

Bond Case Briefs

Municipal Finance Law Since 1971

Public Debt and the Art of the Float.

Governments need to balance expected returns on their invested cash with the costs of their bonds and other obligations. Shifting a portion of their long-term debt from fixed to floating rate is a way to hedge interest rate risk.

It's a cliché we hear from so many political candidates: "Government should be run like a business." Ironically, the collapse of Silicon Valley Bank and other recent bank debacles confirm that governments do indeed have much to learn from businesses. But in this case, the lessons are what not to do.

The most obvious message to be drawn from these meltdowns is that organizations, whether businesses, not-for-profits or governments, cannot ignore the credit risk of depositing large amounts of uncollateralized cash in seemingly rock-solid banks. The more subtle, yet no less important, lesson is that governments need to carefully and consciously manage their interest rate and related liquidity risks. More specifically, they must appropriately balance expected returns on invested assets with their required payments on bonds and other debts.

For sure, this is a principle that government treasurers and other public finance officers of a certain age need not be taught. They are likely to recall the 1994 bankruptcy of Orange County, Calif. The county, one of the nation's wealthiest, borrowed short and invested long, which ultimately produced the same financial consequences as those that struck Silicon Valley Bank.

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governing.com

by Martin J. Luby and Michael H. Granof, University of Texas

Sept. 5, 2023

If Puerto Rico Bankruptcy Ruling Stands, It Could Devastate Municipal Borrowing.

Congress needs to look into how Puerto Rico is managed after bankruptcy ruling

As a former attorney general of the United States, I find it crucial to shed light on a recent court ruling in Puerto Rico that demands our attention. The decision made by U.S. District Judge Laura Taylor Swain in the bankruptcy proceedings of the Puerto Rico Electric Power Authority (PREPA) has profound implications, particularly for the fairness and efficiency of capital markets, as well as the access of state and local governments to municipal bonds.

It is imperative that we comprehend the potential consequences of this ruling, as it could lead to

escalated costs and hindered infrastructure development and also burden taxpayers with higher financial obligations.

In the bankruptcy proceedings of the power utility, Swain sided with borrowers and concluded that special revenue bondholders do not hold a secured claim on current and future net revenues. As The Wall Street Journal explained in March, “A federal judge curbed Puerto Rico bondholders’ rights to the electric revenue generated by its public power utility.”

Furthermore, the ruling stated that the original legal obligation of the borrowers is not the face value of the debt, but rather what the borrower (in this case “PREPA”) can feasibly repay. This ruling raises concerns regarding its broader implications for the municipal bond market.

Municipal bonds play a pivotal role in financing vital infrastructure projects across America. However, Swain’s decision poses a significant threat to the traditional free-market principles that underpin the structure and security of municipal bonds, particularly special revenue bonds.

These bonds have provided investors with the assurance of repayment through revenue streams generated by specific projects or utilities. By eroding this sense of security, the ruling fundamentally alters the risk-reward dynamics of municipal bonds, disregarding the principles of free markets and limited-government intervention.

Consequently, state and local governments may encounter elevated borrowing costs when issuing bonds for necessary public investments, hindering fiscal responsibility and the efficient allocation of resources.

The rise in borrowing costs associated with municipal bonds not only burdens taxpayers but also impedes economic growth. Governments should operate within their means, prioritizing fiscal responsibility and minimizing the tax burden on hardworking citizens.

However, with higher borrowing costs, cities may struggle to undertake vital projects that would otherwise contribute to economic expansion and job creation. This hampers the private sector’s ability to thrive and stifles the entrepreneurship and innovation that drive economic prosperity.

We must not underestimate the significance of any ruling in U.S. bankruptcy proceedings that undermines the free-market values of fiscal responsibility and limited-government intervention.

The recent ruling in Puerto Rico carries far-reaching implications for the entire municipal bond market, posing a threat to our commitment to free markets and individual liberty. It jeopardizes the ability of local governments to access municipal bonds and manage their finances responsibly.

Therefore, it is imperative that Congress, which has oversight of Puerto Rico’s management through the natural resources committees, chaired by Senator Joe Manchin, D-WV, and Representative Bruce Westerman, R-AR, critically examines the detrimental impact of this ruling on the efficiency of America’s bond market.

We must demand a reevaluation of policies that hinder economic growth, burden taxpayers and disregard the fundamental tenets of fiscal responsibility. By advocating for a return to market-based solutions, we can ensure the fairness and efficiency of capital markets, safeguard the prosperity of our communities and preserve the principles that make our nation strong.

Fox Business

By Matthew Whitaker

September 5, 2023

Matthew Whitaker is co-chair of the Center for Law and Justice at the America First Policy Institute and the former acting attorney general under the Trump administration.

[GASB Adds Project on Subsequent Events to Current Technical Agenda.](#)

Norwalk, CT, September 7, 2023 — The Governmental Accounting Standards Board (GASB) recently added a project on accounting and financial reporting issues for subsequent events to the Board's current technical agenda.

The project will reexamine existing requirements in GASB Statement No. 56, *Codification of Accounting and Financial Reporting Guidance Contained in the AICPA Statements on Auditing Standards*, and evaluate ways to improve the accounting and financial reporting for subsequent events.

The reexamination will address issues that were identified in pre-agenda research, including:

1. Confusion about and challenges associated with applying the existing standards for subsequent events,
2. Inconsistency in practice in the information provided about subsequent events, and
3. The usefulness of the information provided about subsequent events, with a focus on clarifying how subsequent events are defined and what information should be provided.

The project will also consider relationships with other existing GASB standards and projects as they relate to transactions or other events that occur subsequent to the date of the financial statements.

Pre-agenda research conducted by the GASB staff found that subsequent events are generally prevalent among governments and related issues are relevant to a broad number of governments. Research indicated the presence of inconsistencies and misreporting in practice in the accounting and financial reporting for subsequent events. Guidance on subsequent events in Statement 56 dates back to audit literature from 1972 and has not been fully evaluated for its effectiveness or consistency with the GASB's conceptual framework.

The Board decided to add a project to the agenda focusing on subsequent events after carefully evaluating the staff's research findings and taking into account the level of interest from the Governmental Accounting Standards Advisory Council, the GASB's advisory council, which ranked the project highly during its annual project prioritization.

[S&P U.S. State Pension And OPEBs: Funding Progress Is Likely To Pick Up In 2023 After Slipping In 2022](#)

Key Takeaways

- Weak investment performance dropped U.S. state pension funded ratios to 73.6% from 81.2% in fiscal 2022, although we expect marginal improvement for fiscal 2023 will blunt potential near-term pressures to states' debt and liability profiles.

- Absent plan modifications, contribution rates could inch up further to address pension funding shortfalls, leading to longer-term budget pressure for some states.
- The potential for further monetary policy tightening and slower economic growth, or equity market uncertainty could require states to exercise heightened pension funding discipline to meet assumed investment return targets.
- Retiree medical or OPEB plans remain substantially underfunded and are not likely to change without significant plan reforms or increased contributions.

[Continue reading.](#)

7 Sep, 2023

[The IRA and Public Schools.](#)

Public school buildings in the United States are crumbling. National school infrastructure received a D+ rating from the American Society of Civil Engineers in 2021, and in more serious cases, learning environments have become toxic. Given the segregated and unequal nature of public schooling, building quality is closely tied to racial and class-based inequalities, with schools in lower-income communities confronting the most serious health and safety consequences. In addition to these unsafe working environments for teachers and students, a [recent study](#) by scholars at the Harvard School of Education found that schools are one of the largest consumers of energy within the US public sector, consuming energy equivalent to eighteen coal-fired power plants or fifteen million cars each year. This is both costly and necessitates involving schools within the broader project of decarbonization.

Indeed, schools are an essential arena for the Biden administration's new green industrial policies. While a cottage industry has formed around assessing whether Biden's industrial policies—specifically the Inflation Reduction Act (IRA)—are commensurate to the scale of the problems they set out to address, it's imperative to survey how IRA programs might look on the ground if applied to their fullest strength. How would IRA programs affect public education finance—specifically school facilities and infrastructure? And how would these financial flows challenge the present state of educational inequality and segregation?

Perhaps because the American Rescue Plan—the Biden administration's pandemic relief package—included \$122 billion in funding for schools, the IRA was not billed as a piece of education legislation, nor did schools take center stage in either the negotiating process or messaging around the policy. But the IRA holds major implications for public schools. While details on these policies are still forthcoming, I examine how two IRA flagship programs—the direct pay Investment Tax Credit (ITC) and the Greenhouse Gas Reduction Fund (GGRF)—could function within existing public-school infrastructure projects. A [report](#) from Aspen Institute's education arm summarizes thirteen policies in the IRA that school districts could benefit from, of which the ITC and GGRF stand out for their novelty and impacts.

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Phenomenal World

by David I. Backer

September 7, 2023

Three Takeaways for Municipal Bond Issuers From the New SEC Cybersecurity Disclosure Rules: McGuireWoods

State and local governments increasingly are becoming targets of cybersecurity attacks. According to CloudSEK, cyberattacks targeting the government sector increased by 95% worldwide in the second half of 2022, compared to the same period in 2021. With the rise of cybersecurity threats, S&P Global Ratings, a leading rating agency, noted that cyberattacks pose a growing credit risk to municipal bond issuers and warned that weak cybersecurity could lead to credit downgrades over the next 12 months.

With the increased scrutiny on cybersecurity by S&P and the growing threat of cyberattacks, disclosure about cybersecurity risk has become increasingly common for municipal bond issuers. To date, there is no official guidance from the U.S. Securities and Exchange Commission (SEC) about inclusion of information on cybersecurity risks for municipal bond issuers.

This lack of official guidance is due in part to the SEC's limited ability to directly regulate municipal bond transactions. The SEC has indicated that many principles applicable to the registered market can be applied to the municipal market. Many municipal issuers also rely on guidance from the registered market when analyzing disclosure issues. Recent SEC rulemaking on cybersecurity disclosure is one instance where municipal issuers can apply these principles.

On July 26, 2023, the SEC adopted a final rule standardizing cybersecurity disclosure practices for public companies that offers guideposts for municipal issuers on disclosure about cybersecurity. Beginning in December 2023, public companies will have to make a timely materiality determination about cybersecurity incidents and, if an incident is determined to be material, disclose the same within four business days of such determination. Importantly, the SEC provided that an item is material if there is a "substantial likelihood that a reasonable shareholder" would deem the information meaningful to make an investment decision. Once a material cybersecurity incident determination is made, the company must disclose within four business days: (1) the nature, scope and timing of the cybersecurity incident; and (2) the incident's qualitative and quantitative impact (or the reasonably likely impact) on the company, including, but not limited to, its financial condition, operations, reputation and relationships.

Additionally, beginning with its annual report for the fiscal year ending on or after Dec. 15, 2023, public companies will be required to provide annual disclosures related to the companies' processes for the management and governance of cybersecurity threats. In the annual disclosure, companies must describe (1) the process for the assessment, identification and management of risks for cybersecurity threats; (2) whether any risks related to cybersecurity have materially affected (or are reasonably likely to materially affect) their business strategy, operations or financial conditions; and (3) the board's oversight and management of cybersecurity risks.

Although municipal bond issuers will not be required to comply with the new SEC rules, the rules provide valuable guidance for issuers on how to address cybersecurity risks in their disclosure documents and through cyberattack policies. In applying the principles found in the new rules, municipal bond issuers should make the following key considerations:

Implement and regularly reassess cybersecurity policies.

Municipalities are vulnerable to cybersecurity attacks without the proper assessment, response and management policies. An issuer that does not have a formal cybersecurity policy should consider

developing a framework related to cybersecurity preparedness to institute centralized responsibilities and a transparent strategy on how to proceed if cybersecurity incidents occur. Even issuers that have formal policies should regularly reassess their policies to ensure the practices are up to date.

To create a workable policy, municipal bond issuers should consider the risks unique to their particular infrastructure and how to best protect their financial condition, operations, reputation and relationships. Municipalities also should consider whether cybersecurity insurance could be managed through an insurance policy as part of their overall risk management system.

For all issuers, ongoing management of cybersecurity risks through regular weakness testing will ensure that municipalities have an action plan in the event of a real cybersecurity attack.

Prepare a disclosure that addresses cybersecurity policy and procedures and material prior attacks.

Including cybersecurity attacks as a risk factor in offering document disclosure has become a best practice to address rating agency and investor questions. In preparing disclosures, issuers should consider their current risk posture, including policies and procedures for cybersecurity risk management, any past cybersecurity attacks and to what degree the board oversees this or delegates to management the day-to-day risk management. Issuers should work closely with legal counsel to craft disclosures on these points.

Disclosures still should be guided by materiality.

While the SEC has been reluctant to define “materiality,” the new rules for the registered market demonstrate that disclosures regarding cybersecurity (as with most disclosure issues) should revolve around materiality. In response to comments from the market during the rulemaking process, the final rule requires disclosure of “management’s role in assessing and managing the registrant’s material risks from cybersecurity threats.”

Further, the adopting release notes that certain actions are material by virtue of the level of attention provided by the board of directors and management. The final rule does not contain a materiality qualifier related to the requirement that registrants describe the oversight undertaken by their board of directors and any applicable committee responsible for this oversight because, by virtue of the board or a committee taking an active role in oversight, the SEC deemed that material to investors.

McGuireWoods LLP - Anna C. Horevay, Thomas William Bruno and Camille A. Pappy

September 6 2023

[ESG Activity in the House Financial Services Committee \(HFSC\): K&L Gates](#)

Prior to departing for the August recess, Chairman Patrick McHenry (R-NC) wrapped up the month-long series of hearings considering digital assets and environmental, social, and governance (ESG) legislation. In tandem markups held on 26 July and 27 July, HFSC advanced several bills on these issues, both on a bipartisan basis (digital assets and stablecoin) and along party lines (anti-ESG bills). Prior to the ESG markup, HFSC Republicans had released 18 bills that would be under consideration. However, these bills were then bundled into a few larger packages, which was done

in a way that largely precluded Democratic support, as they were then tied to provisions that only Republicans would support.

More information on the legislation advanced during the 27 July ESG-related markup, as well as the vote outcomes, is detailed below.

[Continue reading.](#)

K&L Gates LLP - Daniel F. C. Crowley, Karishma Shah Page, Bruce J. Heiman, Ryan T. Carney, William A. Kirk, Lauren M. Flynn and Lauren E. Hamma

September 5 2023

[How De Minimis Fears Drive Illiquidity.](#)

Kevin Bain, debt manager for Detroit, who got his start in the corporate taxable bond market, recalls being baffled by the obscure “de minimis” tax rule when he arrived at the city nearly three years ago.

The rule was one reason why, during a bond sale in 2021, the coupons needed to be set at 5% and 4% at the outset, to protect investors worried that the bonds would later tip into discount territory, Bain recalled. The rule also means the city has to parse issuance size versus par value when it asks voters for borrowing authorization.

“It’s been around so long it’s considered market practice to everyone who works with municipal bonds,” said Bain. But the 5% standard seemed strange – especially in the low rate world of 2021 – compared to the corporate world, where par value tends to roughly equal issuance size and coupons roughly match yields.

That’s “pretty straightforward,” Bain said. “It’s odd that municipal governments have the more complicated issue.”

Investors in Detroit’s 2021 deal proved correct about their concerns as a chunk of the 4% bonds are now trading at a discount, Bain said. When the city came back to market in July, amid a higher interest rate environment, it set coupons as high as 6% on some bonds.

The “market discount” de minimis rule carries a primary market impact for issuers like Detroit, but it is the rule’s significant impact on the secondary market that’s the focus of a paper from a quartet of muni market experts that was presented in July at the 2023 Brookings Municipal Finance Conference.

“[Pushing Bonds Over the Edge: Investor Demand and Municipal Bond Liquidity](#)” takes a deep dive into the de minimis rule’s impact on a secondary market dominated by mutual funds that tend to buy bonds at a premium to avoid de minimis risk. Funds will dump entire positions as they approach discount territory, activity that leads to “substantial illiquidity” and drives up trading costs and prompts other institutional investors to head for the exit, the paper found.

The study takes on more relevance in the rising interest rate environment, where even 5% coupons are now trading near the threshold. More than 30% of bonds in the secondary are currently circling discount territory, said one of the paper’s authors, Stefan Gissler, principal economist at the Board

of Governors of the Federal Reserve System, who presented at the conference.

The so-called de minimis rule took effect in 1993 as part of the Omnibus Budget Reconciliation Act, which repealed the exemption of realized price appreciation – as opposed to interest payments – on municipal bonds from ordinary income taxes.

Under the rule, investors who buy municipal bonds at a discount from its face value at issuance will have to pay taxes on any realized price appreciation if the discount passes below the de minimis threshold, which is defined as one quarter of 1% of the stated bond price multiplied by the number of full years to maturity.

The rule has carried an outsized impact in the secondary market since mutual funds have started to dominate the buyer base, because mutual funds have strong incentives to avoid “discontinuous jumps in ordinary income taxes,” according to the paper, authored by Gissler as well as John Bagley, chief market structure officer at the Municipal Securities Rulemaking Board; Kent Hiteshew, a strategic advisor at Ernst & Young LLC who was formerly deputy associate director at the Federal Reserve Board’s Office of Financial Stability; and Ivan Ivanov, senior economist in the Research Division of the Federal Reserve Bank of Chicago.

Examining bond trading data from 2010 to 2022, the authors concluded that mutual funds are large net sellers of muni bonds above the de minimis threshold, with their selling peaking at four to five percentage points above the threshold, reaching nearly \$500 billion quarterly.

Once below the level, the bonds become illiquid and trading becomes more costly, prompting other institutional investors like banks and property and casualty insurers to avoid them. Only life insurance companies, which tend to be buy-and-hold investors, showed more restraint around the threshold.

“These findings suggest that liquidity is not only the main driver of the trading dynamics around the de minimis threshold, but also has significant impact on trading costs,” the paper said.

The “exit of institutional investors such as mutual funds, insurance companies, and closed-end funds from the secondary market leads to significantly lower market quality and higher transactions costs?an important feature of this market even in ‘normal’ economic times,” the authors said.

The paper also notes that decisions by the Federal Reserve to hike interest rates “speeds up the path to illiquidity and higher transactions costs.”

During a period of monetary tightening, the bonds “underlying as much as a quarter of all secondary market transactions face significant probability of falling below the threshold,” the paper said.

The conclusions are not surprising given the shrinking municipal buyer base over the years, said municipal strategist Vikram Rai.

Mutual funds are exposed to flows and need to sell during an outflow period, Rai said.

“When a mutual fund buys a higher-coupon bond, they’re paying more for it but they need the liquidity; they don’t want to be stuck where they want to raise money and don’t have liquid paper to sell,” Rai said.

Because mutual funds have such a large footprint, their actions reverberate across the market, he said.

“It’s exacerbating illiquidity and it’s exacerbating the discontinuity and volatility in prices,” he said.

For Bain, who presented a response to the academic paper at the Brookings conference, the study helps explain a rule that he said remains unclear even to many of his issuer peers.

“It’s a very confusing rule that most people in the industry don’t know a lot about,” Bain said. “It’s really interesting to see the research on how big an impact it has on the market even though so few people are speaking about it and people have just come to accept it as the market standard.”

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 09/07/23 02:24 PM EDT

[Nursing Home Staffing Mandates to Further Strain Troubled Sector .](#)

- **Rule comes amid labor shortages, uptick in payment defaults**
- **High death rates during Covid highlighted need for better care**

A proposed federal rule that would establish staffing requirements at nursing homes across the US could push the already-troubled sector further into distress, even as the pandemic highlighted their failings.

The Centers for Medicare & Medicaid Services said that “chronic under-staffing remains a concern,” in a Sept. 1 statement outlining the proposed rule, which includes requiring a registered nurse onsite 24 hours a day, seven days a week. About 75% of US facilities would need to make adjustments under the new rule, CMS said. Nursing homes could receive a hardship extension “in limited circumstances.”

Labor shortages and their associated costs still plague nursing homes, which in some cases have eliminated beds because of an absence of caretakers. That’s also created a problem for hospitals, which rely on the homes to take patients who need rehabilitation services when they’re ready for discharge.

[Continue reading.](#)

Bloomberg

By Lauren Coleman-Lochner

September 8, 2023

[Fitch: Immigration-Driven Labor Supply Sustains Job Growth as Labor Market Cools; 2024 Job Losses Expected](#)

Fitch Ratings-New York-08 September 2023: Higher level of immigration in 2022 and 2023 has increased labor supply, driving the labor force participation rate higher, easing labor shortages and sustaining job growth, according to a new report from Fitch Ratings.

“Labor supply has increased, largely on the supply and participation of immigrants, and an uptick in the participation of prime aged workers between ages 25-54,” said Olu Sonola, Head of U.S. Regional Economics.

“Despite the resilient normalization of labor demand thus far in 2023, labor demand is expected to decelerate further. Job losses are expected in 1H24 as aggregate demand stagnates in response to the lagged effect of higher interest rates and tightening credit conditions.”

The three-month average job growth during August 2023 was 150,000, falling below the 2019 average of 164,000 jobs for the first time since the pandemic recovery began.

