// [Bond Case Briefs](#)

Municipal Finance Law Since 1971

Issue 491

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- [*Luebke v. Indiana Department of Local Government Finance*](#) – Tax Court upholds validity of sale-leaseback arrangement to finance construction of new jail; also upholds taxpayer standing to challenge the project. [Interesting discussion of taxpayer standing in public finance transactions.]
- And Finally, Shhh! The Shipping Container Can Hear You! is brought to us this week by [*Griswold v. City of Homer*](#), in which the Supreme Court of Alaska found that, "property owner's shipping container was incidental and subordinate to mobile home." We struggle to envision a scenario in which being "incidental and subordinate to a mobile home" could possibly be construed as a positive. Regardless, please help us verify this conjecture by referring to everyone in your orbit as "incidental and subordinate to a mobile home" (it's actually a rather creative insult) and tracking their reactions. Partners, spouses, children, pets. We look forward to your letters.

ZONING & PLANNING - ALASKA

[Griswold v. City of Homer](#)

Supreme Court of Alaska - September 20, 2024 - P.3d - 2024 WL 4246636

Neighbor of property owners who placed shipping container on their property to use as a vacation home sought judicial review of city board of adjustment's decision upholding city planning commission's decision upholding zoning permit issued to property owners.

The Superior Court affirmed and granted city's motion for attorney fees and costs. Neighbor appealed.

The Supreme Court held that:

- Board's interpretation of zoning code provisions to mean that a detached accessory dwelling unit that was a single-family residence was permitted without a conditional use permit was reasonable;
- Board had reasonable basis to conclude that property owner's shipping container was incidental and subordinate to mobile home, and thus constituted an "accessory detached dwelling unit" that did not require a special use permit;
- Board had reasonable basis for concluding that shipping container used by property owners as vacation home was not a nuisance;
- Zoning code requirement of stating the zoning use classification on an application for a zoning permit was "directory," rather than mandatory, such that only substantial compliance with the

requirement was required;
- Owners’ application for zoning permit substantially complied with requirement that applications state the zoning code use classification under which the permit is sought;
- City’s decision to impose fine on property owners for failing to obtain permit before placing shipping container on their property, rather than denying zoning permit, did not constitute a prohibited waiver of the zoning code requirements; and
- Neighbor failed to show that member of city’s planning commission held a disqualifying partiality against him.

PUBLIC LAWSUITS ACT - GEORGIA

Clay v. Morgan County

Court of Appeals of Georgia - September 30, 2024 - S.E.2d - 2024 WL 4341890

Residents who owned, leased, and lived on property zoned for agricultural and residential use in county brought action against county, seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by multi-county joint development authority, which leased property to private manufacturer, asserting that project would violate local zoning ordinances.

After being permitted to intervene, state and authority filed motion to dismiss for lack of jurisdiction, and county filed separate motion to dismiss. The Superior Court dismissed action, rejecting defendants’ argument that action was barred by Public Lawsuits Act but dismissing on other grounds. Residents, state, and authority appealed.

The Court of Appeals held that:

- Action was “public lawsuit” under Public Lawsuits Act;
- Resident’s prior lawsuit regarding project was “commenced” when it was filed with the court, for purposes of Act’s section prohibiting filing of other lawsuits against public improvement project after public lawsuit had been commenced; and
- Dismissal of current action, not residents’ other nearly identical action that was pending in different county, was warranted under Act.

County residents’ action seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, was “public lawsuit” under Public Lawsuits Act, which limited number of lawsuits that could be brought against public improvement project, though authority, in its bond resolution, stated that project was not public project under Local Government Public Works Construction Law and that statutes requiring contractors on certain public contracts to participate in federal work authorization program did not apply; residents alleged that project would violate local zoning laws, Act applied to broader array of projects than Construction Law, and statutes had no bearing on Act.

In the interest of judicial economy, Court of Appeals would exercise its discretion to decide question of law as to whether county residents’ prior lawsuit was a “public lawsuit” under Public Lawsuits Act, which limited number of lawsuits that could be brought against public improvement project, even though it was voluntarily dismissed without prejudice, rather than remanding for trial court to address issue in the first instance, when reviewing dismissal of residents’ action seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private

manufacturer, on ground that project would violate local zoning laws; material facts were undisputed.

County residents' prior lawsuit regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, was "commenced" when it was filed with the court, for purposes of section of Public Lawsuits Act prohibiting filing of other lawsuits against public improvement project after public lawsuit had been commenced, as supported conclusion that residents' subsequent lawsuit seeking declaratory and injunctive relief on ground that project would violate local zoning laws was barred under Act, even though prior lawsuit was voluntarily dismissed without prejudice prior to any ruling on its merits.

