Bond Case Briefs

Issue 347

Municipal Finance Law Since 1971

- Key Programs From Landmark $1.2 Trillion Infrastructure Act.
- Housing Provision in Reconciliation Bill Eases Private Activity Bond Cap.
- Muni Bond Prices Rally After Infrastructure Bill Leaves Out Market.
- Best Practices and Strategies for Public Investing: GFOA Webinar
- *In re Application of Suburban Natural Gas Company* – Supreme Court of Ohio holds – as a matter of first impression – that assessing whether property is "useful" for purposes of determining a public utility's rate base requires finding that the property be beneficial in rendering service for the convenience of the public as of the date certain.
- And finally, The Only Thing We Have To Mailbox Is Mailbox Itself is brought to us this week by *Smith v. City of Roswell*, in which a, "vehicle left the road and collided with two mailboxes." Ok. Not super cool but, whatever. Cleanup on Aisle 7 and all that. Until the opinion informs us that the fender-bender KILLED EVERYONE IN THE VEHICLE! How is this possible? Who made these? Of what do they consist? Thor's hammer? We fully understand that 20% off at Bed Bath & Beyond is an unalienable right, but still….

ZONING & PLANNING - CALIFORNIA

Chase v. Wizmann

Court of Appeal, Second District, Division 2, California - November 1, 2021 - Cal.Rptr.3d - 2021 WL 5045754

Property owners filed suit against neighbors and related defendants for private nuisance and other causes of action related to neighbors' air conditioning and pool equipment, and property owners sought preliminary injunction.

The Superior Court granted preliminary injunction ordering neighbors to move pool and air conditioning equipment. Neighbors appealed and the injunction was stayed.

The Court of Appeal held that:

- Municipal ordinance did not preclude nuisance actions for equipment noise that did not violate ordinance;
- Property owners showed likelihood of prevailing on merits of private nuisance claim; and
- Balance of hardships favored grant of preliminary injunction.

Municipal ordinance prohibiting operation of air conditioning, refrigeration, or heating equipment for structures, or operation of any pumping, filtering, or heating equipment for pools, above certain decibel levels did not preclude nuisance actions for equipment noise that did not violate ordinance, and thus, irrespective of an ordinance violation, plaintiff could claim the existence of a nuisance; ordinance did not expressly immunize all equipment noise below decibel level proscribed in ordinance or preclude nuisance liability for otherwise excessive or inappropriate equipment noise

below that level, and ordinances contained “catchall” for “any” loud noise, indicating possibility of unreasonable noise violations on case-by-case basis, irrespective of decibel level.

Property owners seeking preliminary injunction requiring neighbor to relocate air conditioning and pool equipment from below their bedroom window to other side of property showed likelihood of prevailing on merits of private nuisance claim at trial, though neighbors asserted that property owners’ noise concerns were not credible; record indicated near-constant equipment noise invading property at all hours, mostly at decibel levels in violation of municipal ordinance, reasonable persons of normal sensibilities would find that to be unreasonable amount and duration of noise near bedroom window and in their yard, noise deprived property owners from comfortable enjoyment of property, and property owners made several attempts to address noise concerns before seeking injunction.

Balance of hardships favored preliminary injunction requiring neighbor to relocate air conditioning and pool equipment from below property owners’ bedroom to other side of neighbors’ property, in property owners’ action raising private nuisance claim, though neighbor asserted that any noise violation was minor and controllable and that there were less burdensome alternatives than relocation; record indicated that equipment frequently operated all at the same time, at all hours of day and night, at decibel levels in violation of municipal noise ordinance, there was no guarantee that noise would be adequately controlled if equipment remained in place, and neighbor had already been ordered to comply with noise ordinance and had not done so.

IMMUNITY - GEORGIA

Smith v. City of Roswell

Court of Appeals of Georgia - October 18, 2021 - S.E.2d - 2021 WL 4840802

Survivors and administrators of estates of driver and passenger who died after vehicle left the road and collided with two mailboxes brought wrongful death actions against, inter alia, city and mailbox owners, asserting that mailboxes proximately caused the deaths and city negligently failed to remove the mailboxes.

The Superior Court granted city’s motions to dismiss, and denied surviving daughter’s motion to consolidate wrongful death and estate claims. Plaintiffs appealed.

On consolidated appeal, the Court of Appeals held that:

- Trial court’s alleged error in refusing to allow decedent’s surviving daughter to bring wrongful death claim when her mother declined to file the claim as surviving spouse was rendered moot when mother passed away;
- Trial court did not abuse its discretion in refusing to order consolidation of wrongful death and estate claims;
- Plaintiffs forfeited right to establish that city waived its municipal immunity by purchasing insurance; and
- Plaintiffs failed to establish that city had ministerial duty to remove mailboxes that were not in or on road.

DEVELOPMENT IMPACT FEES - NORTH CAROLINA

Plantation Building of Wilmington, Inc. v. Town of Leland

Supreme Court of North Carolina - October 29, 2021 - S.E.2d - 2021-NCSC-122 - 2021 WL 5024501

Builder brought action against town seeking refund of all impact fees and capacity fees collected by town as mandatory condition precedent to town issuing building permit.

The Superior Court granted builder's motion for class certification, which had been filed after summary judgment had been granted in builder's favor on issue of liability, and denied town's motion to dismiss for lack of subject matter jurisdiction and two other motions filed by town. Town appealed.

The Supreme Court held that town waived any objection that it may have had to trial court granting builder's motion for class certification after granting builder's motion for summary judgment on issue of liability.

Town waived on appeal any objection that it may have had to trial court granting builder's motion for class certification after granting builder's motion for summary judgment on issue of liability, in builder's action seeking refund of all impact fees and capacity fees collected by town as mandatory condition precedent to town issuing building permit, where motion for continuance filed by builder identified that issue of class certification would be resolved after addressing cross-motions for summary judgment, and expressly stated that both parties to action "join in and consent to this motion," and parties followed that sequence.

PUBLIC UTILITIES - OHIO

In re Application of Suburban Natural Gas Company

Supreme Court of Ohio - September 21, 2021 - N.E.3d - 2021 WL 4269964 - 2021-Ohi--3224

Public gas utility filed application with the Public Utilities Commission of Ohio (PUCO) for a rate increase to cover costs of a pipeline extension. PUCO approved the rate increase and denied consumers' application for a rehearing. Consumers appealed.

The Supreme Court held that:

- As a matter of first impression, assessing whether property is "useful" for purposes of determining a public utility's rate base requires finding that the property be beneficial in rendering service for the convenience of the public as of the date certain, and
- PUCO misapplied the used-and-useful test when it looked beyond the date certain and determined that utility's investment in the pipeline extension was prudent rather than useful, as justification for rate increase.

Whether something is used and useful, for purposes of determining a public utility's rate base, must be measured as of the date certain, not at some speculative unspecified point in time; thus, a public utility is not entitled to include in the rate-base valuation property not actually used or useful in providing its public service, no matter how useful the property may have been in the past or may yet be in the future.

The Public Utilities Commission of Ohio (PUCO) misapplied the used-and-useful test for determining public gas utility's rate base when it looked beyond the date certain and determined that utility's

investment in a pipeline extension was prudent rather than useful, such that there would be a rate increase so that utility customers would have to pay for it; used-and-useful test required measurement of the usefulness of the pipeline as of a the date certain, but the PUCO speculated about the pipeline extension's potential for saving time and money in the long run and looked beyond the date certain to find the extension useful.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Apartment Association of Metropolitan Pittsburgh, Inc. v. City of Pittsburgh

Supreme Court of Pennsylvania - October 21, 2021 - A.3d - 2021 WL 4901913

Landlord association brought action against city, a home rule municipality and city of the second class, for injunctive relief and declaratory judgment that city lacked authority to enact ordinance generally prohibiting denial of access to housing based on a tenant's source of income.