Catch-up industries continue to dominate job growth, with health care and leisure & hospitality contributing approximately 50% of the uptick. The information sector, which includes technology jobs, has contracted in YTD.

Job openings are fast declining to pre-pandemic levels, with 8.9 million in July of 2023, which is down from peak of 12 million in March 2022. At an average monthly decline of 340K in 2023, openings will be back to pre-pandemic levels by December 2023.

The labor demand and supply imbalance equals 1.8% of the labor force as of July 2023, a notable decline since 2.8% in April 2023.

Year-over-year wage growth for private industry employees is declining but still elevated, down from 6% in 2022 to the current 5%.

Thirteen states are below pre-pandemic employment levels, with acute labor shortages above 3.0x in twelve states, with North Dakota the highest at 4.1x.

The median unemployment rate of 3.0% at the end of July 2023 remains below the February 2020 pre-pandemic median rate of 3.6%. The unemployment rate is now below the pre-pandemic level in 36 states.

For more information, a special report titled “U.S. States — Labor Market Quarterly Tracker — 3Q23” is available at www.fitchratings.com.

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[Fitch: U.S. Water Utilities Hold Steady as Recession Looms](#)

Fitch Ratings-New York-11 September 2023: U.S. water utilities weathered a global pandemic remarkably well and appear to be on solid footing as the broader economy inches closer to recession, according to Fitch Ratings' latest annual peer review for the sector.

Slower economic growth and persistent inflation are leading Fitch economists to call for a possible recession in either late-2023 or early-2024. Nonetheless, most water utilities fared well, as evidenced by sustained operating revenue growth. "Inflationary pressures have not been as acute as expected with operating costs increasing only slightly and at a slower pace," said Senior Director Audra Dickinson.

Another sign of the sector's resiliency is evident in liquidity, which remains robust with the median for retail systems' liquidity cushion improving to over 600 days. The metric dropped for wholesale systems, but remains over 500 days.

The picture is more mixed as it pertains to leverage, which improved slightly for retail systems. Conversely, leverage jumped notably for wholesale systems. Given the 'AA+' median rating across the portfolio, most issuers still retain headroom and most ratings are not imminently pressured.

Fitch's U.S. Water and Sewer: Peer Review is a point-in-time assessment of Fitch-rated public water and sewer utilities. It assists market participants in making their own comparisons among the recent financial performance of wholesale and retail water and sewer systems. It is accompanied by the 2023 Water and Sewer Fitch Analytical Comparative Tool (FACT), an interactive tool that provides enhanced trend analysis and peer comparison tables.

The full report, U.S. Water and Sewer 2023 Peer Review is available at www.fitchratings.com.

[Summer Travel Boom Reignites Airport-Bond Sales in August.](#)

- **US airports need \$151 billion over 5 years, trade group says**
- **August saw bond sales for Chicago, Atlanta, DFW airports**

Cities are reviving plans to tap the \$4 trillion municipal-bond market to build and renovate runways, concourses and terminals for airports as passenger traffic rebounds to levels last seen before the pandemic.

During the first half of 2023, sales of airport bonds dropped to roughly \$3 billion — less than a third of the amount seen in the year earlier period — as the Federal Reserve raised interest rates. But a cluster of sales totaling \$1.8 billion in August has brought the sector back to life.

Recent sales for hub airports in Chicago, Atlanta and Dallas-Fort Worth indicate a pick up of issuance given pent-up capital needs, said Mikhail Foux, head of municipal strategy at Barclays.

[Continue reading.](#)

Bloomberg Markets

By Shruti Singh

September 5, 2023

[S&P U.S. Local Governments Credit Brief: California School Districts Means And Medians](#)

Overview

S&P Global Ratings believes that California school districts' credit quality will remain relatively stable, supported by a favorable state funding environment and the receipt of one-time stimulus resources as districts mitigate challenges arising from broad school-aged demographic declines that the pandemic has exacerbated. We expect this trend to continue in the medium term, but districts in the state face more-difficult budgetary tradeoffs as they expend their remaining Elementary and Secondary School Emergency Relief (ESSER) funding and begin to experience the financial impact of continued enrollment declines. In fiscal 2023, the state made upward adjustments to its per pupil equalization formula applicable to most districts. Districts can use the average daily attendance (ADA) of the current year, prior year, or the average of the three most recent years, whichever is highest, to determine operating revenue under the state funding formula, but we think that the revenue effects and operational and asset management complexities of declining local student populations will continue to challenge the budgets of many districts for the long term. Accordingly, we also are seeing a surge in compensation increases to an extent that affects districts' bottom lines, as bargaining groups make the case for addressing broad-based inflation, the state's comparatively high housing costs, and a limited pipeline of qualified teachers.

S&P Global Ratings maintains ratings on 688 school districts in California, including school facilities improvement districts. Fifty-five percent of California school districts are in the 'A' category, 44% are in the 'AA' category or above, and fewer than 1% are in the 'BBB' category or lower. In addition, 99% of the ratings have a stable outlook. Four school district ratings have a positive outlook, while two have a negative outlook.

[Continue reading.](#)

30 Aug, 2023

[Examining the Reach of California's Targeted School Funding.](#)

Key Takeaways

Now entering its second decade, the Local Control Funding Formula (LCFF) fundamentally shifted school finance in California. Under LCFF, the robust state revenue growth of the past decade led to even greater increases for the state's highest-need districts. LCFF also brought about more flexible funding—along with concerns about whether additional funding is reaching the high-need students and schools for which it was intended. In this report, we provide comprehensive new evidence on the targeting and efficacy of LCFF funding for high-need students.

- **Spending on concentration grants improved test scores in high-need districts.** Concentration grants add funding above the LCFF base grant to districts with higher shares of high-need (English Learner, low-income, and/or foster youth) students. For these districts, the additional funding led to higher math and ELA scores, with the largest impact among 11th graders, who have had the longest exposure to increased LCFF funding. →
- **Local Control and Accountability Plans (LCAPs) show incomplete targeting of funds to high-need students.** Nearly 60 percent of districts in 2021–22 reported plans to spend less on high-need students than the additional funding they received for high-need students. The extent of targeting varies widely across districts, and gaps between spending on high-need students and the additional funding intended for them tend to be greater in higher-need districts. →
- **Districts spend funds more evenly across schools than schools generate funds.** Schools with more high-need students generate more funding, but most districts do not spend these additional dollars in the same proportion. In 2020–21, spending at high-need schools was 75 cents higher per dollar of extra funding, compared to roughly 45 cents on the dollar in the two prior school years. However, districts vary in this proportion, with nearly 80 percent of concentration districts spending dollars more evenly across schools than LCFF would imply if districts allocated additional funding in proportion to a school’s high-need share. →

[Continue reading.](#)

Public Policy Institute of California

by Julien Lafortune, Joseph Herrera, and Niu Gao

TAX - CONNECTICUT

[Cazenovia Creek Funding I, LLC v. White Eagle Society of Brotherly Help, Inc.](#)

Appellate Court of Connecticut - August 1, 2023 - A.3d - 220 Conn.App. 770 - 2023 WL 4852104

Holder of municipal tax liens, which were originally assigned to holder’s predecessor in interest by city collector of revenue, brought foreclosure action against owner of real property.

The Superior Court granted holder’s motion for summary judgment as to liability. Another holder was substituted as plaintiff, and subsequent holder was later substituted as plaintiff. The Superior Court rendered a judgment of foreclosure by sale. Owner appealed.

The Appellate Court held that:

- Holder met prima facie burden of establishing ability to foreclose;
- Owner had burden of proof to establish assignment of liens was defective;
- Property owner’s evidence did not create genuine issue of material fact as to whether assignment of liens was defective; and
- Holder met burden of proof that tax was properly assessed.

Owner of real property had burden of proof regarding its special defense that city’s assignment of municipal tax liens to holder’s predecessor in interest was defective, and thus holder did not have burden in lien foreclosure proceeding to prove that liens recorded by city were properly authorized by its legislative body prior to being assigned.

Property owner’s submission of city council minutes that were from three different meetings and

that failed to reflect approval of a resolution to assign real-property taxes for grand lists for years for which tax license were imposed did not create genuine issue of material fact as to whether city's assignment of tax liens to holder's predecessor in interest was defective and thus did not preclude summary judgment in favor of holder of tax liens in action to foreclose liens; there was no evidence that the three city council meetings were only city council meetings held between relevant dates, and property owner did not present any evidence to show liens assigned were not encompassed in city council's resolution to approve assignment of liens for subsequent year.

Holder of municipal tax liens met its burden of proof under rule governing foreclosures of municipal tax liens that tax or assessment was properly assessed, due, and payable on property and no part had been paid, and thus burden of proof shifted to property owner to allege and prove, as affirmative defense, claimed informality, irregularity, or invalidity in assessment or attempted collection of tax, or in lien filed; holder submitted copies of certificates of continuing lien showing unpaid taxes were assessed to property and due, holder submitted affidavit from its predecessor in interest that demand had been made but no payments made, and property owner did not rebut holder's evidence with any proof of payments made to either holder or predecessor in interest.

[Kayne Anderson's Friedrichs Sees Huge Demand for Munis,](#)

Kim Friedrichs, Kayne Anderson Rudnick managing director of fixed income, says there's not enough supply to meet the "tremendous" demand for municipal bonds. She speaks with Romaine Bostick and Katie Greifeld on "Bloomberg Markets: The Close."

[Watch video.](#)

Muni Moment - Bloomberg Markets: The Close

September 6th, 2023

[Fitch: Insurance Pullback Could Pressure CA and FL Tax Base Longer Term](#)

Fitch Ratings-New York/San Francisco-05 September 2023: Rising premiums and reduced availability of homeowners' property insurance could drag on housing markets, development activity, overall economic growth and ultimately tax bases for certain California and Florida local governments over time, Fitch Ratings says. Insurers are re-evaluating their exposures to geographic areas with elevated catastrophe risk as they face greater losses and higher building and reinsurance costs. Insurance plays a key role in securing mortgages and enabling rebuilding following natural disasters.

There were 119 natural catastrophes in 2022 resulting in \$98.8 billion in insured property losses, up from 103 catastrophes costing \$93.3 billion in 2021, according to the Insurance Information Institute (Triple-I) and Aon. This compares with annual losses averaging \$62.1 billion (adjusted for inflation) over the prior eight years. Average homeowners' insurance premiums in Florida were up 11% in 2020 from the year before, to \$2165, the highest in the country, and were up 16% from 2018 in California, according to Triple-I.

State Farm, Allstate, and Farmers have announced they will cease issuing new home insurance

policies in California, with AIG and Chubb also adjusting insurance coverage in the state. In Florida, some insurance companies have announced reduction or cessation of home and condo coverage, including Farmers and Allstate's Castle Key subsidiary, and seven entered liquidation in the last 18 months. The Florida Insurance Guaranty Association recently approved a 1% emergency assessment on all covered lines of business (other than auto) to cover claims owed by United Property & Casualty Insurance Company, one of the liquidated insurers.

Consumers who face insurance non-renewals may turn to the state insurers of last resort, California's Fair Access to Insurance Requirement (FAIR) Plan Association or Florida's state-owned Citizens Property Insurance Corporation (AA/Stable). The FAIR Plan is a syndicated insurance pool requiring the participation of all California-licensed property and casualty insurers, and its rates are notably more expensive on average than standard property insurance policies.

Citizens is the largest insurer in Florida with over 1.3 million policies in force, with policy count and exposure growing significantly over the last three years. Florida regulators recently asked Citizens to submit a new rate proposal following Citizens' proposed average rate increase of 12.6% for homeowners' multiperil policies.

Both Citizens and the Florida Hurricane Catastrophe Fund (AA/Stable), the state-sponsored reinsurer, can levy assessments, subject to a cap, on nearly every property and casualty insurance policy in the state in order to pay claims. Increased storm frequency and severity raises the likelihood of levies from both, placing an additional burden on the assessed base.

Recovery following natural disasters may be delayed or incomplete if there are greater numbers of those who are under-insured or uninsured due to affordability or non-renewal issues. High-risk areas could be left with a smaller tax base if hurricane or wildfire damage leads to permanent relocations, or if these areas find it difficult to attract new residents.

Fitch has not observed these effects playing out to date, as insurance is one of many factors in home purchase decisions. However, pressures on housing demand could be amplified with increasing natural disasters and insurance markets in which the insurers of last resort are costly or impose higher assessments to cover increased claims.

Policymakers have several tools to support property insurance market sustainability. Florida's legislature has passed a series of bills with the aim of reducing insurance litigation, improving claims and payout timing, and containing Florida Citizens' insured base. California's Department of Insurance is hosting discussions regarding insurance companies' potential use of catastrophe models to estimate potential losses and inform rate setting. The effectiveness of policy actions is increasingly important to support housing market and long-term economic growth prospects.

[Muni Market Triple Lindy \(Bloomberg Audio\)](#)

Eric Kazatsky, Senior Muni Bond Strategist with Bloomberg Intelligence, joins to discuss the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

[Listen to audio.](#)

Sep 08, 2023

[**Muni Investors Risk Dismal Returns in September, Barclays Says.**](#)

- **'It is hard to be overly optimistic about municipals': note**
- **New-issue supply expected to total \$30 billion to \$35 billion**

Municipal-bond investors should heed historical trends and steer clear of the market in September if they're unsure of what to buy, according to Mikhail Foux, Clare Pickering and Mayur Patel of Barclays.

"Historically, September and, to a lesser degree, October have not been kind to municipal investors; 2015 is the last time investors were able to realize sizable returns in the autumn," the analysts wrote in a Friday note. Over the past five years, the average return for munis in September and October has been -5.7% and -1.8%, respectively.

Rate volatility will likely persist, making it difficult to be optimistic about municipals this month, according to the note. The analysts recommend that investors "remain relatively light" on the asset class going into October, unless the muni market sell off meaningfully.

[Continue reading.](#)

Bloomberg Markets

By Joseph Mysak Jr

September 8, 2023

[**GFOA's Alliance for Excellence in School Budgeting Fall Meeting.**](#)

Join us for GFOA's Alliance for Excellence in School Budgeting Fall Meeting on **November 2-3 in Chicago, Illinois**. Attendees will explore topics including GFOA's Smarter School Spending Framework, academic return on investment, optimizing scheduling strategies, integrating a logic model into your budgeting approach, and more.

[REGISTER](#)

[**New T.A.D. Video: Accounting for the Opioid Settlement Payments**](#)

This episode features information on the opioid settlement payments that many governments are receiving. Watch as we discuss how this money should be accounted for.

[WATCH](#)

[**MSRB Enhances Free Yield Curves Available on EMMA With Hourly Updates**](#)

[and Monthly Data for BVAL Curves.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today enhanced the free daily yield curves and indices available on its Electronic Municipal Market Access (EMMA®) website with hourly updates for the Bloomberg® valuation (BVAL) curves.

“Investors, issuers and market participants will benefit from the free availability of timelier data to inform their assessment of bond pricing,” said MSRB Chief Market Structure Officer John Bagley.

Previously, BVAL curves and other yield curves available on EMMA reflected the previous day’s data. The enhanced BVAL curve will update hourly between 9:00 a.m. and 4:00 p.m. Eastern Time. Tables displaying monthly data points have also been added.

The MSRB first added yield curves and indices to the free tools available on EMMA in 2017. These market indicators can be useful for understanding the general level and direction of municipal bond interest rates and comparing the relative yields of specific municipal securities. [Read more about understanding yield curves and indices.](#)

The MSRB’s EMMA website serves as the free official source for municipal securities data and documents. The MSRB continues to enhance the EMMA website to bring greater transparency to the \$4 trillion municipal market.

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- [BLX/Orrick 2023 Post-Issuance Compliance Workshop.](#)
 - [Get Key Municipal Insights at GFOA’s MiniMuni.](#)
 - [Financing Essential Infrastructure: NLC 2023 Municipal Bond Market Update](#)
 - [GFOA: Audits and ARPA - You’re Not Alone!](#)
 - [P3 State Legislation Update and Opportunities for the Private Sector: Squire Patton Boggs](#)
 - [IRS Targets Port Arthur, Texas, Bond Issuance for Hedge Bond Violation - Is Your Bond Issue at Risk? - McNeese](#)
 - [Top \(Bottom?\) Ten of Tax Headaches \(Challenges\) for Municipal Bond Issuers: Cozen O’Conner](#)
 - And Finally, I Knew Favorable Light. Favorable Light Was A Friend Of Mine. You, Sir, Are No Favorable Light is brought to us this week by [White v. Flathead County](#), in which the court began its opinion by stating that, “The following facts are undisputed, and viewed in the light most favorable to White.” White had been arrested and cuffed by sheriff’s deputies. “While White was on the ground in handcuffs and being restrained by the deputies, deputy Cox kicked him in the head.” So far, so good. The court then notes that, “no officers present gave any indication that the kick was unusual or out of the ordinary.” We are once again gonna climb out on ye olde limb and suggest that none of this - viewed in any light imaginable - seems at all favorable to White.

EMINENT DOMAIN - ALABAMA

[Ex parte Cooper](#)

Supreme Court of Alabama - August 25, 2023 - So.3d - 2023 WL 5492465

Toll bridge operator, which was a private company, brought action against Director of the Alabama Department of Transportation (ALDOT), in his official capacity, and company that ALDOT had hired to build a nearby bridge.

In the action, toll bridge operator asserted a bad-faith claim for an injunction to the nearby bridge's construction and an inverse-condemnation claim for compensation from the State for the value of the toll bridge.

The Circuit Court entered order compelling Director to respond to certain discovery requests, entered preliminary injunction to halt bridge's construction, and dismissed as a defendant the company hired to build the nearby bridge. Director appealed as to the injunction and sought mandamus relief from the discovery order. Company hired to build the nearby bridge filed its own appeal.

The Supreme Court held that:

- State immunity barred the bad-faith claim;
- Director's recovery under the preliminary-injunction bond would be limited to the \$100,000 bond amount; and
- Company hired to build the nearby bridge would not be entitled recover its damages for being wrongfully enjoined.

State immunity barred bad-faith claim that toll bridge operator had asserted against Director of the Alabama Department of Transportation (ALDOT) in his official capacity, which claim was the basis for operator's request for a preliminary injunction halting the construction of a nearby bridge; the claim sought to directly affect a State contract right by sinking the State's contract for the construction of the nearby bridge.

Toll bridge operator's inverse-condemnation claim for compensation from the State for the value of the toll bridge, which claim stemmed from State having another company build a nearby bridge, was ripe; despite argument that operator was not in immediate danger of sustaining a legally cognizable injury, such an argument was a challenge to the claim's merits, and toll bridge operator's allegation that it faced an imminent injury, i.e., the total loss of the value of its property, caused by a government action that was redressable by the payment of compensation for the value of that property was sufficient to assert a ripe claim.

Following appellate determination that circuit court, due to the existence of State immunity, lacked subject-matter jurisdiction to enter a preliminary injunction against Director of the Alabama Department of Transportation (ALDOT), in his official capacity, to halt the construction of a bridge in the vicinity of a toll bridge operated by a private company, Director's recovery under the preliminary-injunction bond would be limited to the \$100,000 bond amount, absent a finding by the trial court that toll bridge operator sought the injunction in bad faith.

Despite appellate determination that circuit court, due to the existence of State immunity, lacked subject-matter jurisdiction to enter a preliminary injunction against Director of the Alabama Department of Transportation (ALDOT), in his official capacity, to halt the construction of a bridge in the vicinity of a toll bridge operated by a private company, the company that the State hired to build the bridge would not be entitled recover its damages for being wrongfully enjoined; the preliminary-injunction bond bound toll bridge operator only unto Director, and altering the bond's terms to allow the bridge construction company to recover under the bond would effectively increase toll bridge operator's exposure beyond what it agreed to when the injunction was entered.

Grant Park Neighborhood Association Advocates v. Department of Public Health

Court of Appeal, Third District, California - August 14, 2023 - Cal.Rptr.3d - 2023 WL 5198632

Objectors, who were neighborhood association and individuals, filed petition for writ of mandate challenging Department of Public Health's approval of entity's application to operate needle and syringe distribution program in county.

The Superior Court denied petition. Objectors appealed.

The Court of Appeal held that:

- Department violated statutory requirement of "consultation" with local law enforcement;
- Department's violation of consultation requirement was prejudicial, and thus, not harmless error;
- Objectors' claims regarding failure to consult with law enforcement were not rendered moot by expiration of approval of program, in light of its reauthorization;
- Department violated written-notice requirement of public-comment provision;
- Department was required to provide 90-day comment period, rather than 45-day period;
- Department's violations of notice and comment-period requirements were collectively prejudicial, and thus, were not harmless error; and
- Department's violation of comment-period requirement was not rendered moot by amendment of regulation.

REFERENDA - COLORADO

Ward v. State by and through Polis

Supreme Court of Colorado - August 21, 2023 - P.3d - 2023 WL 5340376 - 2023 CO 45

Residents, local officials, and other plaintiffs brought action against Governor and Secretary of State, in their official capacities, to invalidate legislative bill and its embedded referred measure about limiting property taxes and providing other funding for local government, contending that both violated the Colorado Constitution's single-subject requirement and that the referred measure's title violated the Colorado Constitution's clear-expression requirement.

