of Benchmarks.

- **Concern over SOFR's viability grows after year-end spike**
- **Yet some borrowers have been embracing it for new issuance**

The benchmark being eyed as a potential replacement for dollar Libor is facing renewed scrutiny after a year-end surge in the market underpinning the new rate. With more volatility possible, Wall Street is increasingly wondering if the nascent Secured Overnight Financing Rate will be up to the task.

Last month's jump in rates on overnight Treasury repurchase agreements — the market that supports SOFR — pushed the benchmark higher by almost 70 basis points over a two-day span. It has since retreated and was set at 2.43 percent for Wednesday. But given that both repo and SOFR are also susceptible to swings in Treasury-bill supply, which itself could become more erratic as the U.S. grapples with the reintroduction of the debt ceiling, some market veterans are forecasting

further fluctuations ahead.

Concerns about SOFR range from a lack of term structure to tepid volumes in derivatives that are tied to it. And that has traders and strategists saying the new rate needs to make significant headway in 2019 if U.S. regulators expect it to eventually take the baton from Libor, which still underpins more than $200 trillion of dollar-denominated instruments.

Continue reading.

Bloomberg Markets

By Alex Harris

January 17, 2019, 4:00 AM MST Updated on January 17, 2019, 7:46 AM MST

Risk Rises in Municipal Bonds.

Money has poured into high-yield munis even as investors have pulled money from the sector overall

When The Spires at Berry College sought to borrow money to build retirement homes recently, the Georgia-based senior-living center sold municipal bonds.

Even though investors typically consider retirement homes riskier borrowers, and these bonds came without a credit rating, there was enough investor demand that the project landed interest rates below officials' expectations.

There has been a surge in sales from the riskiest parts of the $3.9 trillion market for state and local debt. Retirement communities like The Spires, charter schools and student-housing projects were among sectors in 2018 that issued a greater share of municipal bonds than at any time since the financial crisis.

That increase came even as bond yields, which rise as bond prices fall, climbed for much of past year. Overall municipal-bond issuance fell about 25% in 2018 from the prior year to the lowest level since 2013, according to data from the Securities Industry and Financial Markets Association. Money flowing into municipal mutual- and exchange-traded funds also slowed.

The riskiest sectors in the municipal bond market—including junk and unrated borrowers in categories that tend to have the highest rates of default or impairment—made up about 20% of total bond sales in 2018, up from 17.4% the prior year, according to Municipal Market Analytics data. That was the most since 2008, when they made up 24% of issuance.

Municipal investors in December even welcomed Detroit's first stand-alone bond sale since the city's bankruptcy. Demand was so robust that yields on the junk-rated deal came in below city leaders' expectations, they said. They were still high enough to lure investors.

"The yields got pretty attractive," said Daniel Solender, director of municipal bonds at Lord Abbett & Co. "There was a good range of opportunity available."

State and local debt remains historically safe for investors, with few defaults, because bonds tend to be backed by issuers' taxing power or revenue from essential services like water or power. Many

retirement communities, charter schools and hospitals can use the market to sell tax-exempt debt because they play important community roles, but they aren't government entities—and analysts said a downturn could cause financial difficulties for some.

About 4% of continuing-care retirement-community bonds were in default as of Jan. 1, compared with the 1.8% of the broader market, according to MMA. Excluding Puerto Rico, which is in restructuring talks with creditors, 0.3% of municipal bonds were in default.

Junk and unrated municipal issuers continued to borrow in December, traders say, even as market turmoil halted bond sales by junk-rated corporations for 40 days through Jan. 10—the longest stretch in more than two decades.

Still, there was enough demand for higher-yielding debt that Adam Heffernan, a consultant who works with The Spires, said the retirement community's final bonds priced with lower yields than expected, by at least a quarter of a percentage point for some bond maturities.

High-yield municipal bonds posted a 4.8% total return in 2018, counting price changes and interest payments, above the broader market's 1.3% return, according to Bloomberg Barclays data. Money poured into high-yield munis even as investors pulled money from the sector overall, Lipper data show.