City filed motion for judgment on the pleadings, and association filed motion for summary judgment. The Court of Common Pleas denied city's motion, granted association's motion, and declared ordinance invalid and unenforceable under Home Rule Law. City appealed. The Commonwealth Court affirmed. Supreme Court granted city's petition for allowance of appeal, vacated order of Commonwealth Court, and remanded for reconsideration with instructions. On remand the Commonwealth Court affirmed.

The Supreme Court held that:

- General police powers provision of Second Class City Code (SCCC) did not expressly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating against tenants based on source of income, and
- Provision of Pennsylvania Human Relations Act (PHRA) authorizing municipalities to establish their own human relations commissions to combat discriminatory practices did not explicitly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating based on tenants' source of income.

ZONING & PLANNING - VERMONT

In re 15-17 Weston Street NOV

Supreme Court of Vermont - October 29, 2021 - A.3d - 2021 WL 5023586 - 2021 VT 85

Landlord sought review of city development review board's decision upholding a notice of zoning violation of occupancy restriction prohibiting more than four unrelated adults from occupying a rental unit in a residential low density zoning district.

The Superior Court granted summary judgment for city. Landlord appealed.

The Supreme Court held that:

- Ordinance limiting safe harbor provided by 15-year statute of limitations for zoning enforcement actions was valid exercise of city's authority, and
- Claim preclusion did not apply to bar enforcement action after prior permitting proceedings.

Ordinance limiting safe harbor provided by 15-year statute of limitations for zoning enforcement

actions, with respect to unlawful uses that were resumed after discontinuance for more than 60 days, was a valid exercise of city's authority to regulate zoning, where legislature conferred broad authority on municipalities to regulate land development, legislature expressly authorized municipalities to regulate and prohibit expansion and undue perpetuation of lawful preexisting nonconformities, nothing in statutory provision relating to discontinuances of preexisting nonconforming uses compelled a uniform temporal definition of discontinuance, and ordinance was consistent with and promoted the goals of zoning.

Claim preclusion did not apply to bar city from enforcing occupancy restrictions on rental property in residential low density zoning district, specifically the prohibition on more than four unrelated adults occupying a rental unit, after two permitting proceedings involving the property, where permitting proceedings involved the number of dwelling units that could exist on property rather than occupancy of any particular unit, and there was no record evidence or clear agreement among the parties that occupancy of the specific unit that was subject of enforcement action was at issue, or substantially identical, to a claim that was at issue in prior permitting proceedings.

Federal Infrastructure Funds Lessen Public Utility Operating Risk: Fitch

Fitch Ratings-New York/Austin-10 November 2021: The $1.2 trillion Infrastructure Investment and Jobs Act (IIJA), which will soon be signed by President Joseph Biden, includes significant capital funding for utilities to address much needed remediation and resilience projects that will update and replace aging infrastructure and reduce operating risk, Fitch Ratings says. Access to grants and low-cost financing under the IIJA lowers a utility's cost burden and reduces the need to rely on rate increases to cover costs, which alleviates affordability pressures on the rate base.

With more resilient systems, utilities will be better positioned to mitigate increasing weather and cybersecurity threats and avoid more significant costs in the future. While increased capital spending generally improves a utility's lifecycle ratio and annual capex/depreciation, we do not expect ratings upgrades in the near-term based solely on any improvement in these metrics.

The total $55 billion available to water utilities is unprecedented and addresses material infrastructure needs that accumulate as systems age. The IIJA adds over $23 billion for both the Drinking Water State Revolving Fund (SRF) and the Clean Water SRF to fund water projects at lower interest rates, resulting in lower debt carrying costs. Funding will provide water and wastewater utilities essential capital funding for remediation of lead service lines ($15 billion) and PFAS and other contaminants, including $5 billion through SRFs and $5 billion through the grant program for small and disadvantaged communities.

Many of the provisions in the IIJA are intended to broaden utilities' water portfolios, including $100 million in competitive grant funds for water storage projects. Water infrastructure in the western US will receive a separate pool totaling $8.3 billion. Over the medium to long term, these funds will help utilities in the west and southwest fund water storage and alternative water supply projects, such as water recycling, aquifer storage recovery and desalination, offsetting some of the supply pressures experienced due to prolonged drought conditions. The Drought Contingency Plan is also set to receive $300 million under the IIJA to address drought risks to the Colorado River water supply.

IIJA moneys supplement Local Fiscal Recovery Funds for state, local, territorial and tribal governments under the American Rescue Plan Act that may be spent on broader needs and initiatives. A significant portion of these funds are expected to be spent on water and sewer

infrastructure.

Water affordability is supported by the Low Income Water Assistance pilot program. This has limited benefit for most of our rated credits, which do not see material nonpayment or have a significant number of customers that would qualify.

Public power utilities will have access to funds that will provide necessary investment in grid resiliency, transmission and cybersecurity, allowing systems to limit incremental borrowings and moderate financial leverage. The most significant amount, $10 billion, is dedicated to strengthening the electric grid's resilience against extreme weather events, and another $3 billion is available to help increase grid flexibility to respond to events that cause demand volatility. Hydropower projects will receive a boost, with incentive payments in the amount of $628.6 million to help fund hydroelectric capital and efficiency improvements.

Funds are also available to assist public and private entities affected by cyberattacks, with an additional $250 million specifically for rural electric cooperatives or county-owned utilities to boost cybersecurity and respond to cyber threats.

Congress will continue discussions on the broader Build Back Better Act (BBBA) later this month. The BBBA currently includes additional public utility funding, particularly for disadvantaged and rural communities to replace lead service lines. Expansion of clean energy tax incentives are also part of the proposal.

S&P: For U.S. Public Power And Electric Cooperatives, There Are Hurdles On The Path To Decarbonization

Key Takeaways

- Although the U.S. electric utility sector has reduced carbon emissions over the past decade, much work remains to be done.
- Preserving credit quality will require public power and electric cooperative utilities to maintain affordable rates and provide reliable service as they transition from carbon-based power resources.
- To achieve affordability and reliability goals, utilities need to identify economical solutions that mitigate the intermittency of renewable resources and their sizable spatial requirements.

Continue reading.

8 Nov, 2021

Fitch: Infrastructure Bill Could Spur Overdue Road, Bridge Repairs

Fitch Ratings-New York-09 November 2021: The Infrastructure Investment and Jobs Act (IIJA) provides US state and local governments with important funding to accelerate efforts to address repairs and replacement of aging and failing transportation infrastructure, Fitch Rating says. The roughly $1 trillion bill passed by the House of Representatives on Friday and headed to the President's desk includes $110 billion for roads and bridges and $39 billion for transit systems. Federal spending can boost state and local transportation improvement efforts already underway, or

potentially spur new initiatives.

State and local governments own and maintain nearly the entire inventory of such transportation assets. Assessment of the condition and necessary maintenance costs for these assets is opaque and inconsistent across governments, with very few providing a thorough and current accounting of full needs.

For the past several years, the National League of Cities' Fiscal Conditions Report has indicated that infrastructure funding is among the main factors negatively affecting budgets. While the IIJA will help state and local governments address key infrastructure funding gaps, the substantial investments are one-time in nature, and responsibility for long-term, sustainable transportation funding remains with state and local governments.

Continue reading.

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Key Programs From Landmark $1.2 Trillion Infrastructure Act.

Last Friday the $1.2 trillion bipartisan Infrastructure Investment and Jobs Act ("Infrastructure Act"), which passed the Senate on August 10, 2021, was passed in the House. The $1.2 trillion Infrastructure Act includes $550 billion in new funding for private and public sector initiatives related to energy, transportation, water, manufacturing, technology, and environmental infrastructure.

The $550 billion in new spending includes: $110 billion for roads, bridges, and major projects; $66 billion for passenger and freight rail; $65 billion for broadband; $65 billion for power and grid; $55 billion for water infrastructure; $47.2 billion for resiliency projects; $39.2 billion for public transit; $25 billion for airports; $21 billion for addressing legacy pollution; $16.6 billion for ports and waterways; $11 billion for safety projects; $8.3 billion for western water infrastructure; $7.5 billion for clean school buses and ferries; $7.5 billion for electric vehicle charging; and $1 billion for reconnecting communities.