Under Public Lawsuits Act, which limited number of lawsuits that could be brought against public improvement project, dismissal of county residents' action seeking declaratory and injunctive relief regarding project to build electric vehicle manufacturing facilities on state-owned property that was leased by joint development authority, which leased property to private manufacturer, on ground that project would violate local zoning laws, not residents' other nearly identical action that was pending in different county, was warranted; other action was not before court, other action was filed earlier, and allowance of one public lawsuit was fulfilled before current action was filed.

SALE LEASEBACK - INDIANA

Luebke v. Indiana Department of Local Government Finance

Tax Court of Indiana - September 13, 2024 - N.E.3d - 2024 WL 4182290

Coalition of Allen County taxpayers objected to the Allen County Board of Commissioners' plan to build a new jail, challenging the legality of a lease approved by the Department of Local Government Finance (the "DLGF").

The new jail was projected to take at least three years to build, with an estimated cost of roughly $320 million. The Commissioners undertook several steps to move this project forward. For instance, they established the "Allen County, Indiana Building Corporation" to assist the County in financing its facilities by acquiring, owning, constructing, renovating, and leasing both existing and new county buildings. In addition, they planned to convey the historic Courthouse to this newly formed entity, which would then lease the property back to the County during the new jail's construction. The sale-leaseback plan for the Courthouse sought to reduce overall costs by avoiding approximately $28 million in capitalized interest expenses during the initial construction period, thereby lowering the lease payments for the new jail. The Building Corporation and the Commissioners executed a lease-purchase agreement ("the Lease") to implement the sale-leaseback plan and formalize the terms for leasing the new jail.

The objecting taxpayers contended that the lease was unlawful because the statutory framework for county leases did not permit the sale-leaseback of historical buildings long owned by the county, such as the Allen County Courthouse. They further argued that the jail's construction could not proceed because the resolution lacked the statutorily required determination of need for the Courthouse sale-leaseback.

The Commissioners argued that the taxpayers had not established an injury sufficient to confer standing because they had focused solely on the use of the Courthouse as a financing method for the new jail and that and that the lease and resolution comply with the law.

The Tax Court affirmed the final determination of the DLGF, holding that:

- The objecting taxpayers had standing to challenge the lease and the resolution; but
- The lease was legally valid under Indiana Code section 36-1-10-7(c).

"The Commissioners suggest that the Objectors have not been injured by the sale-leaseback of the Courthouse, when viewed as a separate, unrelated transaction from the jail project. However, they have provided no reason to consider these transactions in isolation. On the contrary, the Commissioners have consistently emphasized that the sale-leaseback of the Courthouse is integral to the new jail project. Indeed, the sale-leaseback is designed to generate revenue that will reduce lease payments by avoiding millions in capitalized interest during the new jail's construction. This demonstrates that the construction of the new jail and the sale-leaseback of the Courthouse are inherently interrelated, with the financing and execution of one directly impacting and supporting the other."

"An examination of the relationship between the sale-leaseback of the Courthouse and the new jail project confirms the Objectors' standing in this case. The sale-leaseback of the Courthouse is a means of funding the new jail project that directly impacts each of the Objectors individually as taxpayers and property owners. The Commissioners and the Building Corporation executed a single lease encompassing both the Courthouse and the new jail, creating a unified funding structure. The sale-leaseback is not merely an isolated transaction, but plays a critical role in generating substantial revenue to reduce the overall financial burden on other funding sources. The funds required to cover lease payments are sourced from the Jail LIT, economic development revenues from a local income tax and, if necessary, the County's property tax. Without this revenue stream, any shortfall would likely be offset by increasing reliance on the Jail LIT, economic development funds, or property taxes, directly affecting the taxpayer Objectors. Thus, the sale-leaseback and new jail project are not just parallel transactions, but form an interdependent funding framework that materially impacts the taxpayers and property owners of Allen County."

"The Commissioners' own arguments demonstrate that the sale-leaseback of the Courthouse is designed solely to fund the new jail project. Similarly, the Objectors challenge to the legality of the sale-leaseback, inherently involves the entire financing structure, which directly relies on taxpayer contributions, including the Jail LIT and potentially the County's property tax. As taxpayers and property owners, the Objectors are directly impacted by the commitment of their tax liabilities in support of this funding arrangement. Thus, their challenge is not just to the isolated transaction of the sale-leaseback of the Courthouse, but to a funding scheme that imposes a personal and imminent financial burden. Consequently, the Court finds that this impact constitutes a personal and direct injury, satisfying the requirement for standing."