Nicholos Venditti, a portfolio manager overseeing municipals at Thornburg Investment Management, said he had largely avoided lower-rated and riskier bonds. But at the end of 2018, as equity markets roiled and investors fled high-yield corporates, at least one deal looked attractive for him: a bond issuance linked to natural gas.

"It's not a sector that we held prior to late November or early December," Mr. Venditti said. "When we saw the market for those change, we did take on a little bit of a position."

Issuance of these bonds more than quintupled in 2018 from the year prior, hitting at least a nine-year high, the MMA data shows.

Some worry the riskiest bonds could be hardest hit if concerns about slowing economic growth, which have rattled markets lately, and stock turbulence rise.

Adding to some investors' worries is the concentration of the high-yield municipal market. Nuveen and Invesco Ltd., which recently acquired Oppenheimer Funds Inc., hold at least 40% of assets in municipal mutual and exchange-traded funds classified as high-yield by Morningstar Direct, according to a Wall Street Journal analysis of the data.

"Imagine a situation in which high yield hiccups….they're both selling the same things at the same time," said Mr. Venditti. "Where is that stuff going to go?"

The Wall Street Journal

by Gunjan Banerji

Jan. 21, 2019 11:00 a.m. ET

The State of Socially Responsible Investing.

In 2007, the European Investment Bank issued its first green bond, a EUR 600 million equity index-linked security, whose proceeds were used to fund renewable energy and energy efficiency projects. A year later, the World Bank followed suit, and by 2017, over $155 billion worth of public and corporate green bonds had been issued, paving the way for the Seychelles government to issue the first ever “blue bond” last year— a $15 million bond to fund marine protection and sustainable fisheries.

The success of these instruments reflects the fact that investors are increasingly conscious of the social and environmental consequences of the decisions that governments and companies make. They can be quick to punish companies for child labor practices, human rights abuses, negative environmental impact, poor governance, and a lack of gender equality. Pair this with an increase in regulatory drivers post-2008 crisis, and a deepening understanding of the impacts of climate change and associated risk to performance, and we begin to see more clearly the need for investment models that will better address investors’ concerns.

The result has been an increasing demand for integrating Environmental, Social, and Governance (ESG) criteria into investment decisions. In the beginning of 2018, $11.6 trillion of all professionally managed assets—one $1 of every $4 invested in the United States—were under ESG investment strategies, a sharp increase from 2010, when the amount was close to just $3 trillion overall.

Inevitably, the financial services sector has responded with a host of innovative financial instruments, some like those mentioned above, others quite different. The through-line that ties together these new investing models and strategies is quite simple: While they have generated competitive returns, it so happens that they all positively benefit society as well. Essentially what investors want is the performance promise of financial engineering combined with the assurance of a better tomorrow.

Many of the innovations have been driven by a collaboration between public, private, and philanthropic institutions. At The Rockefeller Foundation, we recognize the value of engaging private capital markets for societal good and have stepped in to fund the research and development of new instruments that can bring capital to cause. We have increasingly seen, firsthand, how readily these instruments meet not just investor needs but also values, and how interrelated the two can be.

Let’s look at some particularly interesting examples.

Risk-sharing Impact Bonds

Continue reading.

Harvard Business Review

by Adam Connaker and Saadia Madsbjerg

JANUARY 17, 2019

Five Trends to Watch in Community and Economic Development in 2019.

With divided government in 2019, we shouldn't expect much new at the federal level in community development this year. But there are still several trends to watch for. We highlight five.

1. Opportunity Zones will take effect in force

No surprise here. Opportunity Zones were the big community development story in 2018 and will continue to be in 2019. Proposed regulations should be finalized this year, creating more confidence for investors. Opportunity Funds are already being set up, and investment volumes will grow rapidly.