The District Court concluded that it lacked subject-matter jurisdiction to consider the single-subject claims and denied the requested relief on the clear-expression claims. Plaintiffs appealed.

The Supreme Court held that:

- Unless and until Colorado voters approved referred measure, courts lacked subject-matter jurisdiction to review either the measure or the legislative bill in which it was embedded to determine compliance with the Colorado Constitution's single-subject requirement;
- Failure of referred measure's title to provide detail on the rate or amount of proposed property tax reductions was not a basis to find that the title violated the Colorado Constitution's clear-expression requirement;
- Failure of referred measure's title to mention that measure would authorize an appropriation for rental assistance was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement;
- Failure of referred measure's title to refer to separate legislation that concerned refunds under the

Taxpayer's Bill of Rights (TABOR) and that would take effect only if the voters approved the referred measure was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement;

- That referred measure's title used allegedly confusing and obfuscating language in connection with its modifications to certain provisions in the Taxpayer's Bill of Rights (TABOR) was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement; and
- Failure of referred measure's title to mention the new funding for the State Education Fund was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement.

Unless and until Colorado voters approved referred measure about limiting property taxes and providing other funding for local government, courts lacked subject-matter jurisdiction to review either the measure or the legislative bill in which it was embedded to determine compliance with the Colorado Constitution's single-subject requirement; despite argument that statute providing for election contests arising out of a ballot issue or ballot question election concerning the order on the ballot or the form or content of any ballot title conferred subject-matter jurisdiction, a single-subject violation, which, by its nature, could not be remedied by judicial reformation, was not the type of challenge contemplated by that statute.

That the title for referred measure did not provide detail on the rate or amount of proposed property tax reductions was not a basis to find that the title violated the Colorado Constitution's clear-expression requirement; such an alleged failure was nothing more than an assertion that the title could be more specific and expansive, the title did alert voters to the general object to be accomplished, and a title did not have to express all of the act's provisions or the details by which the act's objects were to be accomplished.

Failure of title of referred measure, which concerned limitations on property taxes, to mention that measure would authorize an appropriation for rental assistance was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement; such an argument was simply an assertion that the title could provide more detail, but the lack of that level of detail did not render the title unclear.

Failure of title of referred measure, which concerned limitations on property taxes, to refer to separate legislation that concerned refunds under the Taxpayer's Bill of Rights (TABOR) and that would take effect only if the voters approved the referred measure, was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement; the referred measure did not concern itself with that separate legislation, and challengers to the referred measure's validity pointed to no authority supporting their contention that a ballot title had to disclose the impact that it may have on the implementation of separate legislation.

That the title of referred measure, which concerned limitations on property taxes, used allegedly confusing and obfuscating language in connection with its modifications to certain provisions in the Taxpayer's Bill of Rights (TABOR) was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement; such an argument amounted to nothing more than a quibble with the language of the title, and there was nothing unclear or misleading in the language that the General Assembly chose to employ.

Failure of title of referred measure, which concerned limitations on property taxes, to mention the new funding for the State Education Fund was not a basis to find that measure's title violated the Colorado Constitution's clear-expression requirement; lack of such a mention simply concerned a contention that the title should contain more specificity as to how it will compensate for lost property tax revenues, but such detail was neither necessary nor necessarily desirable.

EMINENT DOMAIN - FLORIDA

[Sabal Trail Transmission, LLC v. 3.921 Acres of Land in Lake County Florida](#)

United States Court of Appeals, Eleventh Circuit - July 25, 2023 - 74 F.4th 1346 - 29 Fla. L. Weekly Fed. C 2791

Natural gas company brought action pursuant to Natural Gas Act to condemn property for pipeline easement.

The United States District Court for the Middle District of Florida, adopting report and recommendation of a magistrate judge, awarded prejudgment interest to property owner under Florida law and, adopting report and recommendation of a magistrate judge, awarded attorney fees and costs to owner under Florida law. Company appealed.

The Court of Appeals held that state law applied in determining the measure of compensation in a condemnation proceeding under the Natural Gas Act.

Condemnation proceedings under the Natural Gas Act section authorizing private entities who have received a certificate of public convenience and necessity to acquire property by the exercise of the right of eminent domain must look to state law to determine the measure of compensation.

MUNICIPAL CORPORATIONS - GEORGIA

[Hospital Authority of Wayne County v. AmerisourceBergen Drug Corporation](#)

Supreme Court of Georgia - August 21, 2023 - S.E.2d - 2023 WL 5337867

County hospital authority brought actions against pharmaceutical companies, seeking to recover unreimbursed amounts it purportedly expended in treating opioid-dependent patients.

Actions were consolidated into multidistrict litigation (MDL). After seven of companies moved to dismiss, the United States District Court for the Northern District of Ohio certified questions.

The Supreme Court held that authority did not have legal authority to challenge Settlement Act's preemption provision on grounds that it violated Georgia Constitution's bar against retroactive laws.

County hospital authority did not have legal authority to challenge Settlement Act's preemption provision, which barred past, present or future claims on behalf of governmental entity seeking to recover against any business or person that was released entity under terms of settlement between State of Georgia and certain pharmaceutical companies, on grounds that it violated Georgia Constitution's bar against retroactive laws; General Assembly's passage of Act and its preemption provision took away any general statutory power the authority might otherwise have had to pursue such claims.

ZONING & PLANNING - MARYLAND

[Prince George's County Council v. Concerned Citizens of Prince George's County](#)

Supreme Court of Maryland - August 22, 2023 - A.3d - 2023 WL 5358452

Citizens of county filed petition for review of county district council's decision to enact bill amending zoning ordinance so as to exempt site of private airport, under certain conditions, from housing and development density restrictions generally applicable to properties in residential-agricultural (R-A) zone.

The Circuit Court, affirmed council's decision. Citizens appealed. The Court of Special Appeals reversed, finding that council bill violated requirement of uniformity in zoning laws. Airport's owners and council petitioned for writ of certiorari, and after writ was granted, council withdrew as party. Citizens moved to dismiss on ground of mootness in light of new council bill.

The Supreme Court held that:

- Council had authority to act legislatively to exempt airport site from development restrictions of R-A zone;
- Amendment served valid public purpose, namely encouraging redevelopment of land currently used for nonconforming and dangerous airport;
- Citizens failed to establish that developers' conduct evinced favoritism on the part of council;
- State's authority to regulate airports did not preclude county from amending zoning ordinance based on public safety concerns;
- Ordinance's facial neutrality was not dispositive of uniformity violation;
- Any intent or belief on council's part that amendment would only affect airport site was not dispositive of uniformity violation; and
- Amendment did not discriminate between similarly-situated properties.

EMINENT DOMAIN - MICHIGAN

[Bruneau v. County of Midland](#)

United States District Court, E.D. Michigan, Northern Division - July 26, 2023 - F.Supp.3d - 2023 WL 4765562

Property owners, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, brought putative class action against counties in which dam was located, alleging gross negligence and violations of both Fifth Amendment's Takings Clause under § 1983 and Takings Clause of Michigan's constitution.

Counties moved for summary judgment.

The District Court held that:

- Counties' conduct in setting lake levels to attempt to protect property values of nearby properties was not "taking" under Takings Clause of Fifth Amendment;
- There was no evidence that counties flooded nearby properties to achieve some public benefit, as would be required for owners to support their claim that counties' actions were taking under Michigan's Takings Clause; and
- Counties were entitled to governmental immunity from claims of gross negligence.

Even if counties in which dam was located knew that they had set lake levels at dangerously high levels that would increase risk of dam failure, counties' conduct in setting lake levels to attempt to protect property values of nearby properties was not "taking" under Takings Clause of Fifth Amendment, in putative class action against counties by owners of properties, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, where counties

did not flood properties to achieve any benefit for any third party.

There was no evidence that counties, in which dam was located, flooded nearby properties to achieve some public benefit, as would be required for owners of properties to support their claim that counties' actions in setting lake levels to attempt to protect property values of nearby properties were taking under Michigan's Takings Clause, in putative class action by owners after dam collapsed following several days of rain due to static liquefaction.

Counties in which dam was located were entitled to governmental immunity from claims of gross negligence brought by property owners, whose properties were flooded after dam collapsed after several days of rain due to static liquefaction, where owners only named counties themselves as parties, rather than naming any individual employees of counties.

LIABILITY - MONTANA

[White v. Flathead County](#)

United States District Court, D. Montana, Missoula Division - July 5, 2023 - F.Supp.3d - 2023 WL 4347648

Arrestee brought § 1983 action against arresting officer, several other unnamed county sheriff's deputies, and county, alleging that arresting officer and other county sheriff's deputies used excessive force when they arrested him, that county was liable under *Monell*, that defendants violated arrestee's right to privacy under the Montana constitution, that defendants were negligent, and that arresting officer's conduct qualified as assault and battery under Montana law.

Defendants moved for summary judgment on *Monell* claim, and filed motion in limine seeking to exclude evidence and testimony of ongoing medical damages that purportedly resulted from the alleged constitutional violations.

The District Court held that:

- Arrestee failed to show failure to train as basis for § 1983 *Monell* liability;
- Arrestee failed to show that county ratified arresting officer's alleged constitutional violation by not disciplining him or commenting on his kick to arrestee's head;
- County could not be held liability under § 1983 based on *Monell* via Montana law's imposition of tort liability on governmental entities; and
- Court would decline to exclude expert testimony of arrestee's treating physicians.

ZONING & PLANNING - NEW HAMPSHIRE

[Weiss v. Town of Sunapee](#)

Supreme Court of New Hampshire - August 23, 2023 - A.3d - 2023 WL 5418884

Property owners, who sought variance for setback for residence, appealed after town zoning board of adjustment denied variance application, both initially and on rehearing.

The Superior Court dismissed action. Property owners appealed.

The Supreme Court held that:

- Superior Court had subject matter jurisdiction to review board's findings that there was insufficient evidence of unnecessary hardship and that variance would not be in keeping with spirit of zoning ordinance, and
- Remand for determination of whether owners had good cause for specifying grounds for appeal in addition to those set forth in rehearing application was warranted.

EMINENT DOMAIN - OHIO

[State ex rel. Balunek v. Marchbanks](#)

Supreme Court of Ohio - July 25, 2023 - N.E.3d - 2023 WL 4711688 - 2023-Ohio-2517

Land owner sought a writ of mandamus ordering the Department of Transportation (DOT) to begin appropriation proceedings for the taking of real property owned by land owner.

The Supreme Court held that:

- DOT committed a taking of land owner's property;
- Land owner was entitled to a writ of mandamus compelling the DOT to institute appropriation proceedings; and
- Attorney fees were not available in mandamus actions to compel appropriation proceedings.

The Department of Transportation (DOT) committed a taking of land owner's property, for the purpose of land owner's mandamus action seeking to compel the DOT to begin appropriation proceedings; prior to DOT's construction project, the property had access to abutting roads through driveways and an easement, during the project the DOT destroyed the property's driveways that connected it to East 93rd Street and did not replace those driveways or provide alternative curb-cut access, and the project also eliminated the property's easement access to Woodland Avenue, rendering the property currently inaccessible to lawful vehicular traffic.

The fact that land owner would "likely" be granted street-opening permit to rebuild driveways to access property and that such a permit "would effectively negate the underlying loss-of-access basis" of his eminent domain claim did not negate owner's entitlement to writ of mandamus ordering Department of Transportation (DOT) to begin appropriation proceedings, after DOT project destroyed property's two driveways and eliminated property's easement across neighboring property to access road; street-opening permit would be granted only if property met city's ordinances and standards, no evidence indicated if property met those standards, to obtain permit owner would have to pay fee and submit performance bond of up to \$250,000, and permit process could not compel DOT to begin appropriation proceedings, and thus was not adequate remedy.

Land owner was entitled to a writ of mandamus compelling the Department of Transportation (DOT) to institute appropriation proceedings for the taking of owner's property, where DOT project eliminated access to the property by lawful vehicular traffic, and DOT's action constituted a taking for which it owed compensation.

EMPLOYMENT - OHIO

[State ex rel. International Association of Fire Fighters, Local 1536, AFL-CIO v. Sakacs](#)

Supreme Court of Ohio - August 29, 2023 - N.E.3d - 2023 WL 5535189 - 2023-Ohio-2976

Firefighters' union brought action against city, mayor, and city civil service commission, seeking a declaration that the fire chief's position, which was filled one day after the incumbent fire chief's retirement when the mayor rehired fire chief who had just retired, was subject to a competitive promotional-examination process, a permanent injunction prohibiting non-competitive means for filling vacancies within the city's fire department, and a writ of mandamus ordering the mayor to declare a vacancy in the fire chief's position, administer an examination, and make an appointment to fill the vacancy.

After allowing fire chief to intervene, the Court of Common Pleas granted the city's and mayor's motions for partial judgment on the pleadings as to punitive damages and attorney fees and denied the union's motion for summary judgment and granted summary judgment to defendants on the union's remaining claims. Union appealed. The Eleventh District Court of Appeals affirmed. Appeal was allowed.

The Supreme Court held that:

- Fire chief position became vacant when incumbent chief retired and thus had to be filled through statutory competitive promotional-examination process, and
- City's charter did not authorize city's mayor to appoint the incumbent fire chief to that position one day after he had retired as fire chief.

Fire chief position in city's fire department became vacant when the incumbent chief retired, and thus, the position had to be filled through the statutory competitive promotional-examination process, despite the fact the mayor purported to rehire the incumbent fire chief for the fire chief's position on the day after the incumbent retired, and notwithstanding that the incumbent fire chief did not intend to permanently relinquish the position when he retired; the incumbent could not have been rehired for a position that was not vacant.

City, its mayor, and its civil service commission forfeited their argument on appeal before the Supreme Court that city's charter authorized the mayor to appoint incumbent fire chief to that position one day after he had retired from the position because the charter was in direct conflict with statute requiring vacancies in positions above the rank of regular fire fighter to be filled using the competitive promotional-examination process and, therefore, the charter controlled, where this argument was neither raised in the trial court nor the court of appeals in suit brought by firefighter's union alleging the failure to fill vacancy in fire chief position through the competitive promotional-examination process upon incumbent chief's retirement violated civil-service laws.

[Fitch: U.S. State Budgets Prepared to Prove Mettle Headed into 2024](#)

Fitch Ratings-New York-30 August 2023: U.S. state budgets are ready and waiting for a slower economy in the coming months, according to Fitch Ratings in its latest report.

Slower economic growth and persistent inflation are leading Fitch's economists to call for a possible recession in either late-2023 or early-2024. Revenue growth for most states is already slowing as a result. Fitch's analysis of monthly tax revenue collection reports indicates at least 17 states saw yoy declines in tax collections for the 12 months ended June 30, with the sharpest declines in California and New York. Despite these declines, actual tax revenues remain well ahead of pre-pandemic levels, suggesting a higher baseline.

However, Fitch Senior Director Karen Krop believes that states are prepared. 'State budgets are

well-positioned to address economic uncertainty,' said Krop. 'A big reason is reserves, which states are adding to in greater numbers while paying down liabilities.' A notable example is Illinois, with reserves at an all-time high of nearly \$2 billion and another \$138 million anticipated in fiscal 2024.

2024 state budgets far are also showing increases in spending, namely on education (especially K-12), health care, transportation, the environment and affordable housing. Almost all states are reporting tight labor markets and wage pressure that is contributing to fairly significant wage increases.

Tax policy changes remain a notable feature of enacted budgets, with many states taking advantage of strong post-pandemic growth to reduce tax burdens, temporarily or permanently. Although the pace of tax reductions is slowing, Fitch sees ongoing tax cuts as an area to watch. 'Permanent tax reductions that rely on temporary revenue surges or draw on accumulated balances pose a potential risk to financial resilience,' said Krop.

'2024 U.S. State Budgets Resilient' is available at 'www.fitchratings.com'.

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[P3 State Legislation Update and Opportunities for the Private Sector: Squire Patton Boggs](#)

P3 state legislation continues to expand and move forward with governors signing legislation into law and sending some bills back to legislatures for review and revision. The states have in common efforts to define the breadth and depth of projects suitable for public private partnerships and many are working to establish specific offices to manage their infrastructure projects. Suffice it to say that the infrastructure to build infrastructure is being built out through state legislation. You can find our current P3 State Legislation Tracker [here](#).

It's time for the private sector to pay attention and interact with state governments as each state is marching to the beat of its own drums when it comes to P3 legislation. The private sector is going to need eyes in the back of its head to predict where to put down stakes. While not necessarily efficient, the market is full of opportunities for the private sector in terms of procurement and financing. Even with state and federal funds, there is a huge need for private sector investment.

And, of course, there is the opportunity for the private sector to engage with state government regarding its expertise and financial support for P3 projects.

On our radar this month is California which continues to expand authority for the use of P3s and progressive design build procurement. Progressive design build procurement is a project delivery method that combines elements of both design-build and traditional design-bid-build approaches. Progressive design build involves contractors early and develops project design in stages providing more flexibility and cost control during the development phase with the contractor taking responsibility for both design and construction with input from the public owner.

[Continue reading.](#)

Squire Patton Boggs - Karol K. Denniston, Jonathan M. Taunton and Kara-Marie Urban

August 24 2023

[What To Expect From S&P Global Ratings' U.S. Public Finance Rating Process.](#)

This publication outlines what to expect from the typical rating process when working with S&P Global Ratings' U.S. Public Finance (USPF) group and presents responses to frequently asked questions about the rating process, to provide transparency and comfort for new and frequent issuers. USPF is active in the following sectors: state and local government, transportation, utilities (water, sewer, public power), higher education, charter schools, health care, and housing. Through our ratings, we provide independent essential intelligence that investors can use to assess creditworthiness, compare different issuers and securities, supplement their own credit analysis, and meet investment guidelines. Our criteria for evaluating issuer creditworthiness and various types of debt are publicly available in the "About Ratings" section at www.spratings.com and our analysts are accessible and responsive throughout the rating process.

[Continue reading.](#)

[The Future Of Commercial Real Estate And Big City Budgets.](#)

More than three years after the beginning of the COVID-19 pandemic, the shift to remote work for many office workers has put the future of commercial real estate, and potentially city government budgets, on shaky ground.

One data and analytics group estimated that commercial property values are down 12 percent over the past 12 months, putting today's values on par with those in May 2018. In comparison, residential home values are about 50 percent higher than in mid-2018.

The divergence in commercial and residential property values makes it hard to predict the fiscal consequences for local governments broadly. Total property tax revenue accounts for 30 percent of local general revenue, but the pain from this transition will likely be concentrated in major cities with big commercial districts.

[Continue reading.](#)

Tax Policy Center

by Thomas Brosy

August 22, 2023

[Texas Port's \\$55 Million Municipal Bonds Ruled Taxable by IRS.](#)

- **Port didn't spend enough proceeds within 3 years, IRS Says**
- **Port says it complied with tax rules and will defend position**

The U.S. Internal Revenue Service has concluded that interest on \$55 million of municipal bonds issued by a Texas port in 2017 is taxable because the issuer was too slow to spend money it raised, according to a [securities filing](#).

The Port of Port Arthur Navigation District didn't comply with a section of the tax code that requires municipalities to spend 85% of tax-exempt bond proceeds within three years of the bonds being issued, according to the IRS, the filing said.

The port, which operates a shipping terminal on the Sabine Neches Waterway along the Gulf of Mexico, said it did comply with the federal tax code and intends to defend its position. After receiving a "proposed notice of adverse determination" an issuer has 30 days to request an administrative appeal of its case, according to the port's filing.

The section of the tax code in question is aimed at preventing state and local governments from issuing bonds when interest rates are low without any immediate need to use the the funds, resulting in excess debt that isn't subject to income tax.

Judy Bettis, Port of Port Arthur's chief financial officer, didn't immediately respond to a call and email seeking comment.

Bloomberg Markets

By Martin Z Braun

August 24, 2023

[Indiana Finance Authority \(State Revolving Fund\): Fitch New Issue Report](#)

The 'AAA' rating reflects the ability of the clean water (CW) and drinking water (DW) state revolving fund (SRF) bond program's (the program) financial structure to absorb hypothetical pool defaults in excess of Fitch Ratings' 'AAA' stress scenario without causing an interruption in bond payments. Aggregate pool credit risk is measured using Fitch's Portfolio Stress Model (PSM), and the strength of the program's financial structure is measured using Fitch's Cash Flow Model.

[ACCESS REPORT](#)

Wed 23 Aug, 2023

[Crisis in Concrete: Navigating the Ripple Effects of Commercial Real Estate on Municipal Bonds](#)

Declining commercial real estate valuations will not likely lead to a wave of defaults among muni issuers, according to Franklin Templeton Fixed Income's municipal bond team.

Executive summary

A decline in commercial real estate (CRE) prices is causing some investors to worry about the potential impact on their municipal (muni) bond holdings. In this publication, we dig deeper into the issue, and share some of the factors the Franklin Templeton Fixed Income (FTFI) muni credit research team considers in our security selection process. To answer the most pressing question first: We do not currently expect declining CRE valuations will lead to a wave of defaults among muni issuers, and we still believe in the sector's fundamental strength. In our view, balance sheets currently look strong. Federal COVID-19 aid gave rainy-day funds a significant boost. Budgets significantly expanded through strong revenue increases during the post-pandemic recovery and have been maintained with conservative budgeting and fiscal discipline.