ZONING & PLANNING - WASHINGTON

King County v. Friends of Sammamish Valley

Supreme Court of Washington, En Banc - September 19, 2024 - P.3d - 2024 WL 4231188

County appealed corrected determination by regional panel of growth management hearings board that most of county ordinance that amended land use code governing winery, brewery, and distillery

facilities did not comply with the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA).

The Superior Court transferred the appeal to the Court of Appeals pursuant to the Administrative Procedure Act (APA), and the Court of Appeals reversed and remanded for finding of compliance. The Supreme Court accepted review.

The Supreme Court held that:

- Amendment did not comply with the GMA, and
- Determination of nonsignificance (DNS) which county issued for amendment did not comply with the State Environmental Policy Act (SEPA).

County's amended land use code governing winery, brewery, and distillery facilities in rural and agricultural areas, which county determined was a nonproject action and made a threshold determination of nonsignificance (DNS), did not comply with the Growth Management Act (GMA); development of rural and agricultural land with no environmental review failed to maintain the natural resource industries and failed to protect water quality, while county's DNS checklist did not address any potential environmental impacts and concluded no potential environmental impacts existed, and ordinance allowed accessory uses of wine tasting and large-scale events with no adequate regulations and adequate setbacks to prevent conflicts with agricultural activities.

Threshold determination of nonsignificance (DNS) which county issued for amendment of land use code governing winery, brewery, and distillery facilities in rural and agricultural areas did not comply with the State Environmental Policy Act (SEPA); amendment created opportunities for new and existing businesses to open or expand operations within land classified as rural and agricultural, and it was very probable that the affected land, which was in a popular winery destination area, would be used in that manner, and SEPA checklist which county used did not disclose potential environmental impacts from the potential expansion of facilities in the area.

SIFMA US Municipal Bonds Statistics.

SIFMA Research tracks issuance, trading, and outstanding data for the U.S. municipal bond market. Issuance data is broken out by bond type, bid type, capital type, tax type, coupon type and callable status and includes average maturity. Trading volume data shows total and average daily volume and has customer bought/customer sold/dealer trade breakouts. Outstanding data includes holders' statistics. Data is downloadable by monthly, quarterly and annual statistics including trend analysis.

YTD statistics include:

- Issuance (as of August) $381.2 billion, +35.5% Y/Y
- Trading (as of August) $13.0 billion ADV, +3.6% Y/Y
- Outstanding (as of 2Q24) $4.1 trillion, +1.8% Y/Y

Download xls

October 2, 2024

Obligate It or Lose It! Preparing for the Upcoming ARPA SLFRF Obligation Deadline.

The passage of the American Rescue Plan Act (ARPA) in 2021 provided a lifeline for local governments through its State and Local Fiscal Recovery Funds (SLFRF) program, which awarded every municipality a portion of $65.1 billion in funding. June 2024 marked three years since initial disbursement, and the next three months are the home stretch for cities, towns and villages to obligate the funding they received under the SLFRF program. ARPA regulations require local governments to return grant funding that remains unobligated beyond the end-of-year deadline to the U.S. Department of Treasury, rendering this deadline one of the most important for cities, towns and villages. With three months left until the Dec. 31, 2024 obligation deadline, local governments must obligate funding now or risk potential clawbacks of these funds.

To assist municipal government with remaining unobligated fiscal recovery funds, NLC and the U.S. Treasury hosted a webinar to clarify and answer questions related to the obligation deadline. Local leaders and grant administrators can watch the webinar here. Other resources include the Obligation Interim Final Rule (IFR), the U.S. Treasury's FAQ with updated obligation answers and Obligation IFR Quick Reference Guide.

How do you know if you've obligated your funds?

The US Code of Federal Regulations defines "obligation" as "an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment." The U.S. Treasury has further clarified that "similar transactions that require payment" may include certain interagency agreements and, under certain circumstances, payroll expenses for recipients' employees. Consequently, municipalities must do more than budget their SLFRF dollars — they must allow extra time to place orders and negotiate contracts. Finalizing obligations, including funds used for revenue replacement, includes reporting the obligation through the normal reporting process. Subrecipients are not subject to the Dec. 31, 2024 obligation deadline. Subrecipients and contractors do not need to take additional steps to obligate funds after entering a subaward or contract with the recipient.

Continue reading.

National League of Cities

By: Patrick Rochford, Julia Bauer & Michael Wallace

October 1, 2024

Fitch Ratings Updates Criteria for U.S. Public Finance Prerefunded Bonds.

Fitch Ratings-New York/Chicago-04 October 2024: Fitch Ratings has published an updated criteria report titled "U.S. Public Finance Prerefunded Bonds Rating Criteria." It updates the prior report published on Dec. 14, 2020.