But because of variation in the economic standing of Opportunity Zones, the incentive's effect will likely vary. Some weak-market Opportunity Zones can expect no or little new investment because of the incentive. In Opportunity Zones that are already attractive to investors, especially those likely to gentrify, investment levels will be appreciably higher. This is because one of the three benefits for investors from Opportunity Zones—the permanent exclusion of taxes on new gains when their investment is held for 10 years—is a generous subsidy but only where investments appreciate in value.

Disclosure requirements will also be worth watching. It is important for the Internal Revenue Service to require transaction-level reporting on Opportunity Fund investments and to make detailed data available to help local governments and stakeholders track the program's progress and find ways to improve it.

2. Geographic winners and losers continue to solidify

Amazon's process of opening a new headquarters got the most attention, but Google, Microsoft, Apple, and Salesforce also made recent decisions to move jobs to new metropolitan areas. Leaving the Bay Area might make it appear that tech profits will be more broadly distributed, but leading firms are actually reinforcing a broader trend of concentrating wealth in a dozen or more large metro areas, with many parts of the country falling behind.

Compare, for example, Amazon's decision to move into Long Island City, New York, and Arlington, Virginia, with General Motors' announcement that it would soon close a plant in Youngstown, Ohio, putting 1,500 people out of work in addition to the 3,000 autoworkers already laid off. Youngstown's population peaked in 1930 and has lost ground ever since, dropping 21 percent since 2000.

The concentration of jobs and wealth in a few metro areas is concerning for the strength of our nation's economy and democracy, as smaller communities may continue to dwindle in population, opportunity, and quality of life. Local efforts can help, but addressing these challenges will require federal commitments we have not seen in decades.

3. Alternative ownership structures raise opportunities

Alternative ownership structures are gaining prominence in policy circles, even if the enterprises themselves face challenges in growing. In an economy where business start-ups are at all-time lows and income inequality is at a modern high, co-op businesses offer alternatives to traditional shareholder- or proprietor-owned business structures. Expect more policy and philanthropic interest in co-ops in the year ahead, especially among worker cooperatives.

Co-ops are important in housing as well—including both high-end housing and affordable shared ownership, like what ROC USA does with mobile home parks. But other models of shared ownership are growing, too. Community land trusts (CLTs), like DC's new Douglass CLT, are getting attention in new ways.

For example, a recent survey of hospital CEOs shows respondents were interested in supporting CLTs. In a CLT, a nonprofit corporation buys or holds land and makes that land available for development that aims to improve the community while preserving access in communities undergoing rapid economic change. This model, among others, can help community anchor institutions like hospitals, churches, or universities take an even more active role in leveraging their land for community development in 2019.

4. Climate change will bring new disasters and the need for new funds

Natural disasters of increasing severity will continue to pose a threat in 2019, even while the recovery from 2018's hurricanes and wildfires remains unfinished. We anticipate that more states and localities will emphasize preparedness, and even the federal government will start to do better, rather than continuing to focus so heavily on recovery after disasters strike.

Yet, most federal disaster funds will still go toward recovery—for example, via the Community Development Block Grant program. There will be continued need to help communities build back in ways that are more resilient to future disasters and that take advantage of federal disaster funding—one of the few new, large federal supports available.

5. Reimagining public assets can boost safety and connectedness

Communities are also regaining an appreciation for public assets. Broadening from a purely economic lens, cities and counties will continue to rely on and repurpose their public assets—like parks, libraries, schools, and community organizations—to bring people together. "Creative placemaking" can build new economic bridges across communities while reducing the divisions that can jeopardize public safety.

These placemaking efforts also offer opportunities for residents to contribute to the reshaping of their community's places and spaces. In this way, placemaking activities are the connective tissue that brings together resources, capital, and actors to focus on revitalizing public assets.

The Urban Institute

by Brett Theodos & Erika C. Poethig

January 17, 2019

Struggling Law Enforcement Museum Defaults on Its Bonds.