In our view, falling CRE values will not escalate into a sector-wide crisis. While we anticipate some ratings downgrades over the near to medium term, we believe they will be idiosyncratic in nature. In determining the overall impact decreased CRE valuations will likely have on specific muni issuers, our dedicated credit research team looks at a wide range of factors on a case-by-case basis.

First, revenue sources, tax bases and primary service areas differ significantly across issuer types (cities, counties, school districts, hospitals, etc.), which leads some issuers to be more sensitive than others to changes in property prices. Second, property valuation changes do not have an immediate revenue impact, but rather, trickle through into tax collections with a lag, allowing time for issuers to react and offering them a wide array of options to address declines. Fundamentally, municipalities can reshuffle expenditures in their budgets, raise revenues or tap reserves if needed to incorporate lower property tax receipts. Additionally, they can change policies to encourage development or other activities that result in more revenue to the city. Lastly, muni bonds often have additional protections, such as insurance, oversight programs and legal provisions, which can help mitigate against potential default events.

Despite the headwind CRE valuations pose on issuers, we continue to believe that attractive opportunities can be found regionally and nationally across the credit spectrum. Robust, bottom-up research and strong security selection will remain crucial in our view going forward.

[Continue reading.](#)

FRANKLIN TEMPLETON

AUGUST 24, 2023

No Real Fix To the Sharp Rise in Public Debt Loads, Economists Say.

Jackson Hole, Wyoming, Aug 26 (Reuters) - The steep jump in public debt loads over the past decade and a half, as governments borrowed large amounts of money to battle the Global Financial Crisis and the fallout from the COVID-19 pandemic, is probably irreversible.

That's the unhappy conclusion of a research paper being presented on Saturday to some of the world's most influential economic policymakers at the Kansas City Federal Reserve's annual central banking symposium in Jackson Hole, Wyoming.

Since 2007, worldwide public debt has ballooned from 40% to 60% of GDP, on average, with debt-to-GDP ratios even higher in the advanced countries. That includes the United States, the world's biggest economy, where government debt is now more than equal to the nation's yearly economic output. U.S. debt was about 70% of GDP 15 years ago.

[Continue reading.](#)

Reuters

By Ann Saphir

August 26, 2023

EPA Cybersecurity Rule Challenged by States and Water Systems Associations.

On July 25, Missouri, Arkansas, and Iowa (the states), along with intervenors American Water Works Association and National Rural Water Association (the water associations), petitioned the Eighth Circuit to review the U.S. Environmental Protection Agency's (EPA) new rule requiring states to review and report cybersecurity threats to their public water systems (PWS).

In August 2022, the EPA provided a report to Congress describing its plan and prioritization framework for addressing the cybersecurity needs of the public water system. The EPA then issued an "implementation memo" in March 2023 that laid the groundwork for the EPA's plan to combat cybersecurity risk. The memorandum requires states to incorporate an evaluation of the cybersecurity of operational technology used by a PWS when conducting its sanitary surveys. A sanitary survey is a review of a PWS to assess its capability to supply safe drinking water, and the EPA is including cybersecurity as a potential deficiency. In a press release announcing the memo, EPA Assistant Administrator for Water Radhika Fox said, "Cyber-attacks against critical infrastructure facilities, including drinking water systems, are increasing, and public water systems are vulnerable. Cyber-attacks have the potential to contaminate drinking water, which threatens public health." In early July 2023, the Eighth Circuit blocked implementation of the rule while the legal challenge is ongoing.

The states' brief argues that the EPA's Cybersecurity Rule unlawfully imposes new legal requirements on states and PWSs, and that the rule exceeds the EPA's statutory authority by ignoring congressional actions limiting cybersecurity requirements to large PWSs and changing the criteria for sanitary surveys through a memorandum. The states also assert that the rule is arbitrary and capricious because the EPA (i) failed to acknowledge or explain it had changed policies relating to amending the minimum criteria or the scope of sanitary surveys and (ii) failed to consider

important aspects of the rule, including that the state agencies responsible for conducting the surveys lack the level of cybersecurity expertise necessary to complete the evaluations expected by the EPA, and the frequency with which sanitary surveys occur (every three to five years) will not ensure PWSs address new threats in a timely fashion.

[Continue reading.](#)

Troutman Pepper

September 1, 2023

[US Water Infrastructure ‘Unsustainable’ Amid Rapidly Evolving Crisis, Report Warns.](#)

The United States is facing an unsustainable demand for water and lacks the security posture to defend the nation’s water systems from emerging threats, according to a new report.

The National Infrastructure Advisory Council voted unanimously on Monday to approve a new report that describes current U.S. water infrastructure as “unsustainable” and warns that the nation is not prepared to cope with a “rapidly evolving water crisis.”

There are more than 150,000 public water systems in the U.S., and an estimated 80% are publicly owned and operated by municipalities. Water and wastewater systems have faced increased cyber threats in recent years, in addition to new security challenges posed by climate change, growing demand for fixed water supplies nationwide and a critical lack of funding.

The [report](#) attributes inadequate conditions across the water and wastewater industries to “decades of chronic underfunding and underinvestment” in the U.S. and makes several recommendations to increase water supply sustainability, from aquifer recharges to developing highly integrated water management systems.

[Continue reading.](#)

Route Fifty

By Chris Riotta

AUG 29, 2023

[U.S. and Canadian Ports - Fitch Peer Review \(Attribute Assessments, Metrics and Ratings\)](#)

This Fitch Ratings report highlights the operating and financial performance of Fitch-rated ports in the U.S. and Canada. These benchmarks are used to determine attribute assessments. The report uses six statistics and ratios calculated from annual audited financial statements, or from supplemental data received directly from the ports, along with select forward-looking metrics

reflecting Fitch's base and rating case analyses. Financial data reflects fiscal 2022 data, the last full financial year for the majority of rated ports. Throughput data for 2019 and 2022 is also included to provide a benchmark of volume performance before and following the coronavirus pandemic. A port's financial metrics, relative to Fitch-designated peer groups, constitute an important component of our credit analysis. This report focuses primarily on U.S. and Canadian ports with a standalone pledge of port revenue. Consolidated entities with primary business lines other than port activity, including airport and/or toll facility operation, are not included in this comparative analysis. A list of public Fitch-rated consolidated ports is included in Appendix D.

[ACCESS REPORT](#)

Tue 29 Aug, 2023

Cargo Volumes Soften for U.S. and Canadian Ports; Cruise Activity Rebounds - Fitch

Fitch Ratings-New York-29 August 2023: U.S. and Canadian ports will see cargo volumes level off in the coming months with the broader economy inching closer to a possible recession, according to Fitch Ratings in its latest peer review for the sector.

Fitch economists are calling for a mild economic recession to materialize sometime between the tail end of 2023 and early 2024. This has manifested in softening U.S. cargo volumes in the last year, with cargo volumes down 24% for West Coast ports through 1H23 and 16% lower for East and Gulf Coast ports relative to highs seen during the pandemic. Even with this year's volume declines, TTM volumes through June 2023 remain up 2.7% relative to the same period ending June 2019, reflecting continued baseline growth for the sector.

"Cargo ports will gradually revert to normalized volume trends following a volatile three years brought on by the pandemic, but the sector in general remains in a solid position fiscally," said Senior Director Emma Griffith. "From a ratings standpoint, this will likely translate to rating affirmations for ports over time."

In contrast, cruise activity is continuing to ramp up significantly in 2023, with full recovery to 2019 levels expected by 2024. This proved to be a catalyst in Fitch raising the Rating Outlook for three Florida-area cruise ports over the last year (Port Canaveral and Port Tampa Bay to Positive from Stable; PortMiami to Stable from Negative).

All three Outlook revisions reflect strength in operating performance due to the robust resumption of cruise activity and enhanced financial stability driven by resilient cargo performance indicating continued favorable metrics are likely.

The report provides a summary of the operating and financial performance of Fitch-rated ports in the U.S. and Canada, as well as an overview of rating changes since the last publication of the peer study in March 2022. Concurrently Fitch has released an update to its corresponding interactive peer study for standalone U.S. and Canadian port credits. Both Fitch's "U.S. and Canadian Ports — Peer Review" and the "U.S. and Canadian Ports - Fitch Analytical Comparative Tool" are available at www.fitchratings.com.

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ESG Criticism Seen Benefiting Bonds.

Broadly speaking, equity-based strategies fueled the initial boom in environmental, social, and governance exchange traded fund proliferation. As a result, criticism lobbed at ESG investing has focused on equity-based ESG funds.

In what could be good news for funds such as the Calvert Ultra-Short Investment Grade ETF (CVSB), bond issuers are paying attention to the vitriol aimed at the ESG/equity combination and are looking to avoid a similar fate.

One way of looking at that is the ESG bond market is maturing. In the process, it's looking to avoid some of the hoopla that recently plagued market stock-based ESG ETF expansion. That could prove wise at a time when investors and regulators are applying more scrutiny to the ESG label.

CVSB Right Bond ETF at the Right Time

In addition to signs the market is maturing, criticism aimed at comparable equity strategies is paying off in another way. Debt issuers are being more thorough in evaluating whether or not upcoming issues can credibly be deemed ESG.

That's meaningful to investors considering CVSB because the Calvert ETF allocates more than 61% of its roster to investment-grade corporate debt. Whether it's junk bonds or investment-grade credit, corporate issuers are very scrutinized when it comes to ESG claims. That is to say, in this environment, they need to ensure there's substance to those claims.

"To some extent some US issuers are more trepidatious because of the pushback," said Melissa James, vice chairman of global capital markets at Morgan Stanley, in an interview with Bloomberg's Caleb Mutua. "Had things gone unfettered, it would've gotten a little too frothy. The market is maturing."

There are good reasons for bond issuers to not take liberties when it comes to applying the label. Others include the aforementioned scrutiny and increasing politicization of ESG investing. Fortunately, the CVSB methodology, including active management, steers investors clear of those

potential pitfalls.

“The so-called greenium, which refers to the price advantage that companies can reap when borrowing in the ESG market, has largely evaporated amid the political pressure, hurting sales of the bonds in the US. Corporations have raised about \$31 billion in dollar-denominated ESG bonds this year through August 17, a 53% slump from the same period last year,” according to Bloomberg.

by Tom Lydon of VettaFi, 8/31/23

Originally published on ETFTrends.com on August 29, 2023.

[A New Village Square for Public Funds Investors.](#)

An online resource now being built out has the potential to become an important intellectual hub for public-sector investment practitioners. They need to articulate what they most want to find there.

State and local government treasurers have their separate professional associations. The Government Finance Officers Association (GFOA) has its committee on treasury and investment management. There’s a corporate program for certified treasury professionals that awards credentials in that niche. But never before has there been a go-to online resource aspiring to provide ongoing intellectual leadership and a timely flow of fresh ideas and professional insights to both the public-sector professionals who handle government funds and their counterparts in the boutique private-sector money management industry that serves such jurisdictions. So it’s worth taking a peek at the relatively new [Public Funds Investment Institute \(PFII\)](#).

PFII is a nonprofit founded by Marty Margolis, the retired founder of one of the nation’s larger firms focused on public-sector money management. It’s characterized as his way to “give back” by establishing a neutral, noncommercial resource center for all the folks who have stumbled their way into the profession of managing megamillions or even billions of the nation’s \$4 trillion of public funds.

There’s a logic to this idea, as nobody ever enters college with the life ambition to become a county treasurer, a municipal pension staffer or an outsourced public funds money manager. Generally the incumbents have found their way into such jobs by coincidence or default, with most of their training received on the job.

[Continue reading.](#)

governing.com

Aug. 22, 2023 • Girard Miller

[An Emerging ‘Greenium’? New Research Says Green Bonds Cost Governments Less.](#)

Amid an ESG backlash in some states, the finding could lead to more governments seeking

an ESG-related label for bonds that will fund socially or environmentally sustainable projects.

The devastating wildfires in Maui, which has so far claimed the lives of at least 110 people, are just the latest in a series of storms made worse by global warming. On Sunday, Gov. Josh Green, appearing on CBS News' "Face The Nation," acknowledged there were critical errors by both local officials and private companies regarding the disaster that contributed to the rising death count. But he added that those mistakes were aggravated by climate change, which created conditions for the wildfire to spread rapidly and behave erratically.

"There's no excuses ever to be made," he said, "but there are finite resources sometimes in the moment."

There's no question Hawaii faces a long and expensive rebuilding process that will most likely include investing in its emergency warning systems and reservoir water diversion projects to better respond to future wildfires. But new research shows that projects like these may at least cost a little less to finance than they did before.

[Continue reading.](#)

Route Fifty

by Liz Farmer

AUGUST 23, 2023

[Facing Budget Shortfall, California Preps \\$2.6 Billion Bond Sale.](#)

- **The bond sale includes \$1.6 billion of refunding bonds**
- **State's latest budget reflects nearly \$31.5 billion deficit**

California is coming to market next week with its largest municipal-debt offering of the year, \$2.6 billion of tax-exempt general obligation bonds that are expected to draw strong demand from investors during a period of lower-than-expected issuance.

The sale includes \$1 billion of new debt to fund a variety of voter-approved capital projects including school construction, improvements to clean water access and high-speed rail. The Golden State will also sell \$1.6 billion of refunding bonds to cut its borrowing costs, according to bond documents.

Retail investors will begin placing orders on Wednesday ahead of pricing Thursday. The bonds will be underwritten by Citigroup Inc. and RBC Capital Markets, and they are rated Aa2 by Moody's Investors Service, AA- by S&P Global Ratings, and AA by Fitch Ratings.

[Continue reading.](#)

Bloomberg Markets

By Maxwell Adler

September 1, 2023

[S&P Second Party Opinion: Caritas Corp.'s California Municipal Finance Authority Mobile Home Park Senior Revenue Bonds](#)

Caritas Corp. has a strong social license to operate in the communities it serves. For more than 25 years, Caritas has acquired, renovated, and operated over 30 affordable housing projects and has a track record of maintaining affordable rents while upkeeping its properties. Regulatory oversight and regulation underscores compliance with social objectives. All of Caritas' projects, including the proposed acquisition of the Chatsworth Project, are governed by various federal and state laws with specific requirements to set aside housing for low-income residents and maintain affordable rent levels for all residents.

[Download](#)

[Inside the \\$900 million 'Black Tax': Why It's So Much More Expensive for Black Towns to Borrow Money.](#)

A growing body of research shows that the municipal bond market is helping perpetuate systemic racism.

When cities need to raise money for roads and water lines, they have a few options. They can raise taxes, for instance, or charge fees for city services. If that isn't enough, though, they can also issue bonds, borrowing on a \$4 trillion credit market to pay for new construction projects they can't afford otherwise. These municipal bonds function like loans that banks and investors make to local governments, and they're an essential tool for filling out city budgets.

"This is how your sewage gets funded, this is how your water gets funded, this is how public schools and public services are funded," said Matthew Wynter, a research professor of finance at Stony Brook University.

But a growing body of research shows that this credit market is also helping perpetuate systemic racism. When Black towns and cities try to borrow money on the bond market, they pay higher interest rates than their white counterparts. A [paper published earlier this month](#) in the science journal PLoS One finds that this "Black tax" amounts to as much as \$900 million per year in the United States. These higher borrowing costs can prevent towns from pursuing much-needed infrastructure upgrades, or push them toward default and bankruptcy if they fall behind on interest payments.

[Continue reading.](#)

FAST COMPANY

BY GRIST

08-23-23

[San Francisco Taps Muni Market for Affordable Housing Project.](#)

- **Bond sale will help finance 537 units of affordable housing**
- **San Francisco needs 82,000 new housing units by 2030**

A San Francisco redevelopment agency is borrowing \$60 million in the municipal bond market this week to help finance affordable housing in a city that has some of the highest rents in the nation and is suffering from an exodus of people.

The Office of Community Investment and Infrastructure, an agency governed by the city and county of San Francisco, is selling \$24.5 million of taxable bonds and \$35.7 million of tax-exempt bonds to launch another phase of the Transbay Program, a roughly two-decade old transportation and housing project intended to transform an “underdeveloped” neighborhood.

Proceeds from the sales will go toward the construction of more than 500 affordable housing units and a new park in San Francisco’s South of Market neighborhood, an area that now houses downtown skyscrapers, luxury hotels and offices for Salesforce Inc., LinkedIn and BlackRock Inc.

[Continue reading.](#)

Bloomberg Markets

By Maxwell Adler and Tanaz Meghjani

August 29, 2023

[S&P U.S. Local Governments Credit Brief: California School Districts Means And Medians](#)

Overview

S&P Global Ratings believes that California school districts’ credit quality will remain relatively stable, supported by a favorable state funding environment and the receipt of one-time stimulus resources as districts mitigate challenges arising from broad school-aged demographic declines that the pandemic has exacerbated. We expect this trend to continue in the medium term, but districts in the state face more-difficult budgetary tradeoffs as they expend their remaining Elementary and Secondary School Emergency Relief (ESSER) funding and begin to experience the financial impact of continued enrollment declines. In fiscal 2023, the state made upward adjustments to its per pupil equalization formula applicable to most districts. Districts can use the average daily attendance (ADA) of the current year, prior year, or the average of the three most recent years, whichever is highest, to determine operating revenue under the state funding formula, but we think that the revenue effects and operational and asset management complexities of declining local student populations will continue to challenge the budgets of many districts for the long term. Accordingly, we also are seeing a surge in compensation increases to an extent that affects districts’ bottom lines, as bargaining groups make the case for addressing broad-based inflation, the state’s comparatively high housing costs, and a limited pipeline of qualified teachers.

S&P Global Ratings maintains ratings on 688 school districts in California, including school facilities improvement districts. Fifty-five percent of California school districts are in the ‘A’ category, 44% are in the ‘AA’ category or above, and fewer than 1% are in the ‘BBB’ category or lower. In addition,

99% of the ratings have a stable outlook. Four school district ratings have a positive outlook, while two have a negative outlook.

[Continue reading.](#)

30 Aug, 2023

[IRS Targets Port Arthur, Texas, Bond Issuance for Hedge Bond Violation - Is Your Bond Issue at Risk? - McNeese](#)

The Internal Revenue Service recently issued a notice of proposed adverse tax determination in what might be a harbinger of additional enforcement actions targeting alleged hedge bonds. The Port of Port Arthur Navigation District of Jefferson County, Texas, issued tax-exempt bonds — according to a continuing disclosure filing made by the Port on Aug. 23, the IRS is alleging that those bonds are taxable “hedge bonds” due to noncompliance with the requirements of the Internal Revenue Code. The Port is contesting the taxability determination.

A taxability determination under Section 149(g) of the code comes down to one thing: you issued your bonds too early. This section is intended to prevent the issuance of tax-exempt bonds earlier than is reasonably necessary to accomplish the governmental purpose of the issue. Bonds issued too early means foregone tax revenue for the federal government, a result frowned upon by the IRS.

Avoiding taxable hedge bond status is fairly straightforward — the issuer must have a reasonable anticipation at the time of issuance that it will expend at least 85% of the proceeds of the issue within three years. The 85% test is based on “reasonable expectations,” not actual results — an issuer could, in fact, fail to spend 85% of the proceeds in three years and avoid a taxability determination under the hedge bond rules.

Over the last year, the municipal bond market has seen a rapid rise in interest rates, coinciding with rapid increases in the Federal Funds Rate by the Federal Reserve to combat inflation. As rates began to rise, a municipality may have been tempted to borrow earlier than was needed to lock in a lower interest rate on its debt. Therefore, bonds issued over the last 12 to 18 months for new capital projects may be at risk of examination by the IRS.

If you issued bonds to finance new projects during this period, now is the time to check your files to ensure compliance with the hedge bond rules. Make sure your records from the time of issuance are in order to show support for having a “reasonable expectation” of spending the proceeds within three years. Meeting minutes, engineering studies and other documentation showing an imminent need to borrow for a project will be helpful evidence. If circumstances have changed since then, preserve documentation of what happened and, ideally, why it was not in the realm of possibility at the time the bonds were issued.

If your bond issue is targeted by the IRS for examination, consult with tax counsel before making any response. I have advised many clients over the years in connection with IRS examinations of tax-exempt bonds, including examinations involving application of the hedge bond rules.

by Timothy Horstmann

September 1, 2023

[GFOA: Audits and ARPA - You're Not Alone!](#)

Three important things to keep in mind:

1. Did you know that you may qualify for an [alternative to the Single Audit](#)? For those entities that received less than \$10M in CSLFRF and spend less than \$750,000 in other federal funds may qualify for an "attestation" which significantly reduces the requirements of the local government under review. [Click here](#) for more details.
2. Did you know that the US Treasury has a fully-searchable excel spreadsheet of all ARPA spending? Search by state, entity type, expenditure category, budgeted-obligated-expended. Go search crazy! [Here are all the P&E reports submitted in April 2023](#) and [here is where you can find all past submitted reports](#) (scroll down, "Quarterly and Annual Reporting Data" excel documents are almost all the way to the bottom).
3. Did you know that [GFOA's Federal Liaison Team](#) can assist with referencing rules and conditions of the SLFRF? You're not alone. We are ready to make connections with other governments involved in the same process—give us a call and we're happy to assist you!