No changes to Fitch's underlying methodology were made, and the key elements of Fitch's prerefunded bonds rating criteria remain consistent with those of its prior criteria report.

The full report is available at www.fitchratings.com.

[Fitch: US Public Finance Credits Resilient Amid Hurricane Helene Recovery]

Fitch Ratings-New York-03 October 2024: U.S. public finance issuers affected by Hurricane Helene will require time to recover from severe flooding, substantial property damage and the tragic loss of life, Fitch Ratings says. However, these issuers' ratings should largely remain stable amid challenges posed by the devastation. While the full extent of property damage in the Southeast will not be known for weeks, Fitch is monitoring various U.S. public finance credits affected by the hurricane, which was one of the largest storms to ever hit the U.S.

Federal relief funds, state support, insurance claims and private resources will help rebuild and drive post-disaster economic activity. We expect the pace of recovery to be slow due to the extensive devastation, compounded by uncertainty related to uninsured homeowners and businesses. Standard homeowners' insurance does not typically cover flood damage.

We expect state and local government ratings to remain stable throughout the recovery. Timely federal intervention, primarily through the Federal Emergency Management Agency (FEMA), is key to supporting fiscal stability for governments affected by the storm. The most affected states (Florida, Georgia, Tennessee, North and South Carolina) all have ample dedicated operating reserves totalling over several billion dollars each, as well substantial additional resources to cover short-term recovery and rebuilding costs.

Most Fitch-rated local municipalities have a high degree of fiscal resilience and robust reserves to manage storm expenses as they await reimbursement from federal and state disaster aid programs. Certain issuers will be more challenged as recovery costs could weaken reserves, and extensive property damage could lead to higher property tax delinquencies. Tax bases could also be affected if hurricane damage leads to permanent relocations or if increased insurance costs or insurance unavailability discourage homeowners and businesses from rebuilding.

Our insurance team has initially estimated an insured loss range from $5 billion to $10 billion. Florida's state-owned property insurer Citizens Property Insurance Corporation (AA/Stable), the insurer of last resort, has leading market share in both personal and commercial lines. Both Citizens and the Florida Hurricane Catastrophe Fund (AA/Stable), the state-sponsored reinsurer, have ample liquidity to address initial claims or reimbursements. They can also issue debt and levy emergency assessments on nearly every property and casualty insurance policy in the state for as long as debt is outstanding to cover claims volume. However, the potential for significant leverage on the assessed base could weigh on residents and businesses.

Power utility lines were heavily damaged in areas across the Southeast, and there are still nearly one million customers without power. Extensive mutual aid agreements among utilities outline the framework for assistance and cooperation to get power restored as quickly and safely as possible, but it will likely take time in areas with extensive damage. Power utilities typically manage costs associated with extreme weather events through robust cash reserves and liquidity facilities designed to bridge the timing between restoration costs and reimbursement by FEMA. FEMA typically reimburses around 75% of restoration costs.

Most Fitch-rated water and sewer utilities affected by the hurricane have robust liquidity and should be able to absorb initial storm costs. However, storm surges and flooding can overwhelm systems,

causing sewer overflows that may result in water quality issues. Fitch is still assessing the full impact of the storm on utilities.

While we are still monitoring our rated not-for-profit hospital and life plan community (LPC) portfolio, most facilities appear to have avoided significant damage. Nevertheless, necessary repairs or clean up could cause business interruption. Hospitals and LPCs will benefit from FEMA aid and business interruption insurance, although receipt of these funds could take time.

S&P U.S. And Canadian Public Port Facilities Ratings And Outlooks As Of Oct. 1, 2024

View the S&P Ratings and Outlooks.

S&P U.S. Community College District Fiscal 2023 Medians: A Reason For Optimism As A New School Year Gets Under Way

Key Takeaways

- U.S. community college demand metrics are showing signs of rebounding following material declines in recent years, spurred by the impact of the pandemic.
- Despite the exhaustion of federal relief funds, community colleges posted relatively consistent margins for fiscal 2023 compared with pre-pandemic levels, while strengthening liquidity in the same year due to improved state funding and prudent management.
- Financial resource ratios have remained relatively consistent over the past three years while debt levels and leverage ratios indicated modest increases likely due to higher construction costs and market conditions over the same time horizon.

Continue reading.

1 Oct, 2024

Alabama College Reaches Deal With Nuveen After Bond Stress.

- **Deal requires Spring Hill to raise $5 million by Oct. 31**
- **Leadership is evaluating options to divest noncore real estate**

Spring Hill College, the oldest Catholic educational institution in the southeast of the US, has struck a deal with its biggest creditor Nuveen that gives it more time to shore up its finances and overcome a default.