- **Just months after opening, museum fails to make debt payment**
- **Joins ranks of financially struggling museums in muni market**

Not enough Americans are interested in what it's like to be a police officer to keep the National Law Enforcement Museum afloat.

The museum defaulted on a Jan. 1 payment due on some of the $103 million of bonds that financed its Washington, D.C., facilities near the Smithsonian, just months after it opened in October. It attributed the lapse to a failure to reach its fundraising goals and lower-than-anticipated revenue, according to a transcript of a conference call held with bondholders on Jan. 10.

The payment shortfall makes the museum — which bills itself as a place where people can "walk in

the shoes" of law enforcement officers — one of the rare borrowers in the $3.8 trillion municipal-bond market to default on its debts. It joins other museums that have struggled financially, including one in Nebraska devoted to the pioneers and the American Folk Art Museum in New York.

The National Law Enforcement Officers Memorial Fund, which borrowed the money for the museum in 2016, slashed its attendance forecasts to just 300,000 visitors in the first year from the 420,000 initially expected, according to the call transcript. It also cut its staff by 12 percent and raised ticket prices for adult visitors by $1 to $21.95.

It opened in October, during what museum officials said is a tough quarter for tourism in the nation's capital. During the fourth quarter, the museum posted a total operating loss of $1.9 million and is expecting a net loss of $5.6 million in 2019.

This month's default affected subordinate taxable bonds, according to the filing. About $460,000 of interest on those bonds wasn't paid.

Bloomberg Markets

By Amanda Albright

January 14, 2019, 10:46 AM MST

What Did the Midterm Election Results Mean for Water?

This year's midterm elections had the highest turnout in a half century, with 49 percent of the population voting for candidates at the national, state and local level.

In the U.S. House of Representatives, control flipped with Democrats poised to pick up nearly 40 seats. In the U.S. Senate, Democrats lost the seats they needed to defend in North Dakota, Florida, Missouri, and Indiana, but they did flip seats in Nevada and Arizona. Although the race in Mississippi headed to a runoff into late November, Republicans retained control of that seat, finishing the cycle with a net gain of two seats.

At the state level, Democrats flipped seven governor's mansions, while the GOP flipped the governor's seat in Alaska. That change in Alaska means Republicans control the governorship, the state house, and state senate. Democrats gained control of both houses and the governorship in six states: Maine, New York, Colorado, New Mexico, Nevada and Illinois. These changes at different levels of government will affect infrastructure and water policy, but some of the most significant support of those issues was demonstrated through ballot measures. Statewide ballot measures supporting investment in water infrastructure projects passed in Rhode Island and Maine, and a measure in Florida passed to ban offshore drilling beneath all state waters.

At the local level, there were even more ballot measures in support of water infrastructure investment. In Los Angeles, voters enacted a parcel tax to fund stormwater projects; in Denver, voters raised property taxes to fund flood warning systems and waterway clean-up; and in Houston, an amendment passed to establish a fund for flooding and drainage projects. These examples, as well as others in Philadelphia, Baltimore, Austin, and San Francisco, reinforce polling data that shows strong public, and bipartisan, support for water infrastructure investment.

According to research from the polling firms FM3 and Public Opinion Strategies, rebuilding

America's infrastructure is increasingly important to constituents. In a poll of 1,600 individuals across the country earlier this year, 89 percent of Americans see rebuilding the nation's infrastructure as very or extremely important, up from the 67 percent who said the same last year. There are many variables for why support is growing, but it is worth noting the overall composition of the electorate is changing, with younger, more diverse generations voting in larger numbers – and we know those demographics support investment in infrastructure.

Their polling research shows that voters of color are more likely to place importance on rebuilding infrastructure, with 94 percent of African-Americans and 92 percent of Latinos ranking the issue as extremely or very important, compared to 74 percent of white voters. It is important for elected officials to recognize that water infrastructure is widely supported across party lines.