Now that the Infrastructure Act has been passed, Federal agencies will be tasked with shaping and administering a substantial number of programs related to the Act. For many of the programs, agencies will develop specific eligibility requirements, funding procedures, and compliance and reporting standards. In order to facilitate these processes, federal agencies may seek public comment and input on the administration of these programs. Continuing to monitor these developments is essential for businesses, nonprofits, local governments, and Tribal governments seeking to utilize these programs.

Below are some of the key programs in the Infrastructure Act:

Roads, Bridges, & Major Projects

- $36.735 Billion – Bridge Grant Programs

- $7.5 Billion – Rebuilding American Infrastructure with Sustainability and Equity Grants
- $5 Billion – National Infrastructure Project Assistance Grant Program
- $3.2 Billion – Infrastructure for Rebuilding America Grant Program
- $1.25 Billion – Appalachian Development Highway System Formula Program
- $1 Billion – Culvert Removal, Replacement, and Restoration
- $500 Million – Surface Transportation Private Activity Bonds

Passenger and Freight Rail

- $36 Billion – Fed-State Partnership Intercity Passenger Rail
- $16 Billion – Amtrak National Network
- $6 Billion – Northeast Corridor Grants
- $5 Billion – Consolidated Rail Infrastructure and Safety Improvement
- $3 Billion – Railroad Crossing Elimination Program

Broadband

- $42.45 Billion – Broadband Equity, Access, and Deployment Program
- $14.2 Billion – Affordable Connectivity Program
- $2.75 Billion – Inclusive Digital Equity Grant Programs
- $2 Billion – Tribal Grants
- $1 Billion – "Middle Mile" Broadband Infrastructure Grant Program
- $600 Million – Private Activity Bonds

Power and Grid

- $5 Billion – Preventing Outages and Enhancing the Resilience of the Electric Grid
- $5 Billion – Electric Grid Reliability and Resilience Research, Development, and Demonstration
- $3.5 Billion – Establish Four Regional Direct Air Capture Hubs
- $3 Billion – Deployment of Technologies to Enhance Grid Flexibility
- $3 Billion – Battery Material Processing Grant Program
- $3 Billion – Battery Manufacturing and Recycling Grant Program
- $2.5 Billion – Transmission Facilitation Program
- $2.5 Billion – Carbon Storage Validation and Testing Program
- $2.1 Billion – Infrastructure Finance and Innovation Act Program for Carbon Dioxide Transportation Projects
- $2 Billion – Pumped Storage Hydropower Wind and Solar Integration and System Reliability Initiative
- $1 Billion – Clean Hydrogen Electrolysis Program Research and Development Program
- $750 Million – Advanced Energy Manufacturing and Recycling Grant Program
- $553.6 Million – Maintaining and Enhancing Hydroelectricity Incentives
- $500 Million – State Energy Program
- $500 Million – Clean Hydrogen Manufacturing and Recycling Research and Development Program
- $500 Million – Clean Energy Demonstration Program on Current and Former Mine Land
- $310 Million – Carbon Utilization Grant Program
- $250 Million – Rural and Municipal Utility Advanced Cybersecurity Grant And Technical Assistance Program
- $250 Million – Enhanced Grid Security
- $200 Million – Electric Drive Vehicle Battery Recycling and Second-life Applications Program

Water Infrastructure

- $23.426 Billion – Drinking Water and Clean Water State Revolving Funds
- $13.8 Billion – Increased State Revolving Fund Authority
- $10 Billion – Perfluoroalkyl or Polyfluoroalkyl Substance Treatment
- $3.5 Billion – Indian Health Service Water and Sewer
- $2.5 Billion – Indian Water Rights
- $1 Billion – Bureau of Reclamation Water Programs

Resiliency

- $3.5 Billion – FEMA Flood Mitigation Assistance Program
- $1.7 Billion – Indian Health Services Sanitation Facilities Construction Enhancement
- $1 Billion – FEMA Building Resilient Infrastructure and Communities Program
- $1 Billion – State, Local, Tribal, and Territorial Cybersecurity Grant Program
- $500 Million – Forest Service Community Defense Grants
- $500 Million – Cyber Response and Recovery Fund

Public Transit

- $8 Billion – Capital Investment Grants Program
- $5.25 Billion – Low-No Program for the Purchase or Lease of Low-emission Transit Buses
- $4.758 Billion – State of Good Repair Grants Program
- $2 Billion – Transit Accessibility for Seniors and Persons With Disabilities Program

Airports

- $15 Billion – Airport Improvement Program
- $5 Billion – Airport Terminal Program
- $5 Billion – FAA Facilities and Equipment

Addressing Legacy Pollution

- $11.293 Billion – Abandoned Mine Land Reclamation Fund
- $4.7 Billion – Orphaned Well Site Plugging, Remediation, and Restoration
- $3.5 Billion – Superfund Projects
- $3 Billion – Brownfields Grants

Ports and Waterways

- $5.15 Billion – Army Corps of Engineers Construction
- $4 Billion – Army Corps of Engineers Operations and Maintenance
- $3.85 Billion – GSA/CBP Land Ports of Entry Modernization and Construction
- $2.25 Billion – DOT Port Infrastructure Development Program
- $912 Million – Ferry Boat and Terminal Construction
- $429 Million – U.S. Coast Guard Unfunded Priority Infrastructure
- $400 Million – Reduction in Truck Emissions at Ports

Safety

- $4 Billion – Safe Streets For All Program
- $1.1 Billion – NHTSA Highway Safety Programs
- $1 Billion – Pipeline and Hazardous Materials Safety Administration Modernization
- $500 Million – SMART Grant Program
- $467.5 Million – Motor Carrier Safety Assistance Program

- $200 Million – High Priority Grant Program

Western Water Infrastructure

- $3.2 Billion – Aging Infrastructure
- $1.15 Billion – Water Storage, Groundwater Storage, and Conveyance Projects
- $1 Billion – Water Recycling and Reuse Projects
- $1 Billion – Rural Water Projects
- $500 Million – Dam Safety Projects
- $400 Million – WaterSMART Water and Energy Efficiency Grants
- $300 Million – Drought Contingency Plan

Clean School Buses & Ferries

- $5 Billion – Clean School Bus Program to Reduce Emissions
- $1.25 Billion – Federal Transit Administration's Passenger Ferry Grant Program
- $1 Billion – Establishment of Basic Essential Ferry Services
- $250 Million – Grant Program for the Purchase of Electric or Low-emitting Ferries

Electric Vehicle Charging

- $7.5 Billion – Funds for Alternative Fuel Corridors and to Build Out a National Network of Electric Vehicle Charging Infrastructure

Reconnecting Communities

- $500 Million – Reconnecting Communities Pilot Program

Kilpatrick Townsend & Stockton LLP – Stephen M. Anstey and John C. F. Loving

November 8 2021

Housing Provision in Reconciliation Bill Eases Private Activity Bond Cap.

States would enjoy more private activity bond volume flexibility under an affordable housing provision in the Build Back Better bill.

The legislation would reduce the so-called financing test for tax-exempt private activity bonds to 25% from 50%. Lowering the threshold would free up states' private activity volume for more affordable housing, or any other projects eligible for PABs financing.

The threshold provision means developers would only have to use 25% of tax-exempt PABs in their capital structure instead of 50% to qualify for the 4% low-income housing tax credits that are key to the economic feasibility of many affordable housing developments.

"It is a huge change for affordable housing," said Jennifer Schwartz, director of tax and housing advocacy for the National Council of State Housing Agencies. "It's really going to significantly extend the amount of affordable housing that we'll be able to build."

States like California and New York that regularly hit their PABs cap would especially benefit from the lower threshold as it will free up PABs volume.

"Those states that are cap-constrained are going to have a lot more bond cap for other priorities," Schwartz said.

There are 20 states that are currently oversubscribed with their volume cap, according to professional services organization Novogradac, which has been analyzing the low-income housing provisions in the legislation. Another 23 states are undersubscribed and seven are at parity, the group said.