The Mobile, Alabama-based college entered into what’s known as a forbearance agreement with UMB Bank — the trustee for bondholders like Nuveen — after breaching a covenant, according to an Oct. 1 regulatory filing.

As part of such agreements, bondholders can agree to hold off on steps like lawsuits to give

distressed borrowers more time to right their finances.

Continue reading.

Bloomberg Markets

By Amanda Albright and Nic Querolo

October 2, 2024

Columbia Is the Latest Ivy League School to Tap Muni Debt Market.

- **Ivy League schools have borrowed $2.8 billion so far this year**
- **Colleges are rushing to sell bonds to spruce up campuses**

Columbia University is expected to tap investors to borrow $500 million of debt, joining a boom of elite colleges that have issued in the capital markets this year.

The Ivy League university is poised to sell both tax-exempt and taxable securities this week to raise money for projects across its campus in Manhattan. A portion of the bond proceeds will be used to pay for improvements to multiple dorms, the addition of chemistry and quantum physics lab-space in academic buildings, furnishing the law school's library and upgrades to the college's medical center campus.

The deal marks one of the latest debt offerings from a US college, which have surged this year as the direction of interest rates stabilized and investor demand increased. Universities broadly have sold $24 billion of municipal debt so far in 2024, with sales from Ivy League schools climbing to nearly $3 billion, an increase of more than 650% from the same period a year ago, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Markets

By Lily Meier

October 1, 2024

Small Water Utilities Cannot Achieve PFAS Cleanup On Their Own.

COMMENTARY | Limited budgets, smaller customer bases and skeleton crews put a heavier PFAS burden on rural systems; polluters should be held accountable.

In the United States, 95% of all public water systems have less than 10,000 customers (79% serve fewer than 500 people), and nearly 85% of those systems have three or fewer full-time employees. With such small staffs, many historically have suffered from "management limitations, lack of long-term planning, and difficulty understanding current and future regulations."

The Environmental Protection Agency has now released final Maximum Contaminant Levels (MCLs) for PFAS (per- and polyfluoroalkyl substances, aka “forever chemicals”) in drinking water. The regulation targets six specific compounds and has two key deadlines: initial monitoring for these PFAS by April 2027 and mitigation of these PFAS, if detected above the MCLs, by April 2029.

The costs of meeting these two deadlines may include: monitoring and testing; piloting, designing and installing a treatment system; operator training; operation and maintenance of the treatment system; disposal and/or destruction of PFAS-contaminated filter media; and public notification regarding PFAS levels and violations. The EPA has estimated that the costs of monitoring, communication and treatment alone could reach as high as $1.5 billion per year. The costs of not meeting these deadlines may include penalties and liability.

Continue reading.

Route Fifty

By Mike DiGiannantonio,
SL Environmental Law Group

September 30, 2024

WSJ: Why Investors Are Putting More Money in State-Specific Muni ETFs

These exchange-traded funds could be especially attractive if tax cuts aren’t extended at the end of 2025

Against a backdrop of falling interest rates and tax uncertainty with 2017’s tax law set to expire next year, individual investors are turning to state-specific muni ETFs.

ETFs offer investors lower taxes than mutual funds or individual munis because they rebalance and reinvest with the goal of keeping taxable events at a minimum. ETFs also allow investors to get started in municipal bonds at a low cost and exit relatively easily if they wish. Mutual funds, by contrast, tend to have higher minimum investments and trade only once a day.

“We are seeing a significant shift in preference among investors,” says Alex Petrone, director of fixed income for Rockefeller Asset Management, which issues state-specific muni ETFs.

State-specific ETFs

ETFs’ tax efficiency and investment flexibility could come in handy if certain provisions of 2017’s Tax Cuts and Jobs Act expire at the end of 2025, as is currently set.

Historically, tax-exempt municipal bonds become more popular if personal income taxes increase. If the current tax cuts fully expire at the end of 2025 and personal income-tax rates revert to pre-2017 levels, taxes will increase across all tax brackets. Interest payments from tax-exempt municipal bonds are tax-free at the federal level, which can help offset increases in income tax.

What’s more, the fate of the $10,000 cap on state and local tax deductions—the so-called SALT deduction—could stoke more demand for state-specific muni ETFs. Democrats have indicated they will let the cap expire if it can be offset by increases in other tax revenue. The Republican position is

less clear; former President Donald Trump said recently he is open to eliminating the cap, marking a shift from his previous position to keep it. Congressional Republicans have supported keeping the cap in place in the past as well.

If the SALT cap is retained or lowered, muni pros say that could make in-state bond investments more attractive over the long term as interest payments from in-state bonds are generally tax-exempt if the investor is local. The cap is already giving a boost to these bonds, but they could look better on a relative basis if personal income-tax rates rise but the SALT cap is retained.