For organizations working with incumbents or newly elected officials joining Congress in January, be mindful to frame water infrastructure in a way that illustrates the benefits of investment, and there are no political ramifications to supporting this issue. According to Lori Weigel of Public Opinion Strategies, people best understand the value of water through the lens of public health. By framing messages in terms of water quality's effect on health and safety, groups educating new Congressional members can help convey the urgency of rebuilding our aging infrastructure.

There are reasons to be optimistic for the chance of an infrastructure bill in the new Congress.

While politics may affect Democrats desire to work with Republicans and the President, many in the Democratic majority want to show that government can still be effective. Infrastructure would be a logical place to show the potential of bipartisanship.

Water Finance & Management

By Scott Berry

JANUARY 4, 2019

What Cities Are Getting Wrong About Public Transportation.

Cities could get more people walking, biking, and riding transit, according to a new report, if they just know where to look for improvement.

Each year, the U.S. Census releases an update in "commuting mode shares" in its American Community Survey. This is an annual accounting of the share of people in every U.S. city who bike, walk, or ride public transit to their jobs, as well as drive. Mostly the latter: Nationally, about 75 percent of the country is sitting alone in their cars every morning. About 10 percent carpool, 5 percent ride transit, and the last 10 percent either walk, bike, or work from home.

If you peruse this data-dump every year, you'll probably notice something: Despite the tireless efforts of transit planners, bike-lane boosters, and other actors in the mobility arena, the mode-share percentages don't seem to budge much in the any given growing city as they add more people, despite massive investments in transit infrastructure. Take Dallas, Texas, for example: In 1996, that city opened the first stage of its light-rail network, which has since grown into the largest system in the U.S., at a total cost of something around $5 billion. But the share of commuters in the city who ride transit has remained below 6 percent since 1990.

Continue reading.

CITY LAB

by ANDREW SMALL

JAN 17, 2019

How Placemaking Can Empower Urban Communities, Not Tear Them Apart.

Late last month, *The Guardian* published a piece with the somewhat incendiary title "How placemaking is tearing apart social housing communities." The article tells a distressing story of a local east London council forcing the relocation of social housing residents so the estate could be refurbished, and how years later, hundreds of units remain empty as displaced residents have yet been able to return. The details as described are a little murky — or perhaps I just got lost in the British English — but the author, Nye Jones, was crystal clear on one point: placemaking was to blame.

Having just launched the new Anne T. and Robert M. Bass Center for Transformative Placemaking, I was understandably anxious about how Jones was defining placemaking, as by the article title alone I was confident he didn't get it quite right. More than that, I had the foreboding feeling that placemaking might now be on the same slippery linguistic slope as "gentrification" — a word that Jason Segedy, in a recent City Observatory article, suggested has become "useless," with no agreed upon meaning.

Upon opening The Guardian article, I was even more disheartened to see in the subtitle that Jones was actually conflating the two terms, referring to placemaking as "gentrification by any other name." Indeed, Jones goes on to say that "placemaking" reflects developers' quest for culture and luxury whereby social housing tenants are "shooed out of the way" to make room for the affluent. So if I understand correctly, it appears that "placemaking" is now being used — by Jones and others in the UK, anyway — to describe the phenomenon of displacement once connoted by the now meaningless term "gentrification." Yikes.

Continue reading.

The Urban Institute

Jennifer S. Vey
Senior Fellow – Metropolitan Policy Program Director – Anne T. and Robert M. Bass Center for Transformative Placemaking

Wednesday, January 16, 2019

To Save the Planet, the Green New Deal Needs to Improve Urban Land Use.

The Fourth National Climate Assessment, released in November 2018, pulls no punches. United States communities are already experiencing tangible harms from climate change, and without substantial changes in human behavior, the situation will get worse. Environmental legislation may

get more attention in the current Congress: Rep. Alexandria Ocasio-Cortez (D-N.Y.) and other prominent progressives have called for a Green New Deal (GND). Early outlines for such a plan include a broad package of policies, such as transitioning to all renewable energy sources, restoring forests and wetlands, and upgrading infrastructure to be more resilient. However, the current plan does not address a major underlying cause of environmental harm—decades of poor urban land use decisions. Specifically, better urban land use would reduce greenhouse gas emissions (GHGs) from cars and limit the human and financial costs caused by developing environmentally risky land.