The latest version of the $1.75 trillion Build Back Better legislation features a swath of housing-related provisions that together would mean the creation of 936,900 additional affordable homes through 2031, according to Novogradac.

The lowered threshold provision is the largest driver of that new production, and would mean 712,400 more units, the group estimates.

The 4% housing tax credit is the "real economic kicker" for affordable housing, said Kyle Richard, an attorney with Foster Garvey's Public Finance & municipal Government Practice who has been tracking bond-related provisions in the Build Back Better bill.

"By making it so you only have to finance the project with 25% PABs, essentially that makes it so that you have to hit less volume cap so should be more volume cap available for everybody," Richard said. "Lowering the threshold also means you have tons more flexibility for how you build your capital structure."

Like other affordable-housing proposals, the lower threshold was stripped out of an earlier version of the Build Back Better bill but added back in the third version that the House Rules Committee released on Nov. 3.

The House could consider Build Back Better as soon as next week. The Senate would then take up the bill and is expected to impose its own changes.

"The provisions in the bill on the housing credit are very popular," Schwartz said. "I don't see these as being anything that would be targeted to be stripped out."

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 11/11/21

Infrastructure Bill Becomes Law.

President Joe Biden Monday signed into law a $1.1 trillion infrastructure package that will infuse billions into state and local governments.

"We're taking a monumental step forward to build back better as a nation," said Biden at a White House ceremony attended by lawmakers, governors, mayors and others. "Things are going to turn around in a big way."

The bipartisan Infrastructure Investment and Jobs Act, approved by the House in November and the Senate in August, features $550 billion for reauthorization of surface transportation infrastructure spending and another $550 billion for assets ranging from bridges, drinking water, public transit,

broadband, rail, electric vehicle chargers, ports and airports.

Biden said the package marked the "most significant investment in roads and bridges in 70 years, most significant investment in rail in 50 years and in public transit ever."

House Speaker Nancy Pelosi, speaking at the signing ceremony, called the bill the "biggest, boldest investment in our country's history."

Supporters say the program will generate thousands of new jobs, grow the economy and make the US more globally competitive.

For the municipal bond market, the infusion of federal money is expected to boost state and local credits. It may also accelerate local projects and lift new money supply as issuers take advantage of the federal cash by borrowing to jumpstart their own projects, said market participants said. Municipal Market Analytics projects the new law could boost 2022 new-money issuance to more than $300 billion, up from a pre-infrastructure bill estimate of $275 billion.

The package also doubles private activity bond volume for surface transportation projects to $30 billion from $15 billion, allows the use of PABs for broadband and carbon capture projects, and features other provisions that are expected to boost public private partnerships.

Biden has appointed former New Orleans Mayor Mitch Landrieu as senior advisor to oversee implementation of the infrastructure program. The president Monday also signed an executive order outlining six priorities for implementation – including building resilient infrastructure that can protect against climate change, effective coordination with state, local, tribal and territorial governments and equitable investment of the dollars – and establishes an Infrastructure Implementation Task Force.

"Today is a monumental day for infrastructure across the country. We look forward to working with the administration to track the funds and get the infrastructure investments where they need to go," said Emily Brock, the Government Finance Officers Association's federal liaison.

The Department of Transportation will allocate the money. In a Nov. 8 White House briefing, Transportation Secretary Pete Buttigieg said the agency would focus on supporting projects that show "economic strength, safety, climate, equity, and preparing for the future."

The largest states will get the most money under the new law. California would see $44.56 billion under the new law. Texas would see $35.44 billion and New York is slated to receive just under $27 billion.

The legislation will be paid for with various revenue streams, including more than $200 billion in unspent coronavirus funds.

The bill had been held up for weeks in the House as moderate and progressive Democrats hammered out differences on a companion bill, the $1.75 trillion Build Back Better legislation. With the infrastructure bill now law, all eyes will turn to Build Back Better, which the House has said it may vote on as early as this week. Moderate Democrats want to wait for a full score from the Congressional Budget Office, which has said it would have by Friday.

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL

[Construction Ahead: Roughly $1 Trillion Infrastructure Act Tackles Backlog And Future Risks]

Key Takeaways

- The Infrastructure Investment and Jobs Act will address traditional infrastructure needs across the U.S., supporting a continued economic recovery.
- Transportation aspects of the act will be the most visible to the average citizen with money for roads, bridges, airports, transit and rail.
- The bill targets both long-standing infrastructure needs and risks related to resiliency, energy transition, electric charging stations, and cybersecurity.

Continue reading.

10 Nov, 2021

[S&P U.S. Transportation Infrastructure Sector Update And Medians: U.S. Airport Sector View Is Now Positive]

Key Takeaways

- We are revising our U.S. airport sector view to positive from stable based on improving aviation industry conditions. This improvement is reflected in the strong rebound of U.S. domestic passengers in recent months, stabilization of airline credit conditions, massive federal assistance provided to the sector, and recovery in airports' revenue-generating capacity and rate-setting flexibility.
- Our airport sector median analysis and the modest degree of credit erosion across the sector highlight the significance of $15 billion-$20 billion in special federal COVID-19 relief grants, which operators used to pay debt service expenses and operating costs while preserving unrestricted cash reserves comparable with pre-pandemic levels. Separately, the recent passage of the $1.2 trillion Infrastructure Investment and Jobs Act will provide another $25 billion for the airport sector to fund capital projects over the next five years.
- Our analysis of 2020 airport medians revealed the effects of airport management actions taken to limit the financial implications of the precipitous drop in passenger traffic, with median debt service coverage (DSC; S&P Global Ratings-calculated) declining to an adequate 1.1x in 2020 from a strong 1.6x in 2019, while median liquidity levels fell by less than 6% to 489 days and median debt outstanding increased 21% to approximately $840 million.
- We expect the uneven enplanement recovery led by the domestic and leisure market segments will smooth out as business and international travel returns, aided by the lifting of certain travel restrictions on China, India, and much of Europe effective Nov. 8, 2021.
- Airports and related special facility issuers that demonstrate recoveries generally better than our activity estimates or demand levels sufficient to produce financial metrics we consider consistent with a higher rating on a sustainable basis are more likely to receive upgrades in the near term.
- We believe the experience and knowledge gained from handling the complex set of challenges from the severity of the COVID-19 pandemic will better prepare airport management teams and various stakeholders in addressing future shocks.

Continue reading.

10 Nov, 2021

America Has an Infrastructure Bill. What Happens Next?

Friday afternoons are typically the place to hide bad news, but that wasn't this.

Late Friday, November 5th, the House of Representatives passed the Senate version of the Infrastructure Investment and Jobs Act (IIJA). The bill now goes directly to President Biden's desk, where it will certainly become law. America finally has a generation-defining infrastructure bill—and if the reconciliation budget comes through, too, America will begin a building spree larger than what happened during the New Deal.

When landmark legislation like IIJA gets passed, it's easy to overemphasize victories on Capitol Hill. But that's not the case for infrastructure. Passing IIJA is only the end of the beginning.

Continue reading.

The Brookings Institution

by Adie Tomer, Caroline George, Joseph W. Kane, and Andrew Bourne

Tuesday, November 9, 2021

Fitch: Personal Income Spike Leads to Fall in Liability Metric for U.S. States

Fitch Ratings-New York-08 November 2021: Liability metrics for U.S. states fell for a fifth straight year in fiscal 2020, with a surge in personal income the primary catalyst, according to Fitch Ratings in its latest annual report. Actual liabilities remain largely unchanged over the past five years, however, indicating slow progress in addressing outstanding states' outstanding long-term obligations.

Federal measures to support individuals, businesses, and the economy at large helped spark the largest median state personal income jump in 14 years (6.3%). This resulted in Fitch-adjusted net pension liabilities (NPLs) as a percentage of personal income declining to 4.7% in fiscal 2020, from 5.2% as of fiscal 2019 across all states.