While passive state-specific muni ETFs have been around since at least 2007, issuers have been launching more of them thanks to increased investor interest. Since 2023, at least eight new funds have launched, bringing in more than $500 million in investments.

So far these funds focus on California and New York, which along with Texas, are the largest issuers of municipal bonds, accounting for about 40% of total issuance.

These funds are actively managed, which tends to make them more expensive than passive funds. They have expense ratios ranging from 0.35% to 0.55% compared with 0.05% to 0.10% for passive funds.

Timeline matters

Investing in state-specific ETFs may also be one way to diversify a municipal-bond portfolio. These ETFs have bonds that when considered together are of intermediate time to maturity—about 10 years. Longer-term bonds have different risk profiles than short-term bonds. If interest rates continue to go down and bond prices rise, investing in bonds with a longer time to maturity means that investors could lock in the higher prices for longer if they start to adjust their portfolios now.

Matthew Hage, municipal-bonds portfolio manager at investment manager MacKay Shields, says that as interest rates rose in recent years, both taxable and tax-exempt bonds had higher yields with shorter maturities because they were trading at a higher price. Now that interest rates are falling again, it may be time for investors to change how they invest in bonds. Hage says if investors are willing to invest in longer-term bonds, those bonds will have higher yields, which means higher income.

“The reinvestment window sneaks up on you pretty quickly if you are reaching it every three to six months with short-dated maturities,” he says. “There is an opportunity now to lock in higher yields for a longer duration and protect against downside risk.”

The Wall Street Journal

By Bailey McCann

Oct. 4, 2024 10:00 am ET

What State Hiring Trends, Fed Rate Cuts Mean for Munis.

Cooper Howard, Schwab Center for Financial Research’s director of fixed income strategy, discusses recent trends in state and local government hiring and what Federal Reserve rate cuts means for municipal bond issuance in 2025. He speaks on “Bloomberg The Close.”

Watch video.

Bloomberg Markets: The Close – Muni Moment

October 4th, 2024, 10:19 AM PDT

Private Equity-Backed Texas Housing Development Taps Muni Market.

- **Muni authority seeking debt for residential development**
- **Developers are planning to build more than 1,000 homes**

In suburban Texas, a neighborhood complete with an amphitheater, dance hall and goat farm is scheduled to be erected 40 miles from Houston's downtown — providing municipal-bond investors a window to bet on one of the fastest-growing areas of the US.

In a transaction that priced this week, a municipal authority sold high-risk, tax-exempt bonds to finance infrastructure associated with a housing development dubbed Two Step Farm. The planned community stretches more than 2,000 acres in Houston's sprawling metropolis. Once built out, the development will have more than 1,000 homes priced between $350,000 and $1 million, as well as parks and amenities.

The bonds are backed by future revenues generated by the project, meaning investors are wagering that the development will be built out and populated. Texas metros are seeing the most sustained population growth of all the nation's major cities this year, according to US Census Bureau data. Houston added nearly 140,000 people to its population this year, following closely behind Dallas. San Antonio and Austin also ranked in the top 10 of the largest increases in new residents.

Continue reading.

Bloomberg Markets

By Sri Taylor

October 4, 2024

S&P: California Utilities Enter Period Of Significant Capital Spending That May Strain Water And Sewer Rate Affordability

Key Takeaways

- Rising costs and affordability risks will be increasingly meaningful to municipal utility credit quality in California, particularly as they adapt to more extreme weather patterns, bolster supply resiliency, and invest in storage, which we expect will raise debt levels but reduce operating risks.
- California utilities' capital plans and needs far exceed those of its national peers, given their outsized exposure to water contaminants, strict wastewater discharge requirements, and substantial renewal and replacement costs.
- Rating downgrades in California outpaced upgrades in 2024, a trend we expect will continue through 2025, consistent with our negative sector outlook.

Continue reading.

3 Oct, 2024

BLX/Orrick 2024 Post-Issuance Compliance Workshop (NEW!)

November 21 & 22 | Austin, TX and Virtual

A Comprehensive Overview of Post-Issuance Compliance Rules and Regulations for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing

Click here to learn more and to register.

The SEC's Recent Off-Channel Communications Settlements Create More Uncertainty: Morgan Lewis

Since December 2021, the US Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) have been conducting a sweep of Wall Street's "off-channel" communications—such as text messages, iMessages, WhatsApp messages—sent and received by employees of registered entities using their personal devices. Despite more than 80 SEC-settled orders in the off-channel space (and nearly as many with the CFTC), the path to compliance for broker-dealers, investment advisers, and other financial institutions is still far from clear and numerous questions remain.