In developing an effective plan to address our climate challenges, proponents of the Green New Deal should consider the following tenets to improve urban land use.

Continue reading.

The Brookings Institute

David M. Rubenstein
Fellow – Metropolitan Policy Program

January 15, 2019

S&P U.S. State Sector 2019 Outlook: Caution - Slower Speeds Ahead

For the U.S. states, S&P Global Ratings' baseline economic forecast of slower growth in 2019 holds the potential for renewed fiscal strain. Although now long in duration, the economic expansion that began in mid-2009 has been shallow.

Continue Reading

Jan. 8, 2019

Fitch Rtgs: Data Breaches Highlight US Public Institutions' Cyber Risks

Fitch Ratings-Austin-09 January 2019: The recently reported data breach at San Diego Unified School District, affecting the personal data of as many as 500,000 students, underscores the heightened threat of cyberattacks that educational, governmental and healthcare organizations face due to the sizable amount of personal data housed on their networks, says Fitch Ratings. Cyber risk is not a driver of credit risk or rating actions. However, our ratings reflect issuers' overall resilience to manage and respond to changes in its operating environment, including risks associated with cyberattacks.

Data breaches in the education, governmental (including federal and military) and healthcare sectors (including private concerns) accounted for about 40% of total data breaches in 2017 and 2018, according to the Identity Theft Resource Center (ITRC). Approximately 27% of total breaches occurred in the healthcare sector. Combined data breaches for these sectors have increased 160% since 2005, with healthcare having the highest attributable growth, while governmental organizations realized modest improvement. The growth of Internet of Things (IoT), interconnected sensors embedded in technology, such as WIFI networks, building maintenance systems, medical

devices and traffic sensors, further contribute to cyber risk. IoT devices outnumbered the world's population in 2017 and are projected to double by 2020, according to Gartner technology consultants.

Cyberattacks create service disruptions for educational, healthcare and governmental organizations, adversely affecting their public service missions and resulting in increased costs. Incident response, crisis management, forensic services and restoration can cost millions of dollars for resource-challenged operations. Some organizations have also paid ransomware demands to retrieve data. Public confidence can also be affected if an organization is perceived to lack preparedness or if their response is seen as insufficient. Exposure of personal and sensitive data can lead to direct costs to personal consumers and loss of confidence in public organizations. Fifty-three percent of data breaches during 2017 exposed Social Security numbers and 19% exposed credit/debit card numbers, according to the ITRC.

The Department of Education has suggested that schools conduct security audits and train staff and students on data security best practices to mitigate cyberattacks. However, there are challenges to adopting cybersecurity best practices within schools as laws do not generally mandate comprehensive standards. Furthermore, these activities compete for scarce budget dollars. Governmental resources are available for guidance and support, such as those provided by The National Institute of Standards and Technology (NIST). However, NIST services have been recently curtailed due to the current lapse in governmental funding.

Contact:

Rebecca Meyer, CFA, CPA, CISA
Director, Public Finance
+1 512 215-3733
Fitch Ratings, Inc.
111 Congress Ave., Suite 2010
Austin, TX 78701

Justin Patrie, CFA
Fitch Wire
+1 646 582-4964
33 Whitehall Street
New York, NY 10004

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

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S&P U.S. Not-For-Profit Health Care 2019 Sector Outlook: Stable Overall, Yet Key Risks Remain.

S&P Global Ratings believes the outlook for the U.S. not-for-profit health care sector for 2019 remains stable. This reflects continued balance-sheet strength, a long-term trend of improving business profiles mostly from mergers and acquisitions, and a growing array of diversifying joint ventures.

Continue Reading

Jan. 10, 2019

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