[Dwindling Muni Sales Limit Pain With Market Set for Monthly Drop.](#)

- **Muni market is on track for worst month since February**
- **Scheduled issuance for next 30 days is near lowest in months**

Sales of new US state and local-government bonds are poised to dwindle for the next few weeks, delivering a potential respite for a market that's on track for its biggest monthly slump since February.

The issuance calendar for the next 30 days, encompassing the abbreviated trading week after the Sept. 4 US Labor Day holiday, currently shows about \$5.9 billion of municipal-bond sales, according to data compiled by Bloomberg. That's not far off the slowest pace since February and well below the five-year average of so-called visible supply, which stands at about \$11 billion.

The slowdown, starting this week with sales slated to total about \$3.5 billion, may relieve some pressure on munis, which are posting losses this month along with other fixed-income securities as investors absorb the Federal Reserve's signals that it will keep interest rates higher for longer to tame inflation.

[Continue reading.](#)

Bloomberg Markets

By Danielle Moran

August 28, 2023

[Top \(Bottom?\) Ten of Tax Headaches \(Challenges\) for Municipal Bond Issuers: Cozen O'Conner](#)

Sometimes the first step to solving (or mitigating or avoiding) problems is to identify what the problem may be to, among other things, put time on one's side.

For issuers of tax-exempt municipal bonds, there tend to be certain types of situations that are more prone to creating tax-issues. The purpose of this article is to identify certain types of situations that are more likely to create tax headaches (or at least are better navigated with some advance planning) for purposes of the tax-exempt bond rules.

Please see full Article below for more information.

[Continue reading.](#)

by Mark Vacha

September 1, 2023

Cozen O'Conner

[Barry Eichengreen On Living In a World of Higher Public Debt.](#)

What it means for policymakers around the globe.

In recent years, the absolute level of government debt around the world has risen dramatically. The Covid emergency unleashed a huge wave of public-sector spending in 2020 and beyond. Meanwhile, spending remains high for other reasons, including public investment on climate and energy-related issues. So what does that mean for policy going forward? What does it mean for central banks tasked with controlling inflation? University of California at Berkeley economist Barry Eichengreen presented a paper on exactly this topic at this year's Jackson Hole Economic Symposium. On this episode, we speak with Eichengreen about his research, why it's of importance to central bankers, and what history says about the prospects for fiscal consolidation. This transcript has been lightly edited for clarity.

[Continue reading.](#)

Bloomberg Markets

By Tracy Alloway and Joe Weisenthal

August 29, 2023 at 9:22 AM PDT

[MSRB Research Indicates Rise in Municipal Securities Transaction Costs for Individual Investors Amid Rising Rates and Market Volatility.](#)

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today published a new research report that indicates a rise in customer transaction costs for municipal securities since early 2022, particularly for individual investor-sized trades.

“This increase in transaction costs is likely due to the steep decline in bond prices triggered by rising interest rates and market volatility starting in 2022, as those factors are often associated with higher effective spread,” said Simon Wu, MSRB Chief Economist and lead author of the report. “Tax implications associated with buying discount bonds tend to make them less liquid, which in turn impacts the costs of trading these securities. Moreover, since dealers may be inclined to charge relatively fixed markups for customer trades, when bond prices decline, transaction costs as a percentage of the purchase price generally increase.”

As previous MSRB research has shown, other than a sharp but brief spike in 2020 attributable to the COVID-19 crisis, transaction costs (as measured by effective spread) in the municipal market declined steadily between early 2009 and late 2021. However, starting in early 2022, that trend reversed. Bond prices suffered a steep decline as interest rates began to rise due to rising inflation, and market volatility increased. Declining bond prices resulted in more trading of discount bonds, which become less liquid the greater the discount from par value. This is because of the Internal Revenue Service’s Market Discount Rule, which sets the threshold at which a discount municipal bond should be taxed as a capital gain rather than as ordinary income, making bonds with deeper discounts less attractive.

During this time, the average effective spread for municipal securities trades began to rise. Since the effective spread is calculated as the difference between customer purchase price and customer sale price and expressed as a percentage of bond price, declining bond prices with a relatively fixed markup would make the effective spread on a customer purchase higher.

The rise in effective spread was especially pronounced for individual investor-sized trades. As of March 2023, the effective spread for the sub-\$100,000 par value trades, a proxy for individual investors, was three times as large as the effective spread for the over \$1,000,000 par value trades that are generally attributed to institutional investors. Whereas, as recently as 2021, the effective spread for individual-sized customer trades was only 1.7 times the effective spread for institutional-sized customer trades. Additionally, the authors found that customer trades flagged with non-transaction-based compensation typically tied to a fee-based customer account, such as separately managed accounts, received a 30-basis point lower effective spread than customer trades from a regular non-fee-based customer account.

“While we do not tell dealers how much markup they can charge a customer, we do have rules to ensure that they charge fair and reasonable prices and clearly disclose markups on customer confirmations,” said John Bagley, MSRB Chief Market Structure Officer. “In addition to writing rules designed to protect investors and ensure a fair and efficient market, monitoring market trends and publishing research reports is another way the MSRB supports market transparency and empowers investors to make informed decisions.”

[Read the report.](#)

Date: August 22, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[Municipal-Bond Investors Pay a Hefty Price for Not Being Taxed.](#)

A new study suggests that ‘investors overvalue the pleasure’ of tax-exemption

Municipal-bond investors are paying a greater premium than should be expected for the “pleasure of not being taxed,” a new study finds, often negating the bonds’ benefit.

In a perfectly priced world, a muni bond would pay interest equivalent to a Treasury bond minus the investors’ tax burden on the Treasury and adjusted for liquidity and credit quality of the issuing state or municipality.

But munis pay investors even less than that, according to the study, which appeared in a National Bureau of Economic Research working paper in June. On average, the study found, the yield of the muni bonds was nearly 15 basis points, or 0.15 percentage point, lower than what would be explained by their favorable tax status.

[Continue reading.](#)

The Wall Street Journal

By Daisy Maxey

Sept. 3, 2023

[How Did Things Go So Wrong at This Arizona Park Built With Muni Bonds?](#)

The sports arena opened just last year. Bonds that built it recently traded at roughly 10 cents on the dollar.

Municipal bonds have a reputation for safety, but a financial meltdown at a sports arena in Mesa, Ariz., shows all munis aren’t created equal.

Legacy Park, spread over 320 acres with volleyball courts, soccer fields and summer campers, filed for bankruptcy in May. That was just 15 months after it opened and three years after an entity known as the Arizona Industrial Development Authority agreed to issue muni bonds to pay for the park’s construction. The bonds recently traded at roughly 10 cents on the dollar, and the park is looking for a buyer.

The sports park’s financial troubles highlight a risky corner of the \$4 trillion municipal-bond market, enabled by local government entities known as conduit issuers. That is a space where private-sector businesses, typically nonprofits, borrow tax-free to build malls, medical centers and charter schools.

[Continue reading.](#)

The Wall Street Journal

By Heather Gillers

Aug. 28, 2023

[**Puerto Rico Utility Bondholders Split on Way to Bankruptcy Exit.**](#)

BlackRock and other municipal bondholders are nearing a restructuring deal opposed by their longtime allies

A group of bond investors is expected to back a new restructuring plan for Puerto Rico's power utility but would have to contend with other creditors that want to keep fighting for a better deal.

BlackRock, Nuveen and Franklin Advisers are nearing a restructuring deal to write down \$8.3 billion in debt owed by the bankrupt electric monopoly to a fraction of that amount, people familiar with the discussions said.

The new deal would open a path to ending the Puerto Rico Electric Power Authority's six-year bankruptcy case and has divided bondholders that until recently were united in negotiations. Bondholders including GoldenTree Asset Management are preparing to battle in court to try to sink the debt plan, due to be filed in court on Friday, according to people familiar with the matter.

[Continue reading.](#)

The Wall Street Journal

By Andrew Scurria

Aug. 24, 2023

[**Taxing Remote Workers: "Convenience," Conflict, And The Courts.**](#)

When your commute to work takes place within the confines of your home, where should you pay income taxes? The answer is complicated. For remote workers, it could mean more work when filing their taxes. State and local budgets can pay a price, too.

Not all jobs can be done remotely. But for people who have the option, an estimated 35 percent are working from home all of the time. A McKinsey & Company survey estimates that there are 92 million people in the US who can, at times, skip their commute to other cities—or even states. When they do, they don't need the same tax-funded public services provided to people on the ground in those jurisdictions.

But communities need people, and their tax dollars, to thrive. States and cities with income taxes can simplify the way remote work is taxed, maintain fiscal balance, and better support their communities, but state-by-state responses could lead to conflicting guidance. Absent a coordinated response from state lawmakers—or intervention by Congress—these conflicts will be settled in the courts.

[Continue reading.](#)

Tax Policy Center

by Renu Zaretsky

August 2, 2023

[Muni Market Outlook for September \(Bloomberg Audio\)](#)

Joe Mysak, editor of the Bloomberg Brief: Muni Markets for Bloomberg News, joins to give us an update on the municipal bond market. Hosted by Jess Menton and John Tucker.

[Listen to audio.](#)

Sep 01, 2023

[Puerto Rico Electric Power Bonds Fall on Proposed Debt Deal.](#)

- **Slump comes as some investors reach deal with utility**
- **Proposal would give some investors 12.5 cents on the dollar**

Some municipal bonds sold by Puerto Rico's bankrupt power utility have plunged after a group of investors reached a restructuring deal that would significantly slash the agency's debt load. A security sold by the Puerto Rico Electric Power Authority, also known as Prepa, due in 2042 changed hands at an average price of 24.25 cents on the dollar between two trades on Monday, down from above 70 cents as recently as May, according to data compiled by Bloomberg.

The deal between creditors including BlackRock Financial Management and Nuveen Asset Management and the island's federally appointed financial oversight board, which is managing Prepa's bankruptcy, would reduce combined claims of \$10 billion down to about \$2.5 billion of new bonds. The deal would give bondholders who sign the agreement 12.5 cents on the dollar on what they were owed when Prepa entered bankruptcy in July 2017, and 3.5 cents for investors who decline to join the restructuring plan.

[Continue reading.](#)

Bloomberg Markets

By Danielle Moran and Michelle Kaske

August 28, 2023

[Transaction Costs for Municipal Bonds Rose for Retail Investors.](#)

- **MSRB report says spreads surged as securities' prices dropped**
- **Effective spread widened to 54.5 basis points from 40 in 2021**

Transaction costs for retail investors buying municipal bonds in the secondary market have jumped since 2021 as falling bond prices have made the securities riskier for dealers to hold, according to a study released on Tuesday.

The gap between the yield where dealers buy or sell a security, known as the effective spread, has widened to 0.545 percentage point, or 54.5 basis points as of March. That's up from 52.9 bps in 2022 and 40.1 bps in 2021, according to the report from the Municipal Securities Rulemaking Board, an industry regulatory body.

The steady rise in interest rates since last year has broadly eroded the value of fixed-income securities. The Federal Reserve started increasing the so-called federal funds rate in March 2022 to combat inflation. After 11 increases, the top of the range for the rate stands at 5.50%.

That's pushed down the price of bonds, with longer-term debt generally hit the hardest. Municipal bonds that trade at below their face value are often harder for dealers to sell, because any gains on the principal can be taxable, making the debt less attractive to the wealthy investors that often focus on tax-free bonds.

Dealers finding it harder to sell the bonds can translate to wider gaps between the prices at which brokerages will buy and sell securities, according to the MSRB. Also, brokers often charge fixed markups on securities, so when bond prices fall, transaction costs as a percentage of the purchase price will rise.

The report focused on trading costs for transactions in about the \$25,000 to \$100,000 range, often viewed as a proxy for retail trades. For institutional investors, trading costs moved much less. The effective spread on trades over \$1 million rose from 17.4 basis points in 2019 to 17.9 in 2021 and 18.1 in 2023.

The kind of customers who engage in transactions of \$1 million and above probably agree upon a price with their dealers before a trade goes through, said Simon Wu, MSRB chief economist and lead author of the report.

Bloomberg Markets

By Joseph Mysak Jr

August 22, 2023

[Wells Fargo Is Cleared to Underwrite Texas Muni-Bond Deals by AG.](#)

The Texas Attorney General's Office ruled that Wells Fargo & Co. can continue underwriting municipal-bond transactions in the state after probing the bank's policies on the firearms industry.

It's a win for Wells Fargo's public finance department, allowing it to maintain its presence in the top market for municipal-bond deals this year. The San Francisco-based bank is the sixth-biggest underwriter in the US muni market overall.

Leslie Brock, the chief of the AG's public finance division, wrote in a [letter](#) to bond counsel on Friday that the bank complies with the rules.

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright

August 25, 2023

[Moving to Texas Is All the Rage, Even in the Muni-Bond Market.](#)

- **Credit spreads on Texas bonds have widened on supply surge**
- **Texas issuers have sold the most amount of debt so far in 2023**

It seems like everything is cheaper in Texas these days as the state lures residents and companies with a lower cost of living. Even municipal debt investors are now getting a bargain after a bond boom overwhelmed demand.

Texas governments and school districts are in the midst of a borrowing spree as the population swells. That caused bond yields to climb, giving investors a chance to buy pristine credits that are yielding 40 or even 50 basis points higher than the AAA benchmark.

Those rates have climbed so high that it makes sense for investors in a bevy of other states to buy Texas bonds. Meanwhile, the credits offer a safe haven: The state is one of a dozen that's rated AAA, higher than the federal government. Texas is considered the eighth-largest economy in the world.

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright and Skylar Woodhouse

August 22, 2023

[Contracting Money Supply: A New Risk for Bond Investors](#)

It's easy to be bullish on bonds and fixed income assets these days. Thanks to the Fed's rate hikes, bonds of all stripes are yielding the most they have in decades. Income choices are plentiful and they offer the chance for good returns versus stocks in the quarters ahead. With that, it's easy to forget about some of the risks that come with fixed income investments.

And investment manager Putnam's latest report unveiled a big one: contracting money supply or M2.

For investors, it's a big risk waiting in the shadows that potentially could hinder a variety of bond asset classes and portfolios. For investors going gaga over bonds, it's something to consider and, perhaps, profit from.

[Continue reading.](#)

dividend.com

Aaron Levitt

Aug 31, 2023

[Muni Bonds Are Back In Fashion.](#)

Finally, yields on municipal bonds have meaning. Considering all the interest rate hikes, it took time for munis to catch fire. The heat feels good.

Just as the Treasury market has an inverted yield curve, so do munis. Municipal bond yields as a percentage of similarly maturing Treasuries are rich. Currently, there are no bargains to be had. But wait until September when the new issue market takes off.

Few Muni Defaults

Muni default rates continue to be much lower than corporate bonds. Yes, we have seen some municipal bond defaults at a few small private colleges along with some small and medium size hospitals, crushed by post-Covid-19 overhead costs. Add to the short default list some sports-related centers. Nevertheless, the municipal bond market is solid with an overall low default rate.

[Continue reading.](#)

Forbes

by Marilyn Cohen

[The FAF's Bridging the GAAP Podcast is Now Available. In Episode 1, GASB Chair Joel Black Talks About the Financial Data Transparency Act.](#)

[Listen to the Podcast.](#)

[08/21/23]

[Muni Market's Performance Wilts in Worst Month Since February.](#)

- **Investors balk even as muni-bond issuance has dwindled**
- **'Munis are not cheap enough yet,' says BI's Kazatsky**

US state and city debt is poised for its worst month since February, with yields not far below multiyear highs. As the municipal market heads into a historically weak period, the worry is that it's still not attractive enough to lure buyers.

Munis have declined about 1.5% in August through Wednesday, on track for the grimmest performance since a 2.3% slide in February, according to Bloomberg index data. Fixed-income assets have declined broadly this month with the Federal Reserve signaling that it may keep hiking interest rates to muffle a still-robust economy.

The performance over the past decade argues against betting on an imminent rebound for the muni index: The gauge has dropped 0.4% in September on average in the period, the weakest return of any month. What's more, even after their August slump, munis are still on the costly side relative to alternatives like Treasuries, says Eric Kazatsky at Bloomberg Intelligence.

“Munis are not cheap enough yet,” the senior US municipals strategist said in an interview. Treasuries, or “even single- or double-A corporate rates, they’re much more attractive. They’re much larger markets and have a lot more liquidity.”

A gauge of relative value in munis has improved this month. But that measure, which compares the level of muni yields to those on Treasuries, still shows munis are costly on a historical basis. That’s in part as sales of new US state and local-government bonds are poised to dwindle for a few weeks.

The ratio of benchmark 10-year muni yields to rates on 10-year Treasuries is about 70%, compared with the average of around 90% since 2000. Yields on munis, which typically offer tax-exempt income, tend to be lower than those on Treasuries.

With volatility in rates likely to be more muted going forward, it points to a better setup for reinvestment flows into fixed income, BI’s Kazatsky and colleague Karen Altamirano wrote in a research report this week. Nonetheless, they still anticipate flat muni returns in September, in part as supply likely outpaces demand.

However, Eve Lando, portfolio manager at Thornburg Investment Management, sees promise.

There is pent-up demand, she says, for issuers to borrow for routine things like deferred maintenance, so supply should eventually pick up and improve the muni market’s relative value. What’s more, yields are looking attractive in some areas.

“We’re talking about fixed income with yields that are similar to equity returns and highlighting the kind of the stability of the sector,” she said. “So far we have not seen any reasons to have a credit worry. So I think there’s lots of things working for the muni market as of now.”

Bloomberg Markets

By Lauren Coleman-Lochner

August 31, 2023

[Why Dwindling Muni Sales May Provide Opportunities.](#)

Sales of new US state and local government bonds are poised to dwindle according to forecasts. Christopher Brigati, Valley National Bank’s former managing director of municipal investments, sees opportunities in the muni market. He speaks with Romaine Bostick and Katie Greifeld on “Bloomberg Markets: The Close.”

[Watch video.](#)

Muni Moment - Bloomberg Markets: The Close

August 30th, 2023

[Hawaii Munis Plunge in Latest Investor Warning on Climate Risk.](#)

- **Index of Hawaii debt is down 2.8% in August, most of any state**
- **State's 'sizable cash balances' help disaster support: Fitch**

Hawaii state and local municipal bonds have surrendered all their 2023 gains in the past three weeks after the deadly Maui wildfires delivered a fresh reminder of climate risk in the \$4 trillion market for state and local debt.

An index comprised of Hawaiian municipal securities has dropped 2.81% in August, the worst performance of any state and compared to a 1.8% loss for the broader market, according to data compiled by Bloomberg. Hawaii is one of only four states to post a negative performance this year. At the end of July, its municipal bonds were sporting a more than 2% gain for 2023.

"The Hawaii index was impacted by the large drop of bonds associated with the Maui catastrophe," said Tom Doe, president and founder of Municipal Market Analytics.

[Continue reading.](#)

Bloomberg Markets

By Maxwell Adler

August 25, 2023

[Texas Port's \\$55 Million Municipal Bonds Ruled Taxable by IRS.](#)

- **Port didn't spend enough proceeds within 3 years, IRS Says**
- **Port says it complied with tax rules and will defend position**

The U.S. Internal Revenue Service has concluded that interest on \$55 million of municipal bonds issued by a Texas port in 2017 is taxable because the issuer was too slow to spend money it raised, according to a securities filing.

The Port of Port Arthur Navigation District didn't comply with a section of the tax code that requires municipalities to spend 85% of tax-exempt bond proceeds within three years of the bonds being issued, according to the IRS, the filing said.

The port, which operates a shipping terminal on the Sabine Neches Waterway along the Gulf of Mexico, said it did comply with the federal tax code and intends to defend its position. After receiving a "proposed notice of adverse determination" an issuer has 30 days to request an administrative appeal of its case, according to the port's filing.

The section of the tax code in question is aimed at preventing state and local governments from issuing bonds when interest rates are low without any immediate need to use the the funds, resulting in excess debt that isn't subject to income tax.

Judy Bettis, Port of Port Arthur's chief financial officer, didn't immediately respond to a call and email seeking comment.

Bloomberg Markets

By Martin Z Braun

August 24, 2023

[BLX/Orrick 2023 Post-Issuance Compliance Workshop.](#)

November 16-17, 2023 - Los Angeles and Virtual Webinar

A Comprehensive Overview of Post-Issuance Compliance and Secondary Market Disclosure 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.

[IRS Targets High-Income Individuals Illegally Claiming Puerto Rico's Tax Benefits.](#)

The Internal Revenue Service (“IRS”) Commissioner Danny Werfel stated that the Agency is taking “swift and aggressive action” to strengthen enforcement efforts against high-income individuals. As part of these enforcement efforts, the IRS identified approximately 100 individuals, including crypto traders and fund managers suspected of illegally claiming Puerto Rico’s tax benefits. According to the IRS, the enforcement efforts will include both civil audits and criminal investigations.