"Rapid personal income growth is likely to continue in 2021, given additional federal pandemic aid enacted early in 2021 and the broader economic recovery, with gains in 2022 likely to slow as federal aid expires," said Senior Director Doug Offerman. "Combined with rebounding investment markets, state liability burdens are likely to see further near-term declines."

Although their rankings shifted slightly compared to last year, the five states with the highest burdens remain unchanged, including Connecticut, Illinois, Hawaii, New Jersey and Alaska. Except for Alaska, the highest burden states have long-term liabilities above 20% of personal income. Fitch's data also shows 43 states with carrying costs below 10% of governmental expenditures in fiscal 2020, which Fitch views as low. Two states (Connecticut, Illinois) have elevated carrying costs in excess of 20% of governmental expenditures.

“States by and large avoided reductions to pension contributions as they addressed budget gaps with surging revenues and federal relief limiting fiscal damage from pandemic shutdowns,” said Offerman. “Solid contribution practices look to continue at least in the near term, given the expansive fiscal flexibility provided by the economic rebound and the continued availability of federal pandemic relief funds available to offset other state needs.”

Over the five years since changes to pension accounting resulted in more consistent reporting, the ratio of state pension assets to liabilities has barely changed. Adjusted to reflect a standard 6% investment return, the ratio stood at 61.7% in fiscal 2020, up from 60.4% in fiscal 2016. The stability of this ratio over time suggests that the state pension changes intended to improve sustainability have not yet meaningfully lowered pension burdens.

“State Liability Burdens Shrink in Fiscal 2020” is available at www.fitchratings.com.

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

Additional information is available on www.fitchratings.com

Sustainable Fitch ESG Encyclopedia.

The ESG Encyclopedia provides insights on the credit relevance and materiality of all sector specific environmental credit issues, including air quality, energy and fuel management, water, and more.

This volume of Fitch’s ESG Encyclopedia provides insights on the credit relevance and materiality of all sector specific environmental credit issues, namely:

- Greenhouse Heating Gas emissions and air quality
- Energy and fuel management
- Water
- Biodiversity and waste
- Exposure to environmental impact

It explains how these issues can translate into relevant credit issues and materialise as credit risks. As such, it constitutes an absolute reference for investment professionals who need to integrate ESG in their credit investment or risk management processes.

Download Now

S&P U.S. Not-For-Profit Health Care Rating Actions, October 2021.

S&P Global Ratings affirmed 22 ratings without revising the outlooks and took 13 rating actions in the U.S. not-for-profit health care sector in October 2021. One of the affirmed ratings also was removed from CreditWatch with negative implications. There were 21 new sales in October including a rating initially assigned to Vanderbilt University Medical Center, Tenn. The 13 rating and outlook actions were comprised of the following:

- Three upgrades, including two stand-alone hospital and one health system;
- Two unfavorable outlook revisions (to negative from stable); and
- Eight favorable outlook revisions (seven to stable from negative and one to positive from stable).

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in October. We based the credit rating affirmations and rating actions on several factors within enterprise and financial profiles, including business position, utilization, financial performance, debt levels, bond-issuance activity, physician relationships, and the external regulatory and reimbursement environment. This also incorporates our stable sector view and our assessment of COVID-19, staffing pressures, economic developments, and market volatility.

Continue reading.

12 Nov, 2021

NASBO Issue Brief: Outcome of Ballot Measures in the 2021 General Election

Read the NASBO Issue Brief.

Fitch Ratings in a Pandemic: Responsive and Measured

View the Fitch Special Report.

Thu 11 Nov, 2021

Muni Bond Prices Rally After Infrastructure Bill Leaves Out Market.

Yield on a 10-year tax-exempt triple-A muni bond has fallen 8% since Oct. 28

Municipal bond prices rallied over the past two weeks as investors abandoned hopes for a flurry of new bonds from Congress's $1 trillion investment in U.S. infrastructure.

The yield on a 10-year tax-exempt triple-A muni bond has fallen 8% since Oct. 28, according to ICE Data Services. Bond yields fall as prices rise.

The municipal market has largely been left out of the infrastructure package signed by President Biden Monday, as well as Democrats' follow-up social-spending and climate proposal, disappointing investors looking to buy new bonds and local governments trying to manage their debt loads. The package could still help strengthen city and state balance sheets, another possible reason for investor optimism.

Muni market wishlist items included in an earlier draft of included federally subsidized interest payments and a plan to restore the federal tax exemption for early refinancings.

"They left out the tried and true mechanism for building local infrastructure in America," said Ben

Watkins, director of Florida’s Division of Bond Finance.

In the long term, any investment in roads, sewers and trains is generally seen as good for the market since it helps boost municipal credit. The $1 trillion package could also eventually lead to more bond issuance because some projects will receive partial, rather than full, federal support, and states and cities will need to pay for the rest.

“In many cases the local contribution will come from municipal bonds,” said Patrick Brett, head of municipal debt capital markets at Citigroup and chair of the Municipal Securities Rulemaking Board, the muni bond industry’s self-regulatory organization.

But any immediate market impact will be muted. Congress’s decision to scrap the municipal bond proposals represents a move by federal officials toward paying directly for projects, rather than standing back and ensuring states and cities can borrow cheaply for infrastructure while leaving the details to the locals.

States, cities, counties and school districts borrow at reduced rates in the nearly $4 trillion muni market because investors don’t have to pay federal—and often state—taxes on the interest. Local officials retain wide discretion over the projects themselves.

A $3.5 trillion package considered in the House Ways and Means Committee in September included a measure based on the 2009-10 Build America Bonds program. State and local governments sold taxable Build America Bonds to a wide pool of buyers and the federal government paid a portion of the interest cost. That program spurred a record $273 billion in new borrowing in 2010, 54% higher than the yearly average over the past decade.

“It’s a great tool to have in the tool kit,” said Dallas Chief Financial Officer Elizabeth Reich, who urged a congressional committee to revive the program in March. The Omni Hotel in downtown Dallas was financed with the help of $388 million in Build America Bonds, Ms. Reich said.

Congress particularly disappointed participants in the supply-starved muni market with its decision not to restore municipal governments’ ability to refinance debt early at tax-exempt rates. That tool was eliminated in the 2017 tax overhaul to save the federal government money and mitigate the cost of tax cuts.

As a result, the many municipalities that rescheduled debt payments amid a pandemic-induced cash crunch over the past two years had to refinance at higher taxable rates.

Before the 2017 law change, cities and states could use tax-exempt borrowing when they wanted to refinance before a bond’s agreed-upon call date to cut interest costs or put off payments. They would issue a second set of tax-exempt bonds, invest the proceeds in safe, short-term securities, and then use those funds to make payments on the older bonds. It is a move that makes the most sense for borrowers when short-term rates are high relative to long-term rates.

But because both sets of bonds remained outstanding until the first set could be refinanced, and both provided investors with interest exempt from federal taxes, the federal government lost out on additional tax dollars. The Joint Committee on Taxation estimated that restoring advanced refunding would have cost the federal government $15 billion over the coming decade.

Municipal borrowers, for their part, could likely have reduced their interest costs, the reason the eliminated bill provision was a favorite of city finance chiefs and state treasurers. Ms. Reich estimated that Dallas saved $147 million with tax-exempt advanced refinancing between 2007 and 2017.

Money managers meanwhile said they would have welcomed an influx of new tax-exempt debt, even if it meant foregoing a bump in the value of their current holdings.

"You want to have a decent amount of supply to create a healthy market with opportunity," said Dan Solender, director of tax-free fixed income at asset manager Lord Abbett.

The Wall Street Journal

By Heather Gillers

Updated Nov. 15, 2021 4:35 pm ET

Muni Investors Stay Flexible As Rates Rise.

Summary

- Truly active managers shine in challenging investment environments, especially when they are given a flexible mandate.
- With tax-loss harvesting, active investors can deliberately sell at a loss to offset taxes on gains elsewhere in a portfolio.
- Rising rates may be less worrisome than expected, at least as far as muni investors are concerned.

Continue reading.

Seeking Alpha

Nov. 09, 2021

Supreme Court Wades Into Battle Between Billboard Advertisers and City Officials.