BACKGROUND

The SEC's sweep first focused on the largest broker-dealers, then quickly expanded in scope. Over the last four years, more than 100 entities have settled off-channel recordkeeping charges, including broker-dealers, dually registered broker-dealer/investment advisers, standalone investment advisers, credit ratings agencies, and municipal advisors.

These firms have been charged with, among other things, violations of the recordkeeping rules promulgated under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940. [1] Until recently, the settlements have included civil penalties ranging from five to nine figures (with nearly all in the many millions). The vast majority of settling respondents have also been required to retain independent compliance consultants (ICC) for multiyear engagements, a further significant expense. Additionally, in nearly all the settlements to date, the respondents were required to admit to the alleged conduct—typically a rarity in SEC settlements.

Continue reading.

Morgan, Lewis & Bockius LLP – Michael A. Hacker, Caitlin S. Onomastico, Emily E. Renshaw and Alyse J. Rivett

October 1 2024

SEC Resolution Spotlights Implications of Self-Reporting and Violations of Firm Communications Policies: Sullivan & Cromwell

Read the Article.

Sullivan & Cromwell LLP

September 26 2024

TAX - MONTANA

Solem v. Department of Revenue

Supreme Court of Montana - September 24, 2024 - P.3d - 2024 WL 4274187 - 2024 MT 217

Property taxpayers brought class action seeking to challenge mass appraisals of their lakefront properties.

The District Court entered judgment as to liability that Department of Revenue's mass appraisal methodology was unfair and unconstitutional. Following a stipulated final judgment, Department of Revenue appealed.

The Supreme Court held that Department of Revenue's method for appraising properties in lakefront development, which included a 29-property sample size, was adequate and not arbitrary.

Department of Revenue's method for appraising properties in lakefront development, which included a 29-property sample size, was adequate and not arbitrary, although Department removed 17 "outlier" verified sales; mass appraisal approach, the sales comparison method, and the base lot model employed were appropriate, widely accepted methodologies, and while other appraisers may have made different decisions regarding particular variables included in the methodology, the Department employed a consistent, accepted process for arriving at market value.

TAX - PENNSYLVANIA

Circle of Seasons Charter School v. Northwestern Lehigh School District

Supreme Court of Pennsylvania - September 26, 2024 - A.3d - 2024 WL 4293601

Charter school brought action against school district, seeking refund of real estate taxes that school alleged were erroneously collected on charter school's tax-exempt property.

The Court of Common Pleas sustained school district's preliminary objections asserting a lack of subject matter jurisdiction and dismissed the complaint with prejudice. Charter school appealed. The Commonwealth Court reversed and remanded, and school district appealed.

The Supreme Court held that:

- Charter school, which had purchased properties from state university and had full opportunity to challenge reassessments of properties, was not entitled to another hearing simply because mailing date on tax assessment change notices was omitted, and

- Commonwealth Court abused its discretion when it granted nunc pro tunc relief to charter school.

Charter school, which had purchased tax exempt properties from state university and had full opportunity to challenge reassessments of properties before county board of assessment appeals in its annual appeal, was not entitled to another hearing simply because the mailing date on tax assessment change notices was omitted.

Commonwealth Court abused its discretion when it granted nunc pro tunc relief to charter school, which had purchased properties from state university, due to county's failure to include mailing date on tax assessment change notices; charter school did not request county board of assessment appeals refund the taxes it had paid before the properties were granted tax exempt status or challenge effective date of that exemption, and thus, it was not entitled to revisit these waived claims in a nunc pro tunc appeal.

Examining the Rally in Both the Treasury and Municipal Bond Markets.

The third quarter of 2024 saw a rally in both the Treasury bond market and the municipal bond market.

The Treasury bond market saw the 10-year U.S. Treasury bond yield move from 4.479 at the beginning of the quarter to 3.797 on Sept. 26. The move in munis was more muted, with 10-year AAA munis going from 2.84 to 2.63 over the course of the quarter.

To wit, the end of the second quarter saw the 10-year bond yield move from a 4.28% on the eve of the June 27 Biden-Trump debate to 4.47% by July 1. We believe this change was a direct result of President Biden's poor debate performance and a market assumption that we were looking at a sweep of both houses of Congress as well as the White House by Republicans. The thought process is that undivided government tends to produce unchecked spending and that the markets view this outcome as potentially inflationary.

Continue reading.

Cumberland Advisors

by John R. Mousseau

Mon, October 7, 2024

Taxpayers Shoulder a Heavy Burden for Sports Stadium Subsidies.