For taxpayers not in compliance with Puerto Rico Act 60 (formerly Acts 20 and 22) requirements, they must act swiftly to take corrective action. In July of this year, Puerto Rico’s Secretary of Economic Development and Commerce stated he is actively cooperating with the IRS in their efforts to identify individuals that are abusing Puerto Rico’s tax benefits.

On January 27, 2021, the IRS announced its compliance campaign that focused on Puerto Rico Act 60 (“Act 60”). Act 60 consolidated various tax decrees, incentives, subsidies, and benefits, including Acts 20 and 22. Acts 20 and 22 were intended to incentivize investment in Puerto Rico, promote the exportation of services from companies and individuals providing such services and attract high net-worth individuals to Puerto Rico.

Taxpayers that meet the requirements of Act 60 are eligible to receive significant tax savings. For example, Act 60 offers a corporate tax rate of 4% to Puerto Rico domiciled companies that export services performed in Puerto Rico to people or companies outside of the territory. Similarly, high net-worth individuals may qualify for a total exemption from Puerto Rico income taxes on all interest and dividends realized after the individual becomes a bona fide resident of Puerto Rico.

Puerto Rico is a United States territory (and generally subject to all US federal laws); however, for federal tax purposes, Puerto Rico is treated as a “foreign country.” The Internal Revenue Code (“Code”) states that US citizens and resident aliens are taxed on worldwide income; however, section 933 provides an exception to this general rule. Residents of Puerto Rico receive special tax treatment for Puerto Rico sourced income.

The IRS’s new campaign targets taxpayers who have claimed benefits through Puerto Rico Act 60 without meeting the requirements of section 933, Residence and Source Rules Involving Possessions. Consequently, the IRS has identified certain individuals who may be excluding income

subject to US tax on a filed US income tax return or failing to file and report income subject to US tax. As such, the IRS campaign will also address those individuals who have met the requirements of section 933 but may be erroneously reporting US source income as Puerto Rico source income in order to avoid US taxation.

To enhance voluntary compliance with the tax laws, the IRS partners with foreign jurisdictions, federal, state and municipal governmental agencies. These partnerships often involve some type of formal agreement such as a Memorandum of Understanding (“MOU”) or Tax Coordination Agreement (“TCA”) that allows for the exchange of taxpayer data. Article 4 of the TCA between the US and the Commonwealth of Puerto Rico allows for the exchange of information to administer and enforce the tax laws of the respective jurisdiction.

In this IRS campaign the IRS will utilize various methods to detect noncompliance, including examinations and outreach via soft letters. Consequently, it is reasonable to assume the IRS has started identifying those individuals who may fall under the scope of this audit campaign.

Taxpayers should review their reporting positions and, if appropriate, consider correcting past non-compliance before the IRS comes to their door. We have experience advising clients through a variety of IRS controversy matters including voluntary disclosures, civil audits and criminal investigations. Similarly, we are well versed in evaluating Puerto Rico-specific tax issues.

Meadows Collier Reed Cousins Crouch & Ungerman LLP - Michael A. Villa, Jr. and R. Damon Rowe

August 30 2023

[Financing Essential Infrastructure: NLC 2023 Municipal Bond Market Update](#)

Municipal bonds are the crucial tool cities use to finance essential projects — accounting for nearly 70% of all financing for public infrastructure like roads and water and sewer utilities. On **Monday, September 25 at 2:00 p.m. ET**, join NLC, Build America Mutual and market experts for an update on trends in the market and what city leaders should focus on when preparing to sell bonds.

The session will also highlight recent innovative transactions, like how the State of Connecticut was able to save \$200 million when it set up a trust fund to provide “baby bonds” for all Medicaid-eligible babies born in the State.

[Click here](#) to register.

[Navigating the Next Frontier: AI's Role in Reshaping Local Governance - GFOA Webinar](#)

Artificial intelligence (AI) will someday be ubiquitous in government operations. Should workers be threatened? No. What’s most important is to understand what AI is, the benefits, and the limits. Join this webinar, **October 12**, to hear from leading experts from Microsoft, Rutgers, and the City of Columbus on how they utilize AI. Participants will walk away with a better understanding of AI, why human interaction is still important, and how successful organizations in the future will manage AI

to make better decisions.

[REGISTER](#)

[Get Key Municipal Insights at GFOA's MiniMuni.](#)

Registration is free for GFOA members! Join us online for GFOA's 5th Annual MiniMuni Conference on **October 11-13**. Engage with experienced practitioners and regulators on topics influencing municipal issuers. Whether it's ESG considerations or the Financial Data Transparency Act, participants will leave with a comprehensive grasp of the market's most urgent concerns.

[LEARN MORE](#)

- **Ed. Note:** We will be off next week due to court-mandated (in)sensitivity training. Double Dose O' Drivel 9/5!
 - [Issuers Urge Supreme Court to Review BABs Subsidies Case.](#)
 - [Additional ESG Disclosure Requirements Coming for Public Debt Issuers?](#)
 - [Wall Street's Most Hated 3 Letters Prove Too Risky to Ignore.](#)
 - [In Re City of Amarillo, Texas](#) - After city's voters defeated a proposition for issuance of \$275 million in general obligation bonds payable from ad valorem taxes to fund improvement and expansion of the city's civic center complex, the city council approved a plan in which city would fund the project via the issuance of tax anticipation notes and the future issuance of refunding bonds to refinance the debt, all of which was struck down by the Court of Appeals due to city's failure to adequately explain the details of this plan in the corresponding agenda item for the meeting at which this plan was approved.
 - And Finally, Zombie Apocalypse! is brought to us this week by [Linden v. City of Southfield, Michigan](#), in which, "Emergency medical personnel in Southfield, Michigan, pronounced Timesha Beauchamp dead when she was still alive. Beauchamp was placed in a body bag and transported to a funeral home, where an embalmer discovered that she was not dead." (Unlike most of our content, we are not making this up.) And spare a moment for the most-certainly-savage-y-traumatized embalmer, who is never even mentioned thereafter! The mind reels. Anyhoo, that's all. Sleep well.
-

EMINENT DOMAIN - IDAHO

[Day v. Idaho Transportation Department](#)

Supreme Court of Idaho, Boise, April 2023 Term - August 14, 2023 - P.3d - 2023 WL 5185613

Property owners brought action against Idaho Transportation Department (ITD) asserting claims for inverse condemnation and breach of contract concerning ITD's alleged failure to provide alternative access to their property near a freeway interchange.

The Fourth Judicial District Court entered summary judgment in favor of Department. Owners appealed. The Supreme Court affirmed in part, and reversed and remanded district court's decision

on ITD's statute of limitations defense. On remand, the Fourth Judicial District Court held a bench trial, and after conclusion of owners' case-in-chief, granted ITD's motion for involuntary dismissal, finding there was no breach of contract and that the inverse condemnation claim was untimely. ITD moved for attorney fees, and the District Court denied the motion. Owners appealed, and ITD cross-appealed. Both parties moved for attorney fees on appeal.

The Supreme Court held that:

- Owners' quasi-estoppel argument was preserved for appeal;
- District court's findings did not support conclusion that ITD took inconsistent positions on the statute of limitations defense;
- Facts found by the district court supported finding that ITD did not create an unconscionable disadvantage by asserting statute of limitations defense;
- Owners' conduct did not demonstrate that they relied on ITD's purported waiver of the limitations period;
- It was reasonable for ITD to believe agreement had been reached so as to cease tolling of limitations;
- ITD was not entitled to prevailing party attorney fees; and
- Owners were not entitled to attorney fees related to their appeal.

EMINENT DOMAIN - ILLINOIS

[Luster v. Village of Ashmore](#)

United States Court of Appeals, Seventh Circuit - August 2, 2023 - F.4th - 2023 WL 4921532

Putative purchaser of residential property, who was buying property on contract, brought § 1983 action against village, alleging village violated purchaser's due process rights when it acquired the property for a municipal park and required purchaser to vacate home.

The United States District Court for the Central District of Illinois, dismissed action. Purchaser appealed.

The Court of Appeals held that:

- Alleged availability of adequate post-deprivation remedies did not preclude purchaser's due process claim, and
- Damages were a permissible remedy for claim.

Alleged availability of adequate post-deprivation remedies did not preclude putative purchaser's § 1983 claim against village for procedural due process violation based on village acquiring home, which purchaser was buying on contract, for a municipal park and requiring purchaser to vacate home, where purchaser did not allege that he was deprived of his property interest by the random, unauthorized acts of any village employee but rather that village, as part of its plan to establish a municipal park, deliberately deprived purchaser of his property interest and attempted to remove him without prior notice and an opportunity to be heard.

Damages were a permissible remedy for putative purchaser's § 1983 claim against village for procedural due process violation based on village acquiring home, which purchaser was buying on contract, for a municipal park and requiring purchaser to vacate home; given that house was gone, damages were purchaser's only possible remedy.

EMINENT DOMAIN - KANSAS

[Kansas Fire and Safety Equipment v. City of Topeka](#)

Supreme Court of Kansas - June 30, 2023 - 317 Kan. 418 - 531 P.3d 504

Multiple month-to-month tenants sued city for relocation benefits under Eminent Domain Procedure Act (EDPA) after they were forced to move once city bought property where they operated their businesses.

City filed motion for summary judgment. Tenants appealed. The District Court granted summary judgment to city. Tenants appealed. The Court of Appeals reversed and remanded. Tenants petitioned for review, which was granted. The Supreme Court affirmed decision of the Court of Appeals. On remand, city again sought summary judgment. The District Court granted summary judgment to city. Tenants appealed and city cross-appealed, and the Court of Appeals reversed and remanded with directions. The Supreme Court granted petitions for review.

The Supreme Court held that:

- Eminent Domain Procedure Act (EDPA) does not provide a private right of action;
- EDPA did not provide the district court with jurisdiction over tenants' claims for relocation expenses;
- Tenants' failure to pursue administrative remedy within the Kansas Relocation Assistance for Persons Displaced by Acquisition of Real Property Act (KRA) deprived the district court of subject matter jurisdiction; and
- Statute generally authorizing the court to review final judgments and orders of a political or taxing subdivision when it exercises judicial and quasi-judicial functions did not apply.

Kansas Eminent Domain Procedure Act (EDPA) does not provide a private right of action to displaced persons to recover relocation costs following condemnation; instead, the Kansas Relocation Assistance for Persons Displaced by Acquisition of Real Property Act (KRA) provides a single, comprehensive administrative remedy to vindicate the statutory right to relocation benefits and assistance.

EMINENT DOMAIN - LOUISIANA

[3000-3032 St. Claude Avenue, LLC v. City of New Orleans](#)

Court of Appeal of Louisiana, Fourth Circuit - June 22, 2023 - So.3d - 2023 WL 4117342 - 2022-0813 (La.App. 4 Cir. 6/22/23)

Owner of split-zoned lots filed a petition for judicial review of city council's denial of owner's request to rezone rear portions of lots, which were zoned commercial in front and residential in back, to apply a single commercial zoning designation to enable construction of hotel project.

The District Court remanded the matter back to city council for further review and to clarify basis for its decision. City filed a motion for suspensive appeal, which the District Court granted. After city filed appeal, the Court of Appeal converted the appeal to an application for supervisory writs, and the Court of Appeal issued writ opinion denying relief and remanding to city council. After city council again denied zoning amendment, lot owner filed amended petition for judicial review. The District Court granted the amended petition, and city timely filed a motion for suspensive appeal.

The Court of Appeal held that:

- Trial court improperly shifted burden from landowners to city council to demonstrate why its denial of rezoning request was in fact not arbitrary and capricious;
- As a matter of first impression, split-zoning is not per se invalid; and
- Denial of rezoning request was not arbitrary and capricious, or characterized by an abuse of discretion, and thus did not constitute a taking.

IMMUNITY - MARYLAND

[Williams v. Morgan State University](#)

Supreme Court of Maryland - August 14, 2023 - A.3d - 2023 WL 5198267

Former university employee brought action in state court against university and former supervisor, alleging claims of wrongful termination in violation of Maryland public policy, defamation, and retaliation in violation of the National Defense Authorization Act (NDAA) and the American Recovery and Reinvestment Act (ARRA).

Defendants removed to federal court and the United States District Court for the District of Maryland granted defendants' motion to dismiss for failure to state a claim. Former employee appealed. The Court of Appeals affirmed in part, vacated in part, and remanded. On remand, the District Court granted defendants renewed motion to dismiss on the ground that the Maryland Tort Claims Act (MTCA) does not waive the state's sovereign immunity with respect to federal whistleblower claims. Former employee appealed. The Court of Appeals certified question of law to the Supreme Court, which the Supreme Court accepted.

The Supreme Court held that as a matter of first impression, MTCA's limited waiver of state's sovereign immunity for a "tort action," does not expressly or by necessary implication encompass federal statutory claims.

Based on the plain language of the Maryland Tort Claims Act (MTCA) and its statutory context, purpose, and legislative history, MTCA's limited waiver of state's sovereign immunity for a "tort action," does not expressly or by necessary implication encompass federal statutory claims; when the General Assembly has intended to waive state's sovereign immunity for purposes of a state statutory claim, it generally has done so directly within specific statutory scheme at issue, General Assembly has demonstrated that it knows how to waive sovereign immunity to federal claims when that is its intent, and extending scope of the waiver provision to federal statutory claims is inconsistent with both the key, neighboring provisions concerning interplay between state and state employee's immunity in certain suits, as well as MTCA's role as a gap-filler scheme.

IMMUNITY - MICHIGAN

[Linden v. City of Southfield, Michigan](#)

United States Court of Appeals, Sixth Circuit - July 26, 2023 - F.4th - 2023 WL 4758817

Personal representative of patient's estate filed § 1983 action against city and emergency medical responders alleging deliberate indifference to patient's serious medical needs and violation of substantive due process after responders pronounced her dead and discontinued treatment while she was still alive.

The United States District Court for the Eastern District of Michigan dismissed complaint and affirmed order denying plaintiff's motion of leave to file third amended complaint. Plaintiff appealed.

The Court of Appeals held that:

- Responders were entitled to qualified immunity;
- City was not subject to municipal liability under § 1983; and
- District court did not abuse its discretion in denying plaintiff's motion for leave to file third amended complaint.

It was not clearly established in August 2020 that government officials' failure to treat patient based on their mistaken belief that patient was dead violated patient's substantive due process rights under state-created danger doctrine, and thus city emergency medical responders were entitled to qualified immunity from liability in § 1983 action alleging violation of substantive due process after they pronounced patient dead and discontinued treatment while she was still alive, even if their mistake increased risk that funeral home employee would begin processing her presumed-dead body for funeral proceedings; patient was not in state custody, and responders did not prohibit any private party from seeking or rendering aid.

CONTRACTS - MISSISSIPPI

[Teeuwissen v. Hinds County , Mississippi, by and through its Board of Supervisors](#)

United States Court of Appeals, Fifth Circuit - August 14, 2023 - F.4th - 2023 WL 5200322

Law firm and attorney brought § 1983 action against county and members of county board of supervisors who voted to terminate contracts entered into by predecessor board retaining law firm as special counsel for county and attorney as board attorney for one year, alleging contracts required county to pay fixed sum for entire year, even if county no longer wanted the contracted legal services after election flipped board's composition, asserting federal due process and state-law claims, and seeking declaratory and injunctive relief.

The United States District Court granted county's motion to dismiss federal causes of action for failure to state a claim, and declined to exercise supplemental jurisdiction over state-law claims. Plaintiffs appealed.

The Court of Appeals held that attorney and law firm had due-process-protected property interests in money that they were entitled to under early-termination provisions in contracts.

Attorney and law firm had due-process-protected property interests in money that they were entitled to under early-termination provisions in contracts entered into by predecessor county board of supervisors retaining law firm as special counsel for county and attorney as board attorney for one year, since Mississippi statute granting power to county board of supervisors, in its discretion, to employ counsel by the year at an annual salary at an amount that it deemed proper rendered contracts binding on successor board that had voted to terminate contracts after election had flipped board's composition.

IMMUNITY - NEW JERSEY

[Conforti v. County of Ocean](#)

Supreme Court of New Jersey - August 10, 2023 - A.3d - 2023 WL 5112899

Wife of deceased county jail inmate, individually and as administratrix ad prosequendum of inmate's estate, and as parent natural guardian and guardian ad litem of their minor child, brought action against county, county Board of Chosen Freeholders, county Department of Corrections, retired warden, and corporal, alleging negligence and violation of New Jersey Civil Rights Act (NJCRA) in connection with inmate's suicide.

The Superior Court denied defendants' summary judgment motion on negligence claims, and granted defendants' summary judgment motion as to NJCRA claims. Following a jury's finding that defendants were negligent and award of damages to plaintiff, the Superior Court, 2018 WL 4676882, denied defendants' motions for judgment notwithstanding the verdict (JNOV), or, in the alternative, for a new trial and remittitur, and entered judgment for plaintiff. Defendants appealed. The Superior Court, Appellate Division affirmed. The Supreme Court granted defendants' petition for certification.

The Supreme Court held that whether defendants were negligent as to conduct unrelated to any failure to examine, failure to diagnose or treat, or failure to confine a person for a mental health condition or drug dependence, were material fact issues.

LIABILITY - NEW YORK

[Methal v. Village of Ardsley](#)

Supreme Court, Appellate Division, Second Department, New York - July 12, 2023 - 192 N.Y.S.3d 545 - 2023 N.Y. Slip Op. 03775

Property owners brought action against village, company that constructed retaining wall, and engineer of retaining wall alleging that village's storm drain system broke and caused damage to property and that retaining wall contributed to system's deterioration.

Company and engineer asserted cross-claims against village. The Supreme Court, Westchester County, granted in part village's motion for summary judgment on certain cross-claims and denied it in part with respect to owners' negligent design claim and with respect to complaint and engineer's cross-claim to extent they sought damages, contribution, or indemnification for injures to property that occurred 90 days prior to service of second notice of claim. Village appealed and company and engineer cross-appealed.

The Supreme Court, Appellate Division, held that:

- Limitations period for owners' negligent design claim began to run when system was designed and installed;
- Village failed to establish prima facie entitlement to judgment as a matter of law that trespass and negligent maintenance claims were untimely; and
- Owners' notice of claim to village sufficiently complied with statutory requirements.

EMINENT DOMAIN - NEW YORK

[Niagara Falls Redevelopment, LLC v. City of Niagara Falls](#)

Supreme Court, Appellate Division, Fourth Department, New York - July 28, 2023 - N.Y.S.3d

----2023 WL 4837104 - 2023 N.Y. Slip Op. 04050

Property owners commenced proceeding seeking to annul city's determination authorizing the condemnation of their property for the development of a park and associated recreational facilities.

The Supreme Court, Appellate Division, held that:

- Condemnation determination was rationally related to a conceivable public purpose, supporting confirmation of the determination;
- Contention that condemnation determination should have been annulled for city's failure to establish how it planned to pay for project and failure to conduct market study fell outside of scope of judicial statutory review;
Annulment of condemnation determination on basis of alleged failure to comply with city's comprehensive plan was not warranted;
- Annulment of condemnation determination on ground that it was excessive was not warranted;
City's identification of tax parcel numbers and street addresses of property it was condemning was sufficient to comply with statutory condemnation-notice requirements; and
- Property owners were not prejudiced by untimeliness of publication of synopsis of condemnation determination and city's findings, and thus untimeliness did not support the annulment of condemnation determination.

PUBLIC MEETINGS - TEXAS

[In Re City of Amarillo, Texas](#)

Court of Appeals of Texas, Amarillo - August 16, 2023 - Not Reported in S.W. Rptr. - 2023 WL 5279473

In November 2020, more than 60% of the City's voters defeated a proposition for issuance of \$275 million in general obligation bonds payable from ad valorem taxes to fund improvement and expansion of the City's civic center complex. Per statute, this meant the City could not issue certificates of obligation to fund the proposed civic center project for three years.

After conferring with legal counsel, two officials and city staff put into place a three-step plan. First, they proposed the city council pass Ordinance 7980 to designate the existing civic center and another building as part of the City's Tax Increment Reinvestment Zone (TIRZ #1) project plan. Second, they met behind-the-scenes with lenders and legal counsel to pre-negotiate a \$260.525 million financing deal and language for proposed Ordinance 7985 wherein the City would issue tax anticipation notes. This method of funding requires no voter approval, but also carries a short repayment schedule: seven years. So, to try to avoid risk of an enormous tax increase this project would pose, they planned a third step: future issuance of 30-year refunding bonds to "refinance" the debt authorized under Ordinance 7985.

The city council passed Ordinances approving this plan on May 24, 2022. The agenda item regarding the Ordinances read:

This item is the discussion and consideration of an ordinance authorizing the issuance of the City of Amarillo, Texas Combination Tax and Revenue Notes, Series 2022A resolving other matters incident and related thereto including the approval of a paying agent/registrar agreement and a purchase contract.

Taxpayer filed a declaratory judgment action under Texas Civil Practice and Remedies Code Chapter 37 (UDJA) seeking to void the Ordinances and the anticipation notes.