Industry seeks to lift limits on 'off-premises' signs

WASHINGTON—Supreme Court justices Wednesday stepped into an advertising industry battle that could reduce restrictions on billboards across the country.

At issue is a long-recognized difference between on-premises signs that flag a business or activity taking place at a specific location, and off-premises advertising to which most billboards are dedicated.

A billboard company in Austin, Texas, is challenging a local ordinance that makes such a distinction to restrict the proliferation of digital signs, arguing that the First Amendment precludes government from distinguishing between on- and off-premises locations.

The Austin municipal code prohibits converting conventional billboards to digital unless they are on the premises of the business or activity being advertised. Local billboard companies complain that the regulations amount to discrimination based on the content of the message, something government generally is forbidden to do. The city counters that the rules are based on where the

signs are located and not what they say.

Justice Brett Kavanaugh said that adopting the advertisers' view could disrupt sign regulations around the country.

"Unlike some of our decisions, this decision is going to affect every state and local official around America," he said. "They spend a lot of money and a lot of time trying to figure out how to comply with the First Amendment implications of sign ordinances."

According to a brief filed by the National League of Cities, the U.S. Conference of Mayors and other organizations representing local government, laws in at least 30 states and in thousands of jurisdictions distinguish between on- and off-premises signs "out of legitimate concerns regarding public safety and local aesthetics."

A decision in the case, City of Austin v. Reagan National Advertising of Austin LLC, is expected before July.

Reagan National Advertising argues that the premises distinction is unconstitutional in light of the court's 2015 decision striking down a Gilbert, Ariz., ordinance that restricted noncommercial temporary signs, with an exemption for political messages but not religious ones. A federal appeals court in New Orleans agreed, siding last year with advertisers.

In its brief, Reagan National Advertising said that digital billboards are superior to the conventional variety. "Digital billboards offer more opportunities to communicate with the public, because multiple messages can be displayed at a given time and updated instantly without the physical labor required to change a traditional billboard," the company said.

The city said in its brief that "signs can cause esthetic harms by their size, number, and placement. They can also pose traffic dangers by distracting drivers and obscuring views. Billboards, because of their size, prominence, and attention-getting designs, amplify those concerns. And digital billboards take those concerns to new levels."

At Wednesday arguments, justices expressed doubts that distinguishing between on- and off-premises businesses raised First Amendment concerns akin to discrimination regarding political, religious or artistic speech.

Chief Justice John Roberts said that treating the premises distinction as a content regulation could imperil the Highway Beautification Act of 1965, a cornerstone of the America the Beautiful program that limits outdoor advertising.

The highway law, a legacy of the late first lady Lady Bird Johnson, makes several distinctions among messages, permitting those from nonprofit groups advertising free coffee for weary motorists, and signs indicating lodging, gas stations, restaurants and other information useful to travelers.

The beautification act includes "five sign provisions, and under your theory, I suppose they would be unconstitutional," the chief justice told Kannon Shanmugam, the lawyer representing Reagan National Advertising.

Mr. Shanmugam said that it was possible the government could justify Highway Beautification Act distinctions enough to survive First Amendment scrutiny.

Several justices asked how the rule could apply to different messages.

“Let’s say a sign just says ‘Black Lives Matter,’” said Justice Neil Gorsuch. That wouldn’t be off-premises because it doesn’t mention a location. “But what if Black Lives Matter has a local office and it isn’t there?” he continued. “How about if it says ‘Black Lives Matter, Do Something About It,’ anticipating an upcoming rally, but no information is provided?” he said. Alternatively, he posited, what if it did include the location?

“Somebody’s going to have to read this and decide which side of the line these four examples fall on,” Justice Gorsuch said.

Justice Elena Kagan said that it was “formally true” that city officials would need to examine a sign’s content to determine whether it referenced an on-premises activity. On the other hand, she said, “there are some laws that sort of scream out not to worry in terms of any First Amendment values.”

The Wall Street Journal

By Jess Bravin

Nov. 10, 2021 5:51 pm ET

Investment In Stadiums And Municipal Bonds (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses, his recent column on the Buffalo Bills stadium, and other issues related to municipal bonds in Bloomberg Market’s “Munis In Focus”. Hosted by Matt Miller and Taylor Riggs.

Play Episode

Bloomberg Radio

November 12, 2021

Junk Munis Seeing Best Outperformance Since 2012 as Cash Returns.

- **Second-biggest inflow ever in high-yield munis extends advance**
- **Investors ‘want to be involved’ after seeing sector’s strength**

Junk-rated municipal debt is extending its biggest outperformance in almost a decade thanks to one of the largest weekly inflows ever seen into the sector.

Investors added $1.2 billion to high-yield muni mutual funds in the week ended Wednesday, second only to a slightly bigger intake in April, according to Refinitiv Lipper US Fund Flows data.

The rush of money, coming after Treasury yields appeared to stabilize below their October peak, marks a shift from the lackluster demand and even periods of outflows that the riskiest part of the municipal market saw in prior months.

“The pivot from demand sluggishness at the end of October back to strong inflows/demand over the past week has been pretty abrupt,” said Gabriel Diederich, a portfolio manager at Robert W. Baird &

Co.

Junk munis are poised to gain for a third straight week, something they haven't done since July. The segment has earned 7.2% this year, compared with 1.1% for the overall market for state and local-government debt, Bloomberg index data show. That performance gap is the widest since 2012.

With most of the fixed-income universe posting losses in 2021, munis have been a haven. They've lured money as the economy has recovered from the pandemic, federal relief has flowed to municipalities and as lawmakers in Washington debated steeper taxes on higher earners. That backdrop has benefited the riskiest debt most.

'Garnering Attention'

"The big outperformance that we've seen this year is garnering attention," said Kathleen McNamara, senior municipal strategist at UBS Global Wealth Management. "Muni investors chase returns, they saw how well muni high-yield has done and they want to be involved."

McNamara said that after yields on junk munis rose from the record lows seen this year, investors who had been waiting on the sidelines returned to the market. Then, after the securities staged a rebound this month, more buyers wanted to participate given that municipal credit remains strong.

There's also the fact that munis have entered a "stronger technical backdrop" in November with the calendar of new-issue sales dwindling before year-end and the need to start positioning for 2022, said Terry Goode, a senior portfolio manager at Allspring Global Investments.

That may benefit some high-yield bond sales on the horizon in the weeks ahead.

A conduit borrower in Phoenix, Arizona, is expected to sell $256.7 million of unrated, tax-exempt bonds to finance the construction of a hotel and conference center in Puerto Rico. Separately, Grand Canyon University in Arizona is slated to offer $1.3 billion of taxable, junk-rated bonds next week.

Bloomberg Markets

By Danielle Moran

November 12, 2021, 10:11 AM PST

Hotel Builder Misled Municipal Bond Investors, Trustee Alleges.

- **Hard Rock Hotel developer lied about construction loan: UMB**
- **Bonds defaulted when wholesale lender failed to fund loan**

The developer of a planned Hard Rock Hotel in a suburb of Kansas City, Kansas, allegedly defrauded investors who bought about $23 million municipal bonds issued to help finance the project, according to a lawsuit filed in federal court.

Minnesota developer D. Jon Monson said that he had a $52 million construction loan in place when he sold the bonds, but hadn't closed on that financing, which was only for $48.8 million, UMB Bank NA said in a Nov. 1 lawsuit filed in U.S. District Court in Kansas City. UMB is the trustee for the securities.

Monson was relying on a wholesale lender that in turn relied on third-party lines of credit to fund that loan, UMB said. The warehouse lender wasn't able to fund the project, meaning the project couldn't be completed and leaving no revenue to make required payments for the bonds, UMB said.

The developer also failed to contribute $3 million of the down payment deposit before the bonds were issued and "had no intention" of contributing $4.2 million for predevelopment costs and a $1.5 million equity payment, UMB alleged.

Monson didn't immediately return a call seeking comment.