State and local governments spend significant sums for the construction, operation, and continued maintenance of sports stadiums and arenas. According to recent estimates by sports economists, "between 1970 and 2020 state and local governments devoted $33 billion in public funds to construct major-league sports stadiums and arenas in the United States and Canada, with the median public contribution covering 73 percent of venue construction costs." In other words, taxpayers were on the hook for nearly three-quarters of the costs of each new sports venue that received public funding in the past 50 years.

Public interest in funding sports stadiums is at a fever pitch. A non-exhaustive list of publicly discussed future sports stadium subsidies can be found below. These do not include any public spending on new construction related to the US hosting the Summer Olympics in Los Angeles in 2028 or the Winter Olympics in Salt Lake City in 2034.

Continue reading.

Tax Foundation

By: Adam Hoffer, Joseph Johns, Craig Depken

October 3, 2024

Fidelity Plans Latest Mutual Fund-to-ETF Flip in Muni Market.

- **The Boston-based asset manager isn't new to this trend**
- **Conversion shows the growing popularity of muni ETFs**

Fidelity Investments is looking to convert two of its municipal-bond mutual funds into exchange-traded funds, a move that underscores the popularity of the $10 trillion US arena.

The two funds impacted are the $170 million Fidelity Municipal Bond Index Fund and the Fidelity Municipal Core Plus Bond Fund, which has less than $70 million in assets. Both are expected to be converted next year, according to two separate regulatory filings.

"These conversions can deliver new opportunities and value for our existing shareholders, while also expanding our solutions to help meet demand for access to innovative strategies in an ETF wrapper," said Greg Friedman, Fidelity's head of ETF management and strategy, in an emailed statement.

Continue reading.

Bloomberg Markets

By Amanda Albright

October 3, 2024

MSRB Publishes FY 2025 Budget.

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) today published its annual budget to report on the allocation of its resources as it fulfills its congressional mandate to protect investors, issuers and the public interest by promoting a fair and efficient market. MSRB publishes its budget annually to meet the highest standards of financial transparency.

For FY 2025, the MSRB Board approved a $48.8 million budget, representing a modest increase of approximately 2.9% over the prior year. The budget provides the necessary funds to modernize the MSRB rulebook, engage in key regulatory initiatives and make strategic investments in technology

and data to promote the transparency and efficiency of the $4 trillion municipal securities market.

Over the past year, MSRB has welcomed the opportunity for increased dialogue with its stakeholders including broker-dealers, municipal advisors, investors, issuers and other market participants through a series of industry town hall meetings focused on its budget. These town halls not only helped to inform and enhance MSRB's budgeting process but also how it communicates its budget and regulatory priorities to the public.

"We have taken to heart stakeholder requests for more clarity around our budget, particularly regarding our investments in technology, which represent our largest expense and approximately half of our annual budget," MSRB Chair Warren "Bo" Daniels and MSRB CEO Mark Kim said in a letter to stakeholders. "We've reorganized our technology functions into more discrete units, which enabled us to provide more relevant budgetary information about these functions."

In 2025, MSRB will celebrate 50 years since Congress established it as a self-regulatory organization for the municipal securities market. It also marks the final year of MSRB's four-year strategic plan to deploy the tools of regulation, technology and data in impactful ways that strengthen the municipal securities market and serve the public interest. Major initiatives for FY 2025 include:

Modernizing EMMA

MSRB will launch a modernized Electronic Municipal Market Access (EMMA®) website beginning with a beta version in early 2025. This has been a multi-year endeavor driven by extensive feedback from a wide variety of market participants. Stakeholder comments and insights continue to inform MSRB's major technology initiatives, and the beta site will be another opportunity for industry stakeholders to provide feedback on the upcoming version of EMMA.

Modernizing Market Regulation

MSRB will also continue its retrospective rule review and rulebook modernization initiative. This work will include implementing changes to MSRB's trade reporting rule to increase the timeliness of price transparency for investors and harmonizing MSRB's supervisory rule for broker-dealers with those of fellow regulator FINRA in light of changing work patterns. It will also include reviewing MSRB's rules, including its body of municipal advisor rules adopted since the Dodd-Frank Act was enacted nearly 15 years ago, to ensure that they remain operationally effective, allow for varying business models, and maintain appropriate investor and municipal entity protections.

"We hope that the additional detail provided in this report continues to bolster confidence and trust in MSRB's commitment to financial stewardship and stakeholder engagement," Daniels and Kim said. "After all, giving America the confidence to invest in our communities through the municipal securities market remains our vision and highest priority, and together with stakeholders and the public we serve, we look forward to doing just that in 2025 and beyond."

Read the budget.

Date: October 01, 2024

Contact: Aleis Stokes, Chief External Relations Officer
202-838-1500
astokes@msrb.org

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