Taxpayer alleged several violations of the Texas Open Meetings Act (TOMA) in his petition and counterclaim. He requested declaratory relief under the UDJA, injunctive relief, and a direct violation of TOMA. Because of these alleged violations, taxpayer requested the trial court declare Ordinances 7985 and 7980 to be voidable.

On October 25, 2022, the court signed a final judgment which, among other things, invalidated the two ordinances and the anticipation notes. Both parties appealed.

Generally, TOMA is satisfied when written notice of the date, time, place, and subject of each meeting held by a governmental body has been posted in a place readily-accessible to the general public at least seventy-two hours before the scheduled time of the meeting. The primary disagreement in the appeal centered on whether the City substantially complied with TOMA by sufficiently describing the "subject" to be discussed in the city council meeting.

The Court of Appeals held that the City's notice regarding Ordinance 7985 failed to substantially comply with TOMA because it failed to give the reader adequate notice of the action the City sought to take.

[S&P Credit Trends: Improving Finances Drive U.S. Public Finance Credit Quality In The Second Quarter](#)

Key Takeaways

- The credit quality of rated U.S. public finance (USPF) companies improved for the ninth consecutive quarter in second-quarter 2023, with 465 upgrades and 76 downgrades, compared to 186 and 56 in the first quarter, respectively.
There were three defaults, up from zero in the first quarter.
- We raised the ratings on the debt of three states in the second quarter: New Jersey, Massachusetts, and Kentucky. There have been no state-level downgrades since June 2020.
- Improved finances were the leading reason for upgrades (285), and deteriorating finances the leading reason for downgrades (26).

[Continue reading.](#)

15 Aug, 2023

[Fitch: State Tax Cut Wave Has Peaked with Modest Revenue Effects for Most States](#)

Fitch Ratings-New York-17 August 2023: Tax cuts enacted by US states in 2023 are not likely to

have a meaningful effect on most states' revenues or affect credit ratings in the short term, says Fitch Ratings. We expect that states implementing the largest structural tax changes will adjust spending accordingly, though states that have underestimated the potential revenue impact of cuts made near the peak of the economic cycle may face fiscal deterioration and credit challenges.

The wave of tax cuts passed by U.S. states beginning in 2021 appears to have crested. Although 24 states adopted tax reduction measures of some kind in their fiscal 2024-25 budgets, the scope of changes narrowed versus prior years, with fewer states opting for major restructurings of tax brackets or deep cuts to tax rates.

For the most part, tax cuts enacted in 2023 will have more modest effects on revenues than cuts made in prior years, as most 2023 changes took the form of temporary rate reductions, tax holidays, or expanded tax credits. Tennessee's four-month sales tax holiday will reduce fiscal 2024 collections by \$400 million, equal to 1.3% of state-source revenues. Wisconsin's permanent cuts to its two lower personal income tax (PIT) rates will reduce biennial general fund revenues by only 0.8% (\$175 million). However, when combined with larger PIT cuts enacted in the last biennium, this will reduce collections by \$2.2 billion, or about 2.5% of state revenues.

[Continue reading.](#)

[S&P U.S. Not-For-Profit Health Care Rating Actions, July 2023.](#)

[View the rating actions.](#)

15 Aug, 2023 |

[S&P U.S. Transportation Infrastructure Toll Sector Report Card: Resilient Demand And Higher Tolls Underpin Credit Strength](#)

Key Takeaways

- We expect the ratings on U.S. not-for-profit toll road operators will remain stable, given the almost-complete rebound in demand, supported by steady commercial vehicle traffic and toll-rate increases. Toll roads have been among the most resilient transportation infrastructure asset classes in recent years, with no downgrades during the pandemic.
- Revenue growth will be accompanied by increased operations and maintenance expenses, as well as capital spending for capacity expansions and continued conversions to all-electronic toll collection against a backdrop of higher financing costs.
- Our economic outlook no longer includes a recession but projects a shallower and more attenuated slowdown, which could translate into more muted transaction growth with remote work trends and a normalizing post-pandemic e-commerce trucking industry adding to uncertainty.
- Our analysis of fiscal 2022 financial metrics—including debt service coverage, debt to EBIDA, and liquidity—for U.S. not-for-profit toll road and toll bridge issuers that we rate, shows relatively stable performance that we expect will remain so.

[Continue reading.](#)

17 Aug, 2023

Wall Street's Most Hated 3 Letters Prove Too Risky to Ignore.

- **ESG risks have dragged down shares of TUI, UPS this month**
- **GOP attacks are leading bankers to avoid talking about 'ESG'**

As the label “ESG” ends up among the most hated on Wall Street, the financial cost of ignoring it is making headlines.

In just the past few weeks, a string of textbook environmental, social and governance issues — spanning workers’ rights to extreme weather — erupted in a number of major stocks.

The world’s biggest publicly traded package courier, United Parcel Service Inc., was forced to issue a profit warning that drove down its shares, after it said a tentative labor agreement will add to its costs. The firm agreed to raise wages for some workers, bump up the amount of paid vacation and improve working conditions. That includes installing air conditioning in new vehicles rendered unbearably hot by extreme heat.

[Continue reading.](#)

Bloomberg Markets

By Saijel Kishan

August 16, 2023

Issuers Urge Supreme Court to Review BABs Subsidies Case.

A bevy of city, state and public finance advocates is urging the U.S. Supreme Court to take up a case challenging the subjection of Build America Bond subsidies to federal budget sequestration.

The [amicus brief](#), filed by groups including the Government Finance Officers Association, the National Association of Bond Lawyers, the National League of Cities and the American Public Transportation Association, argues that allowing the BABs decision to stand would have “grave ramifications” for federalism and “significant and adverse practical consequences” for states and local government finances.

“It’s frustrating that this has to go through the courts,” said John Godfrey, senior director of government relations for the American Public Power Association, which is filing its own amicus brief in the case. “I think we have a strong legal case and the bottom line is, if we prevail in court, all the money stays in the communities and it’s the communities where the bonds were issued that will benefit.”

The case stems from a three-year-old lawsuit brought against the United States by six Midwestern public power agencies, led by the Indiana Municipal Power Agency. The agencies, which together had floated \$4 billion in direct-pay Build America Bonds before 2011, argued that the federal government’s reductions of the 35% direct-pay subsidies – under Office of Management and

Budget's sequestration calculations - violated the American Recovery and Reinvestment Act and represented a breach of contract. The group was seeking the full 35% subsidy on interest payments from 2013 through 2030.

The Court of Federal Claims sided with the U.S. when it ruled that no statutory claim existed because sequestration applied to the payments and that ARRA did not create a contract.

The agencies appealed to the U.S. Court of Appeals for the Federal Circuit, which on Feb. 17 ruled that the BABs subsidies are subject to federal budget sequestration, and that the public power agencies are not eligible for refunds.

The power agencies on July 13 filed a petition asking SCOTUS to take up the case, saying it arises from a "multi-billion-dollar broken promise by the federal government." The questions presented are whether a payment obligation imposed by Congress can be reduced without congressional repeal by agencies and whether a statutory provision creates a contractual obligation.

For the issuer groups, the stakes are both constitutional and financial, according to its amicus brief.

"The import of this case extends far beyond the group of public power providers that have sued," the brief says. "If this court permits the Federal Circuit's reasoning to stand, it will have adverse long-term implications for state and local governance in the United States."

Allowing a federal agency like the Internal Revenue Service to interpret generic statutory language "raises constitutional alarm bells," the issuers argue.

The decision will undermine federal policies and programs that the federal government relies on locals to implement, the issuers said.

"This case is of acute concern not only to the thousands of state and local governmental entities that issued Build America Bonds but to the 40,000 state and local governments in the United States cooperating with the federal government to implement critical programs and deliver essential services."

The GFOA's federal liaison Emily Brock notes that SCOTUS opts to review only a small number of the volume of requests it receives.

"That said, GFOA and our fellow Amici have a good feeling about this one due to the variety and expanse of interest here," Brock said. "Although preemption has been on the docket quite a bit in the last several years, it's been a while since it's been in the muni context, so fingers crossed."

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 08/16/23 02:27 PM EDT

[**Husch Blackwell Authors U.S. Supreme Court Amicus Brief in Public Finance Litigation.**](#)

Husch Blackwell prepared and filed an *amicus curiae* brief on behalf of 11 major state and local government organizations, including the International Municipal Lawyers Association, Government Finance Officers Association, and the National League of Cities, urging the U.S. Supreme Court to

grant certiorari in *Indiana Municipal Power Agency v. United States*. The case addresses whether the federal government can renege on its binding commitments to state and local governmental entities under the Build America Bonds program—the first-ever direct federal subsidy program for general-purpose state and local borrowing.

In 2009, the Build America Bonds program was created by the American Recovery and Reinvestment Act (ARRA), a stimulus package in response to the Global Financial Crisis that began in 2007. The program was an unprecedented federal intervention in the municipal bond market that induced thousands of state and local entities to issue taxable bonds, giving up the considerable advantages of tax-exempt bonds. State and local issuers made this election in reliance on Congress's promise to refund 35% of the interest payments on the bonds.

The petitioners—Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Northern Illinois Municipal Power Agency, American Municipal Power, Illinois Municipal Electric Agency, and Kentucky Municipal Power Agency—were among the 2,275 state and local governmental entities that issued over \$181 billion in Build America Bonds in 2009 and 2010. These entities used the proceeds to invest in capital infrastructure projects that created thousands of new jobs, just as Congress intended.

In 2013, Congress had not repealed the ARRA, but federal agencies—specifically, the Office of Management of Budget, the Department of the Treasury, and the Internal Revenue Service—decided to stop making direct cash payments to issuers to cover the full 35% of interest payments, maintaining that these payments qualified as direct spending subject to sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, Budget Control Act, and American Taxpayer Relief Act of 2012.

The Petitioners appealed to the Federal Circuit, which affirmed the trial court's ruling that the IRS did not improperly decrease the payments for sequestration.

Husch Blackwell's brief was written by attorneys Danny Solomon, Kate David, Sebastian Waisman, Ben Stephens, and Spencer Tolson. The petition for writ of certiorari was filed on August 16, and the justices are scheduled to consider the petition shortly after returning from their summer recess next month.

August 18, 2023

[Additional ESG Disclosure Requirements Coming for Public Debt Issuers?](#)

In a world where deadly heat waves, droughts, storms, wildfires and floods are becoming more widespread and more frequent every year, investors want to know about environmental, social and governance (ESG) risks when buying securities. To ensure transparency, the U.S. Securities and Exchange Commission (SEC) has proposed rules on ESG disclosure for corporate securities. And, where the private sector goes, public finance is usually close behind.

The investment community's push for guidance on ESG came from two fronts: the desire to invest in ventures with a focus on environmental, social and governing sustainability, and a need to understand risks that these factors pose to the overall security of any investment. In 2021, the SEC announced priorities addressing climate-related risks, and proposed rules in 2022 regarding the corporate disclosure of environmental, social and governing risks and the impact on publicly traded securities.

The Government Finance Officers Association (GFOA), a membership organization of government finance professionals, which provides resources, education and best practices, followed suit by releasing voluntary ESG disclosure guidelines in 2021, and we recommend that officers responsible for municipal debt disclosures take note to avoid the potential litigation risks of non-disclosure. It will only be a matter of time before the SEC issues ESG disclosure rules for the municipal sector. Public agency officers should review what's happening on the corporate side now to be ahead of the game. See "The Evolving Word of ESG Disclosure," webinar presented by Best Best & Krieger [here](#).

What environmental risks municipal issuers should disclose

Environmental risks have significant material impact on municipal securities. If a community is located in a fire-risk area and the property taxes secure bonds, casualty loss of a group of houses in a wildfire could reduce the community's ability to collect sufficient property taxes to pay that debt. Investors want to know that risk.

A discussion of risks can be complex, but public entities would be wise to take the time to assess them during the early stages of planning public issuances. Such a discussion may appease investors, reduce the likelihood of claims that such risks were undisclosed in the event of some unforeseen event and ensure success of the agency in its ongoing communications with investors.

Issuers should identify physical risks that could impact a debt-financed project. Are there risks of wildfire, tornados, flooding, wind damage or coastal erosion? Could natural disasters wipe out the project itself, or the tax base that services the debt?

Some questions to address are: Could higher temperatures, changing climate, or the increased frequency and intensity of natural disasters disrupt power generation or farming? Could climate-related changes, such as the rise of sea level, change the consumer or tax base that will service the debt? Could these changes impact prices for real estate in the area? Will current residents leave as a result of the climate related change? How might these risks impact business operations or services?

Additionally, a discussion of resiliency might be needed. How will the agency mitigate climate-related risks? Is there technology investment needed to offset such risk? What would be the cost of researching and developing these offsets? Has the agency implemented prevention measures, such as wildfire cameras or detection systems?

Comprehensive disclosure could also involve discussions about greenhouse gas emissions. The SEC's proposed rules identify three scopes of emissions. For example, if you have a toy factory in your city, Scope 1 includes direct emissions out of the factory's smokestack; Scope 2 includes indirect emissions, such as for purchasing energy to run the plant; and Scope 3 includes downstream emissions, such as those from transporting the toys to retailers.

Finally, for environmental risks, the GFOA recommends including cautionary language similar to what issuers include on financial projections in official statements for bond issuances. This language should reflect the importance that no one knows what the actual impacts of climate change will be, and these disclosures are forward-looking projections based on facts available to date. The issuer cannot guarantee any results from mitigation measures or impacts as assumed.

Recommendations for disclosure on social and governance risks

The GFOA recommends disclosing information about demographics, income level and wealth disparity, housing availability and affordability, the availability and affordability of services, access to and quality of education, and other resources. Investors want to know about employment

statistics, labor relations and challenges for public entities, and the long-term costs related to labor such as pension and other post-employment benefit liabilities.

For example, investors want to know about social risks that could impact service to general obligation bonds, such as a sudden decline in population. Or, if a school district issues debt, investors want to know if a drop in enrollment will impact the ability to service bonds for a new facility.

Governance is the ESG factor that is already widely discussed in most offering documents. Issuers should include a description of the entity's organizational structure and offer transparency about debt management policies and how financial policies are implemented. Investors want to know when a budget is adopted each year and when financial reports are issued. They also want to know about budget controls and how an entity generates revenue assumptions.

Issuers should also disclose any governance instability that poses risk. For example, continuity in administration is important. Investors want to know the composition and term of board or council membership, and they want to know if there have been departures in executive management or significant turnover in operating staff.

Naturally, issuers should always be transparent about any lawsuits, federal or state investigations or other actions against the agency.

Increased investor scrutiny of ESG factors will force governmental agencies to improve their own due diligence for bond-financed projects. Public officials have a variety of resources at their disposal, such as regional climate change impact studies, local developers, real estate appraisers and economists, who can help evaluate the risks. Analyzing risk will help municipal issuers better plan their future projects and manage their finances over time. Environmental, social and governance factors impact everyone, and before long, issuers will need to provide comprehensive disclosure regarding these risks.

Reuters

Best Best & Krieger LLP

By Mrunal M. Shah and Kimberly A. Byrens

August 17, 2023

[McGuireWoods: California Proposes Rules Clarifying Notice and Review Requirements for Health Care Transactions](#)

On July 31, 2023, the California Office of Health Care Affordability (OHCA) issued [proposed regulations](#) requiring health care entities to notify OHCA about material transactions at least 90 days prior to closing. McGuireWoods previously published an alert on California's advance notice and review requirements and the potential implications for health care transactions occurring in California on or after April 1, 2024.

California is one of many states to implement reporting requirements for health care transactions. Several other states such as New York, Oregon and Washington have similar laws and requirements. McGuireWoods continues to monitor these developments and analyze the impacts of such laws, most

recently on [June 5](#) and [May 8, 2023](#).

Key Takeaways

1. By expanding the definition of “health care entity” to include entities like management services organizations, broadening of the definition of “material transactions” and potentially extending review timelines, OHCA will play an extensive role in future transactions.
2. Health care providers and entities operating in California that are planning or considering entering into a transaction now must consider the advance notice filing requirement, review process and additional timing components when planning a transaction. This will include preparing documents and compiling significant amounts of information to submit the notice filing in advance of the 60-day initial waiting period for OHCA to determine whether to conduct a cost and market impact review (CMIR), and a potential additional 90-day waiting period if OHCA chooses to undertake a CMIR.
3. Health care providers and entities subject to the advance notice and review requirements must provide information about the entities undergoing the proposed transaction and submit copies of documents such as structure charts and transaction agreements. By default, OHCA will consider such information and documents as public records, but a submitter may mark certain documents as confidential or redact certain information, and OHCA will deem confidentially marked documents such as purchase agreements, financial documents and unredacted resumes as confidential.
4. Parties making filings must consider the antitrust and other market implications of a transaction in advance of their submission and be able to credibly address the impact of the transaction on competition, cost of care, quality of care, health equity, innovation and access to care. Failing to adequately develop a strategy that takes account of these aspects of a transaction in an initial filing can increase the odds that OHCA will undertake a CMIR, which involves significant additional delay, expense, disruption and the risk that OHCA may refer the matter to the Office of the Attorney General for additional action.
5. These proposed regulations provide additional details on the requirements and process, and they provide more details to the language of the statutes. Stakeholders may submit comments on the proposed regulations to CMIR@HCAI.CA.GOV until 5 p.m. on Aug. 31, 2023. It is unclear if the public should expect further changes, but OHCA intends to submit the finalized regulations as an emergency rulemaking package in October 2023.

[Continue reading.](#)

McGuireWoods LLP - H. Holden Brooks, Trey Andrews, Kristen H. Chang and Tom Siwula

August 14 2023

[LA School System Kicks Off School Year With Municipal Bond Sale.](#)

- **Proceeds from \$384 million sale to also fund campus security**
- **Balance will finance electric bus, student enrollment efforts**

The nation’s second-largest K-12 district is kicking off the new school year with a municipal bond offering while it contends with attacks from hackers, a dwindling student body and soaring labor costs.

The Los Angeles Unified School District, which begins the school year Monday, plans to borrow

about \$384 million to tackle cyberattacks, school safety and climate change, according to the bond offering prospectus. The series of bonds carries a sustainability label.

“The district is constantly facing a variety of persistent and evolving cybersecurity threats,” said the prospectus, which details previous incidents, including a ransomware attack last year that exposed some student data.

[Continue reading.](#)

Bloomberg

By Lauren Coleman-Lochner

August 14, 2023

Hollywood Strikes Pose a Credit Risk for \$113 Million Muni Deal.

- **Oscars ceremony is major source of revenue to repay the debt**
- **Moody’s grades deal 2 steps below top rank with stable outlook**

Municipal-bond investors have to assess an unusual risk as part of a \$113 million bond offering next week: The historic strikes that are paralyzing business for much of Hollywood.

The seller of the debt, a group affiliated with the Academy of Motion Picture Arts and Sciences, is familiar to muni-market participants because it has issued bonds several times for its Los Angeles museum, which opened in 2021.

However, this offering, which will refinance old, higher interest-rate debt, comes against a troubled backdrop for the industry. The Writers Guild of America went on strike May 2, seeking higher pay and other changes amid the rise of streaming TV and artificial intelligence. The strike, coupled with one by screen actors that began in July, has largely halted production of new films and scripted TV shows.

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright and Maxwell Adler

August 16, 2023

Save the Tax-Exemption, A Call to Action for U.S. Public Finance.

- A convergence of risk has the potential to result in the elimination of new tax-exempt municipal bond issuance.
- For the public finance community this analysis is meant to be a call-to-action.
- This is a potential policy threat for investors to monitor, for now.
- The rising U.S. debt-to-GDP ratio along with climbing interest costs are among the leading reasons why there is an even greater threat to the municipal bond tax-exemption today compared to recent

decades.

- Reinforcement of this increased threat was recently delivered in the form of Fitch Ratings' U.S. downgrade (August 1) and the CBO's July Monthly Budget Review (August 8).
- The public finance community should escalate support for tax-exempt bonds by educating and informing D.C. lawmakers now, even though we may experience a federal budget cycle or two and a Presidential election before the true threat is imminent. If an educational process does not begin soon, it could be too late to save the tax-exemption by the time potential deficit reduction measures are proposed.

[Continue reading.](#)

AdvisorHub

by Tom Kozlik, Hilltop Securities

August 18, 2023

[Opinion: How Toxic Fertilizers Create Toxic Municipal Bonds](#)

Spreading sewage sludge on farms is a bad environmental move. It's also a bad economic one.

Two environmental hazards are emerging in tandem with the promise of disruptions to municipal financial markets. One, global warming, has received widespread attention; the other, toxic waste, less so.

Sea level rise due to a climate change presents an existential threat to coastal towns and cities as they experience a steady gnawing away of their land boundaries, and with it the tax revenue of washed away property and infrastructure. They also face additional costs for maintenance and renovation.

Agricultural communities, like their seaside sisters, also face an existential threat from land permanently rendered toxic because of toxic-laden industrial and urban sewage sludge, also known as biosolids, used as fertilizer.