The developer won approval from the city of Edwardsville in 2018 to build the 241-room hotel and conference center near the Kansas Speedway, a NASCAR racetrack. Edwardsville issued tax-free debt in 2019 backed by the 4,500-person city's hotel tax and incremental increases in property taxes generated by the project.

The case is UMB Bank, NA v. D. Jon Monson; Compass Commodities Group III, LLC; 11 Water LLC, One10 Hotel HRKC LLC' and One10 Hotel Holding LL, 21-cv-2504, U.S. District Court, District of Kansas.

Bloomberg Markets

By Martin Z Braun

November 9, 2021, 1:43 PM PST

Best Practices and Strategies for Public Investing: GFOA Webinar

November 30, December 1 & 3 | 12:30-3:15 p.m. ET

Details:
This course offers attendees a comprehensive agenda of the concepts and techniques needed to effectively manage their investment portfolios. This two-day course highlights the importance for governmental entities to have a robust investment policy and corresponding procedures, and brings attention to GFOA's best practices related to investing. Through interactive activities and classroom presentations, attendees will gain a better understanding of the various elements of an investment program, whether the portfolio is managed internally or externally. Topics covered include: cash flow forecasting, hiring and managing external professionals, types of investments commonly used in the public sector, investment strategies for liquidity and core investment funds, managing risks, benchmarking, and reporting.

Learning Objectives:

Those who successfully complete this seminar should be able to:

- Understand key components of an investment policy
- Develop an approach to cash flow forecasting and understand how that leads to investment decisions
- Understand key factors in hiring and managing external investment professionals
- Learn how to use tools to raise awareness of and develop tools to manage various risks related to investing

- Approach the multifaceted segments of investment strategies
- Choose the right benchmarking standard for your portfolios

Member Price: $315.00
Non-member Price: $630.00

Click here to register.

Section 48D: A New Tax Credit for Electric Transmission Property - Foley & Lardner

The Biden Administration has proposed the creation of a new tax credit under the new Section 48D of the Code for qualifying electric power transmission property that is placed in service after December 31, 2021, but before January 1, 2032 (such credit, the "**Section 48D Credit**"). The proposal would also allow a direct-pay option to elect a cash payment. The proposed credit would be for an amount equal to 6% of a to-be-determined eligible basis (the "**Base Rate**"), with a possible increase to 30% (the "**Bonus Rate**") if certain criteria are met.

Qualifying property would include overhead, submarine and underground transmission facilities meeting certain criteria, including a minimum voltage of 275 kV and a minimum transmission capacity of 500 MW, and any ancillary facilities and equipment necessary to operate such project. A qualifying electric transmission line may be a replacement, or upgrade, to an existing electric transmission line if the transmission capacity of such electric transmission line, as upgraded, increases to an amount equal to the existing capacity of such transmission line plus 500 MW. However, the basis allocable to the existing transmission line would not be eligible for the Section 48D Credit.

Certain property and projects already in process are not eligible for the Section 48D Credit if (i) a state or political subdivision thereof, any agency or instrumentality of the US, a public service or public utility commission or other similar body of any state or political subdivision, or the governing or rate-making body of an electric cooperative has, before the date of the enactment of these rules, selected such property for cost recovery, (ii) construction begins before January 1, 2022, or (iii) construction of any portion of the qualifying electric transmission line to which such property relates begins before January 1, 2022.

In addition to the technical requirements, to claim the credit at the Bonus Rate, the project must satisfy the new prevailing wage and apprenticeship requirements. To satisfy the prevailing wage requirement,any laborers and mechanics employed by contractors and subcontractors must be paid prevailing wages during the construction of such project and, in some cases, a defined period after. To satisfy the apprenticeship requirement, no less than the applicable percentage of total labor hours (5% for projects for which construction begins in 2022, 10% for projects beginning construction in 2023, and 15% thereafter) must be performed by qualified apprentices. Additionally, each contractor and subcontractor who employs four or more individuals to perform construction on an applicable project must also employ at least one qualified apprentice or, in the case of a lack of availability, show a good faith effort to do so. If a non-exempt project fails to meet the wage and apprenticeship requirements, but otherwise meets the technical requirements for the Section 48D Credit, such property will qualify for the Base Rate.

Finally, qualifying electric power transmission property is eligible for an increase to either the Base

Rate or the Bonus Rate if such project meets the domestic content requirement, which requires the steel, iron, or other manufactured products that comprise the project be produced in the United States (i.e., at least 55% of the total cost of the components of such product is attributable to components that are mined, produced, or manufactured in the United States). Projects satisfying this requirement could be eligible for a 2% increase to the Base Rate or a 10% increase to the Bonus Rate.

Friday, October 15, 2021

Foley & Lardner LLP

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

Court of Appeals of Georgia - October 26, 2021 - S.E.2d - 2021 WL 4979102

Licensed limousine carrier filed action challenging the decision of the commissioner of the department of revenue denying carrier's application for a refund of previously remitted state and local-option sales taxes as well as a declaration that owner would owe no such taxes in the future.

The Tax Tribunal granted summary judgment in favor of commissioner. Carrier appealed. The Superior Court affirmed. Application for discretionary review was granted.

The Court of Appeals, as a matter of first impression, held that Georgia Limousine Carrier Act did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers.

Georgia Limousine Carrier Act, which barred local governments from imposing excise, license, and occupation taxes on limousine carriers, did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers and their customers for the rental of limousines.

SEC Appoints New Director of Office of Credit Ratings: Cadwalader

The SEC named Ahmed Abonamah as its new Director of the Office of Credit Ratings. Mr. Abonamah had served as the Acting Director of the Office of Credit Ratings since October 2020.

Since joining the SEC in 2016, Mr. Abonamah has served in multiple roles within the SEC's Office of Municipal Securities, including as Deputy Director.

Cadwalader Wickersham & Taft LLP

November 9 2021

Nuveen Says Fortress-Backed Luxury Rail Has Path to High-Grade Rating.

- **Speculative venture seeks another $1 billion of tax-free bonds**
- **County fees may give Brightline access to larger buyer base**

A planned bond sale financing a speculative luxury train line in Florida can probably win investment-grade credit ratings, according to Nuveen Asset Management, the biggest holder of the project's debt.

Brightline Holdings, the train company backed by Fortress Investment Group, hopes to sell another $1 billion of tax-free bonds in the coming weeks to help pay for additions that can help the company profit from pandemic-linked migration to Florida. Brightline has previously sold $2.7 billion of tax-free securities that were unrated.

Florida counties would hand over fees to Brightline to add commuter service to its system, payments that would back the bonds. That revenue pledge should help the securities gain investment-grade ratings, said Ryan Rosberg, senior research analyst at Nuveen.

High-grade ratings can draw in a much broader array of investors than unrated securities attract. Muni-bond holders, often retirees looking for tax-free income, tend to crave safety, and the majority of the $4 trillion municipal-bond universe is ranked investment grade.

"An investment-grade rating clearly improves the liquidity and broadens the buyer base for these bonds," said Terry Goode, a senior portfolio manager at Allspring Global Investments, which doesn't hold any of the existing debt.

Asked about the rating potential, Brightline spokesperson Ben Porritt said, "it's our position not to speak publicly about financing plans as we formulate the details." Spokespeople for Moody's Investors Service, S&P Global Ratings, Fitch Ratings and Kroll Bond Rating Agency didn't answer queries on whether Brightline had approached them for grades.

The country's first new privately financed intercity passenger rail line in a century was launched in 2018 along Florida's east coast. Service resumed on Monday between Miami and West Palm Beach after stopping in March 2020 for the pandemic. A train hit a car carrying a woman and her grandchild on the first day, according to the Associated Press. The woman suffered broken bones while the boy didn't appear to be seriously injured, the report said.

When fully built, the system will cost $6 billion. For round trips on Tuesday, Brightline was charging $15 for seating in standard railcars and $37 for service that includes free drinks and lounge access.

The system's ridership and revenue fell short of estimates even before the onset of the Covid-19 outbreak. The company expects 2.89 million total passengers in 2022, and 9.5 million in 2023, which is due to be the first full year with service to Orlando.

On Thursday, Brightline Chief Executive Officer Michael Reininger said proceeds from the new bond sale would primarily go toward work on its existing line between Miami and West Palm Beach, and the expansion already underway of service to Orlando. Fees that Miami-Dade and Broward counties would pay to establish new commuter rail service along the Brightline corridor "have tremendous value," he said.

In documents posted for bond holders, the company said that for helping offer commuter service, it expects to receive as much as $50 million upfront, and then annual payments starting at $12 million from Miami-Dade County. It hasn't revealed estimates of the financial benefits from a Broward partnership.

The alliance with both counties is a positive, Nuveen's Rosberg said, adding that his firm's interest in the new debt will depend on relative value at the time of issuance.

A Brightline bond due in 2049 traded Nov. 5 at an average yield of 6.1%, unchanged from trading the previous week and lower than a high of 7.75% in January, according to data compiled by Bloomberg.

Bloomberg Markets

By Romy Varghese

November 9, 2021, 8:15 AM PST

Citi Says Ready to Resume Texas Muni Business After Gun Spat.

- **Halted deals after law sought to bar banks for gun policies**
- **Bank is 'prepared to resume serving issuer clients in Texas'**

Citigroup Inc. says it's prepared to restart its public-finance business in Texas after halting the operations in the wake of a new Republican law in the state that sought to bar it and other banks from such work as punishment for restrictive gun policies.

The lender says it's ready to once again underwrite new municipal-bond deals sold by Texas issuers, potentially marking a major win after it had to stop doing so in September. After being ranked as the biggest underwriter of Texas municipal debt in 2020, New York-based Citigroup has tumbled to eighth place this year.

The halt to its Texas public-finance business came after a state law went into effect that bars government entities from working with companies that "discriminate" against firearm entities or trade associations. The bank has made no substantive changes to its gun policy in response to the new law.

"We elected not to engage in primary market underwriting activity with public sector clients in Texas temporarily while we were working through the certification process, which included submitting a standing letter to the Office of the Attorney General," the bank said in a statement Tuesday through a spokesperson.

"Having made the certifications required by the new law, we are now prepared to resume serving issuer clients in Texas," the statement said.

The bank has had conversations with state officials as part of the certification process and is confident that it's able to resume muni deals, according to a person familiar with the discussions who asked not to be named as the conversations aren't public.

Resumption Seen Soon

The bank expects that it will be able to resume underwriting in Texas soon, the person said.

The Texas Attorney General's office didn't respond on Tuesday to email and phone messages seeking comment on Citi's announcement.

The state's law targeted Wall Street banks for wading into the debate over guns in the U.S. Bank of America Corp., JPMorgan Chase & Co. and Goldman Sachs Group Inc. also haven't underwritten munis sold by the state and its cities, schools, and transit agencies since the legislation took effect. Bank of America and Citigroup are the top two underwriters in the $4 trillion U.S. municipal market.

Citigroup has repeatedly said it can comply with the legislation and that it doesn't discriminate against firearm entities. In June, the bank said in a blog post that its policy "simply requires our clients to use best practices when selling firearms."

The Lone Star State is a crucial market for muni business thanks to a growing population that drives infrastructure needs. Texas-based borrowers sold more than $58 billion of municipal debt in 2020, the most of any state after California, according to data compiled by Bloomberg.

In the wake of mass shootings in the U.S., Citigroup in 2018 said it would prohibit retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21.

The sponsor of the Texas law, Republican state Representative Giovanni Capriglione, has said that policies taken on by Citigroup were an example of the type of company policy that his legislation was targeting.

Citigroup took a key step to restart its public-finance operations in Texas by submitting a letter last month verifying its compliance with the new law.

The bank sent a so-called standing letter to the Texas Attorney General's office, a requirement for banks if they want to do business with Texas and its local governments after the legislation took effect.

Bloomberg Markets

By Amanda Albright

November 9, 2021, 10:03 AM PST Updated on November 9, 2021, 1:25 PM PST

— With assistance by Danielle Moran

Illinois Projects Surplus But Gaps Come Back Next Four Years.

- **Fiscal 2022 surplus at $418 million: governor's budget office**
- **Holes in next four years to be smaller than previous forecasts**

Illinois, which has seen a vast improvement in its financial outlook over the last year, expects a bigger surplus this fiscal year and smaller gaps in the next four annual budgets thanks to a quicker than expected recovery in revenues and billions in federal aid.

The state's fiscal 2022 budget surplus will be $418 million, up from an earlier estimate of $88 million, as revenue from sales and income taxes increased more than previously anticipated and after the state taps about $2 billion of its more than $8.3 billion in American Rescue Plan Act funding, according to a report Tuesday from the Governor's Office of Management and Budget. Deficits will return from fiscal 2023 through 2027 but will be smaller than previously expected, according to the report.

“I am committed to building on this significant progress while tackling our remaining fiscal challenges,” Governor J.B. Pritzker said in a statement Tuesday. He added that he’s focused on working with the Illinois General Assembly to build “long-term fiscal stability for Illinois while ensuring economic opportunity in all of our communities.”

Pritzker’s budget office is projecting a 2023 shortfall of $406 million, down from $2.9 billion estimated in 2019, and the 2024 deficit was cut to $820 million from $3.2 billion, according to the statement. The state’s unpaid bills will drop below $2.75 billion by the end of fiscal year 2022 after topping $16 billion during the state’s budget impasse a few years ago.

“It stands on its own how remarkably improved Illinois’s budget situation is from all of 12 months ago,” Ty Schoback, a senior municipal research analyst for Columbia Threadneedle Investments, which owns Illinois debt as part of $17 billion in muni assets, said in an interview.

Big Turnaround

In November 2020, Illinois was facing the threat of its debt being downgraded to junk after voters rejected a shift to a graduated income tax from a flat rate. Pritzker had championed the move as a way to increase revenue and address the state’s structural deficits. At the time, Illinois was headed toward borrowing from the Federal Reserve’s Municipal Liquidity Facility for a second time because its penalty for selling debt in the $4 trillion muni bond market surged during the pandemic.

Since then, the state’s outlook has dramatically improved. In mid 2021, Illinois received upgrades from S&P Global Ratings and Moody’s Investors Service, the first in more than 20 years, while Fitch Ratings boosted its outlook to positive from negative. The state has paid off at least $2.2 billion of the total $3.2 billion it borrowed from the Fed. The extra yield it pays on on its debt compared to 10-year benchmark AAA muni securities has fallen to about 70 basis points from around 300 a year ago.

Schoback gives the state credit for taking prudent steps to improve its credit profile, including reducing its backlog of unpaid bills and interfund borrowing for liquidity. The key for Illinois will be to address longer-term financial pressures, such as its pensions, and building up its rainy day fund in meaningful ways, he said. The state’s unfunded pension liability has grown to around $144 billion.

In the report Tuesday, Illinois officials acknowledge that even with “a major sign of critical progress on state finances, and a significant improvement over previous projections for fiscal year 2022,” the state has much work to do.

“They have the ability to continue to improve their credit profile and secure further upgrades, but they can’t take their foot off the gas,” Schoback said. “The market will be receptive to slow and steady, but that trajectory needs to continue.”

Fitch Ratings is monitoring the state’s progress to “unwind” steps taken during the pandemic such as the Fed loan and inter-fund borrowing, and “real progress” on such items would support an upgrade, said analyst Eric Kim.

The firm has assigned the state’s debt a BBB- rating, one step above junk, but sees a positive trajectory given plans to pay down those liabilities and the continuation of “normal decision-making,” he said.

An impasse between then Governor Bruce Rauner and state legislators left Illinois without a full budget for more than two years between 2015 and 2017.

“That tone has shifted and if we continue to see that progress where things work in a more normal

way, that's a positive rating factor," Kim said in an interview.

Bloomberg Markets

By Shruti Singh

November 9, 2021, 3:09 PM PST Updated on November 10, 2021, 9:59 AM PST

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