[Continue reading.](#)

Environmental Health News

by Stephen Stevick

August 16, 2023

[Bond Villains: How a Little-Understood Feature of Urban Finance - Municipal Bonds - Fuels Racial Inequality.](#)

Municipal governments today hold around \$4 trillion in outstanding debt. For many cities, the growing costs of simply servicing their debt is cannibalizing their annual budgets. When

municipalities get in trouble, it's not uncommon for around a fifth of a big city budget to go to debt service alone. This is far from a new development. Since the birth of the modern city in the nineteenth century, cities have turned to the private sector to fulfill their immediate cash needs by issuing what are known as municipal bonds.

The bond market, despite its invisibility to the public, has long been the oil in the gears of our society. If a city needs a dilapidated bridge secured, a school building updated, a transit expansion funded, or, in the case of Flint, Michigan, in 2013, a new water pipeline built, they issue a bond. The bond—a kind of loan, in essence—is bought from the municipality by a bank or a syndicate of banks and bond dealers. Together they raise the money necessary for the project through a process called underwriting, offering shares to investors and in turn making money from transaction fees and interest rate spreads—the difference between the price they paid and the premium they will charge.

In most cases, the bond itself is guaranteed by the taxation of residents, or the fees they will pay to access the service. The conveyor belt of highway toll stations to get from New York to New Jersey is one such example: residents bear the financial burdens of the municipal debt taken on in the construction of the city's streets, parks, schools, and hospitals.

[Continue reading.](#)

Boston Review

by Clark Randall

August 16, 2023

[Maui Wildfires Put Hawaiian Electric On Hedge Fund Radars.](#)

California utility PG&E went bankrupt after raking up billions in wildfires liabilities

Wildfire Liabilities

Distressed debt investors are circling Hawaiian Electric and have zeroed in on a set of rarely traded bonds following deadly wildfires in Maui.

While the company's municipal bonds have sunk to distressed prices, Jefferies sent out quotes this week on the company's private placement notes at levels between 40 cents and 60 cents on the dollar. These notes are primarily held by insurance companies and are rarely traded. Meanwhile, traders at Seaport are also gauging interest from some investors in hopes of making a market in the bonds.

[Continue reading.](#)

Bloomberg

By Rachel Butt and Reshmi Basu

August 18

[Brokers Ready Trading in Discounted Bonds of Hawaiian Electric.](#)

- **Jefferies quoted private placement notes at distressed levels**
- **Some holders have held calls on potential fallout, recovery**

Some Wall Street bond brokers are soliciting interest in a series of rarely traded notes tied to Hawaiian Electric Industries, as market participants assess potential liabilities for the utility following deadly wildfires in Maui, according to people with knowledge of the situation.

Jefferies Financial Group sent out quotes this week on Hawaiian Electric Co.'s private placement notes at deeply distressed levels, between 40 cents to 60 cents on the dollar, said the people, who asked not to be named because the matter is private. Meanwhile, traders at Seaport Group are gauging interest from some investors, the people said.

The solicitation is among a number of early indications that both investors and the utility have started to take steps to determine potential losses stemming from the wildfires. The notes quoted by Jefferies are rarely traded, privately-placed securities primarily held by insurance companies, the people said. Several banks are also making markets in the company's municipal bonds.

[Continue reading.](#)

Bloomberg Markets

By Rachel Butt and Reshmi Basu

August 17, 2023

[Hawaiian Electric Muni Debt Risks Junk Cut, Barclays Says.](#)

A unit of Hawaiian Electric Industries that is under scrutiny for its possible role in the deadly Maui wildfires could end up seeing its municipal bonds slashed to high-yield from investment-grade, according to Barclays Plc muni and ESG strategists.

Hawaiian Electric Co. and its subsidiaries have roughly \$500 million in special purpose municipal debt and it's "quite possible" those bonds could be downgraded to below investment-grade in the near future, reads Barclays' note out Wednesday. S&P Global Ratings cut Hawaiian Electric Industries to junk earlier this week.

"In that case we might see heavy forced selling from investors that are not able to hold high yield muni debt," strategists led by Clare Pickering wrote. "If this happens in late August or early September, the secondary market might not be deep enough to absorb heavy selling if it materializes, which might cause outside price swings."

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright

August 17, 2023

Hawaiian Electric's Municipal Bonds Tumble Amid Maui Fire Probe.

- **Utility's subsidiary has \$495 million of munis outstanding**
- **Hawaiian Electric cut to junk Tuesday by S&P over lawsuits**

Municipal bonds sold by a unit of Hawaiian Electric Industries, which operates the utility that serves Maui, are plunging amid scrutiny over the company's possible role in the island's deadly wildfire.

Investment-grade muni bonds sold by Hawaiian Electric Co. due in 2039 traded at about 65.7 cents on the dollar on Monday. That compares with above 80 cents in the days before the catastrophe, according to data compiled by Bloomberg.

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright

August 15, 2023

TAX - WISCONSIN

Wisconsin Property Taxpayers, Inc. v. Town of Buchanan

Supreme Court of Wisconsin - June 29, 2023 - 408 Wis.2d 287 - 2023 WI 58 - 992 N.W.2d 100

Plaintiff brought action for declaratory and injunctive relief from "transportation utility fee" that town imposed to fund its transportation utility district.

The Circuit Court entered summary judgment for plaintiff, finding that the fee was a property tax subject to the town's levy limit, and permanently enjoining the town from levying, enforcing, or collecting the fee in any amount above its levy limit. Town appealed, and the parties filed a joint petition for bypass of the Court of Appeals, which the Supreme Court granted.

The Supreme Court held that:

- Pursuant to statute allowing the creation of utility districts, town could not base the fee on class of property and its commercial characteristics;
- State law precluded town from imposing the fee on tax-exempt properties; and
- The fee counted against town's levy limit as set by state law.

When imposing "transportation utility fee" to fund its transportation utility district, which was fee that constituted property tax, town could not base fee on class of property and its commercial characteristics; statute allowing certain municipalities to set up utility districts and to fund them through "taxation of property" did not authorize such taxation to be based on anything other than property value.

“Transportation utility fee” that town imposed to fund its transportation utility district, which fee constituted property tax, counted against town’s levy limit as set by state law; despite argument that utility district had assumed responsibility for public improvement, town itself levied taxes to fund district.

Taxation of property funding utility district under statute allowing certain municipalities to set up utility districts is subject to municipal levy limits.

TAX - GEORGIA

[Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority](#)

Court of Appeals of Georgia - June 28, 2023 - S.E.2d - 2023 WL 4228280

Taxpayer, a hospital authority, brought action against board of tax assessors, seeking declaration that its leasehold interest in certain property, on which residential retirement community was operated, was exempt from ad valorem taxation.

The Superior Court granted summary judgment in favor of taxpayer, and the Court of Appeals affirmed. The Supreme Court granted certiorari, reversed decision, and remanded, and the trial court again entered summary judgment in favor of taxpayer. Board appealed.

The Court of Appeals held that leasehold interest was public property exempt from ad valorem taxation.

Leasehold interest of hospital authority taxpayer in continuing care residential retirement community, which taxpayer operated on land leased from property owner, was “public property,” and thus was exempt from ad valorem taxation; community, which provided elderly individuals with room and board and nursing care, addressed public need of identifiable class of citizens, bond validation proceedings established that taxpayer financed and paid for construction of community through revenue bonds issued in furtherance of public purpose for which taxpayer was established, community’s audited financial statements treated operating profits as those of taxpayer, and income derived from operating community was used to repay bonds.

[New York City Debt Offering Shows Attractiveness of Munis.](#)

The 2023 bond comeback is rife with opportunities for fixed income investors. New York City’s recent issuance, in particular, highlighted the attractiveness of municipal bonds.

“The City of New York (“the City”) announced the successful sale of approximately \$1.56 billion of General Obligation Bonds, comprised of \$1.41 billion of tax-exempt fixed rate bonds and \$151 million of taxable fixed rate bonds,” a public [press release](#) stated. “Proceeds of the bond sale will be used to refinance outstanding bonds for savings. The transaction achieves over \$108 million in total debt service savings, spread primarily across Fiscal Years 2024 through 2027.”

Munis receive praise for their ability to offer fixed income investors with a tax-free alternative. When you combine that with the high yields of today, along with quality debt with low rates, it’s a win-win.

“The Big Apple — rated AA by two ratings companies — sold 30-year debt that was priced to yield 4.35%,” a [Wealth Management article](#) said. “It sounds modest, but with tax adjustments, the richest New Yorkers snapping up the securities earned yields equivalent to 10% taxable debt, an online tool from Eaton Vance Management shows.”

That combination of high yield and quality makes munis even more appealing for high-net-worth individuals. The higher the tax bracket, the more beneficial munis become.

“The \$4 trillion municipal bond market is offering elevated yields not seen in years,” the article added. “But the state and local debt market has an added allure that other asset classes don’t: the income is tax-exempt. That means that the yields on muni bonds are even higher after adjusting for taxes. And the higher your tax bracket, the more attractive the bonds look.”

Access to Munis in One ETF

Rather than sifting through countless muni options available on the U.S. market, the Vanguard Tax-Exempt Bond ETF (VTEB) is an easier way for all-encompassing exposure. With a 0.05% expense ratio, the fund offers low-cost exposure to municipal debt. It also offers a 3.45% 30-day SEC yield as of August 10.

VTEB tracks the Standard & Poor’s National AMT-Free Municipal Bond Index, which measures the performance of the investment-grade segment of the U.S. municipal bond market. This index includes municipal bonds from issuers, primarily state or local governments or agencies whose interests are exempt from U.S. federal income taxes, and the federal alternative minimum tax (AMT).

ETF TRENDS

by BEN HERNANDEZ

AUGUST 16, 2023

[Munis Maintain Summer Heat in July.](#)

July update

- Demand outpaced supply and prompted strong absolute and relative performance.
- Rich valuations and waning seasonal trends warrant some near-term caution going forward.
- Any prolonged weakness would offer the opportunity to add duration and lock in attractive yields.

Market Overview

Municipal bonds maintained their seasonal strength and extended gains for the second consecutive month in July. Interest rates rose amid heightened volatility as economic data exceeded expectations, and the Federal Reserve resumed its tightening cycle and communicated a commitment to data dependence. Favorable supply-and-demand dynamics and the more stable nature of the asset class prompted outperformance versus Treasuries. The S&P Municipal Bond Index returned 0.25%, bringing the year-to-date total return to 2.78%. Triple-B-rated credits and the 15-year part of the yield curve performed best.

[Continue reading.](#)

advisorperspectives.com

by Peter Hayes, James Schwartz, Sean Carney of BlackRock, 8/15/23

[Positive Trends in the Municipal Debt Outlook.](#)

With the Fed's continuous fight against inflation, the interest rate environment has been quite attractive for new municipal debt investments.

Investors are capitalizing on high coupon offerings with the hope that when rates start to come down, their current investment may yield additional income in the form of capital gains.

In the third quarter of this year, we have witnessed several key factors behind the municipal debt performance. First, municipal bonds are likely to benefit from consistent coupon payments and reinvestment funds, as well as a slower rate of new bond issuances. While there will be more new bonds introduced compared to the first half of the year, it likely won't outweigh the impact of reinvestment funds. However, the combination of higher borrowing costs and substantial reserves means that borrowing needs are expected to remain restrained in the near future.

In this article, we will take a closer look at some positive trends we are seeing in fixed income markets and potential opportunities for municipal debt investors.

[Continue reading.](#)

dividend.com

by Jayden Sangha

Aug 15, 2023

[Why it's Time to Rethink Reserves: GFOA Webinar](#)

THU, 24 AUG | 1 PM ET

Governments are subject to financial shocks, including natural catastrophes, recessions, and more. Financial reserves (a "rainy day" fund) are essentially a form of self-insurance that governments use to buffer themselves against these risks. But what are the risks governments should be concerned about and what size of reserves are appropriate to those cover risks?

Speakers in this session will answer these questions and more. Participants will leave with resources and strategies to apply risk-aware and risk-savvy thinking to reserves in their own organizations.

[Click here](#) to learn more and to register.

Muni Buyers Can Find Bargains in Unlevered Closed-End Funds.

- **Discounts on the funds are wider than historical average**
- **Retail buyers may still be shellshocked from bond-market slide**

Investors looking for bargains in the municipal-bond market may find opportunities in closed-end funds that don't borrow to boost returns.

Unlevered municipal bond closed-end funds traded at a discount to their net asset value of as much 12.6%, according to data compiled by Bloomberg. The biggest, Nuveen LLC's \$1.9 billion Municipal Value Fund, is trading at a 7.2% discount with a tax-exempt yield of 3.97%. Over 20 years, its average discount is 2.3%.

Meanwhile, the DTF Tax-Free Income fund, which terminates in 2028, last month eliminated its leverage and is trading at a discount of 12.6%, or 87 cents on the dollar. As the fund moves closer to liquidation, the discount will disappear, said Ryan Paylor, a portfolio manager at Thomas J. Herzfeld Advisors, which focuses on the closed-end fund market.

[Continue reading.](#)

Bloomberg Markets

By Martin Z Braun

August 18, 2023

Senior-Living Operator Files for Bankruptcy Due to Pandemic.

- **Nashville Senior Care operates five facilities in three states**
- **Company has \$213 million in municipal bond debt outstanding**

A senior-living company filed for bankruptcy this week after it exhausted an emergency loan, the latest to falter because of Covid-19.

Nashville Senior Care LLC's plight illustrates the pressures bearing down on the senior-living sector. Higher staff and supply costs on top of tepid demand for such facilities have caused defaults to outpace the rest of the municipal bond market this year. About 8% of the \$43 billion in outstanding senior-living bonds is in default, compared with less than 1% of the total municipal bond market, according to data compiled by Bloomberg.

At Nashville Senior Care, the pandemic shutdown lowered the number of residents "precipitously," while expenses rose "dramatically," leaving the facilities without the means to make needed investments, executive director Thomas Johnson said in a court filing.

[Continue reading.](#)

Bloomberg Markets

By Lauren Coleman-Lochner

August 18, 2023

[**Muni Market Update \(Bloomberg Audio\)**](#)

Joe Mysak, Editor of the Bloomberg Municipal Market Brief, joins to discuss the latest on the muni bond market. Hosted by Paul Sweeney and Matt Miller.

[Listen to audio.](#)

Aug 18, 2023

[**Hedge Fund Paradise Hides Puerto Rico's Crisis In the Making.**](#)

A failing power grid and affordability strains are dividing the island into haves and have-nots.

If you walk in certain circles, it's easy enough to believe that Puerto Rico has moved past devastating hurricanes and the largest municipal bankruptcy in US history.

Ritzy hotels and luxury restaurants are sprouting up along the island's white-sand beaches and crystalline waters. Dinner for two can cost \$500 at those high-end spots. Hedge fund executives and crypto exiles are moving in, lured by lucrative tax breaks.

But it's the hum of privately owned generators that makes those lifestyles possible, and shields this set of the island's inhabitants from the reality experienced by the vast majority.

[Continue reading.](#)

Bloomberg Economics

By Jim Wyss and Michelle Kaske

August 18, 2023 at 3:00 AM PDT

[**Neuberger's Iselin Sees Pockets of Opportunity in Munis.**](#)

Jamie Iselin, Neuberger Berman's head of municipal fixed income, says he sees investment opportunities in the municipal bond market on "Bloomberg Markets: The Close."

[Watch video.](#)

Bloomberg Markets: The CloseMuni Moment

August 16th, 2023, 12:39 PM PDT

Municipal Bonds Outperform as Investors Rush to Buy Dwindling Supply.

- **July deals oversubscribed by 5.2 times on average: BlackRock**
- **New muni debt sales year-to-date are slowest since 2019**

A reluctance by states and cities to borrow is making municipal debt a star performer among credit assets and driving investors to scour the market for bonds.

Municipalities issued \$218 billion of long-term debt year to date, 9% less than at the same point last year and the slowest pace of sales since 2019, according to data compiled by Bloomberg. The Federal Reserve's interest-rate increase regime since March 2022 to fight inflation at least partly explains the dropoff.

The scarcity is fueling outperformance in the asset class. Municipal bonds returned 0.4% in July, better than a 0.35% decline in US Treasuries, according to data compiled by Bloomberg. Month to date, munis lost 0.8%, less than Treasuries and corporates, which lost 1.2% and 1.8% respectively.

[Continue reading.](#)

Bloomberg Markets

By Nic Querolo and Amanda Albright

August 15, 2023

Ohio Budget Bill Adopts Municipal Net Profits Tax Safe Harbor Statute.

Companies that have individuals (whether an employee or an owner) that work out of their home now have the choice of filing a net profits tax return with that individual's city of residence. In brief, if the company chooses to not file a net profits tax return with that individual's city of residence, then the company's property, payroll and sales associated with that individual are assigned to the company's office location. The statute is not a model of clarity, so companies are well advised to study the associated procedural rules very carefully. The statute is effective for tax years ending on or after December 31, 2023.

Vorys understands the General Assembly may amend this statute's effective date to make it effective for tax years ending on or after January 1, 2022. Companies should monitor further legislative developments accordingly.

Vorys Sater Seymour and Pease LLP - David A. Froling

August 10 2023

Shorter Term Munis Continue to Win Over Longer Dated Munis.

BlackRock, one of the largest muni bond managers, recently released their update on muni bond market performance for the month of July. It offers a nuanced view that combines optimism about the current strong performance with caution regarding the near future. The firm provides clear insights

into strategic investment, highlighting both opportunities and potential risks, all while considering recent shifts in the credit landscape. Their guidance seems aimed at navigating the complexities of the market while recognizing the underlying stability of municipal bonds, particularly in comparison to the federal fiscal landscape.

The July update on municipal bonds paints a picture of strong performance with a warning of caution due to rich valuations and waning seasonal trends. The update emphasizes that municipal bonds maintained their seasonal strength, extending gains for the second consecutive month, driven by favorable supply-and-demand dynamics. Interest rates rose as the Federal Reserve resumed its tightening cycle, leading to a return of 0.25% for the S&P Municipal Bond Index, and a year-to-date total return of 2.78%. The performance of Triple-B rated credits and the 15-year part of the yield curve was particularly strong.

Issuance for July totaled \$27 billion, down 17% from the five-year average, while the year-to-date total reached \$198 billion, a decrease of 12% compared to the previous year. The reinvestment income outpacing issuance created a net-negative supply environment, resulting in deals being oversubscribed by 5.2 times on average. However, the report also advises a more cautious approach in the near term, suggesting that performance may soften in August, although prolonged weakness could present opportunities to lock in attractive yields.

[Continue reading.](#)

dividend.com

by Shauvik Haldar

Aug 17, 2023

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- [Municipal Securities Regulation and Enforcement: 2023 Mid-Year Review - Ballard Spahr](#)
 - [NFMA Advanced Seminar on Transportation.](#)
 - [Lawmakers Probe Nonprofit Hospitals, Challenge Tax-Exempt Status.](#)
 - [Wall Street's Projected Tab on Muni Price-Fixing Suits Expected to Plunge.](#)
 - [Analysis Suggests Municipal Bond Market Prices Race But Not Climate Risk.](#)
 - And Finally, I Know You Are But What Am I? is brought to us this week by [Brandy v. City of St. Louis, Missouri](#), in which we learned that open and constructive dialogue can help bridge the gap between parties with divergent interests and viewpoints, creating the conditions for the understanding and forgiveness necessary to heal this fractured nation of ours. Specifically, a potentially violent civil rights protest was defused when a protestor noted Officer Olsten's "pepper spray fogger" and declaimed, "If you put that s*** in my face, I'll f*** you up." After which, Officer Olsten, "stepped toward protestor and [decorously] responded, "Come f*** me up then." Perhaps not the soaring oratory of the Lincoln/Douglas debates, but the message was indeed succinctly conveyed. This of course calmed the crowd and led to the peaceful... Ha! The protestors were summarily treated to the wafting aroma of weapons-grade capsaicin. Can't we all get along?

Coalition of County Unions v. Los Angeles County Board of Supervisors

Court of Appeal, Second District, Division 3, California - July 28, 2023 - Cal.Rptr.3d - 2023 WL 4862020

Coalition of county employee unions and two individuals filed petition for peremptory writ of mandate prohibiting county board of supervisors and county chief executive officer (CEO) from enforcing voter-adopted county charter amendment, which required board to annually allocate at least 10% of locally generated unrestricted revenues in general fund to direct community investment and alternatives to incarceration and prohibited such funds from being allocated to any carceral system or law enforcement agency.

The Superior Court, Los Angeles County, granted petition. Respondents appealed.

The Court of Appeal held that:

- Amendment was authorized by constitutional provision allowing counties to provide for powers and duties of local officers and operation of local governments;
- Amendment comported with constitutional requirement that county charters provide for performance of statutorily mandated functions;
- Voters were authorized to approve ballot measure amending county charter;
- Amendment did not incapacitate county from performing state-delegated public functions;
- County Budget Act did not reflect legislative intent to exclusively delegate county budgeting to boards of supervisors; and
- Statutes governing Public Safety Augmentation Fund did not reflect legislative intent to preclude local referenda and initiatives on public safety budgeting.

Voter-adopted amendment to county charter which required county board of supervisors to allocate portion of general fund revenues to community investment and incarceration alternatives and prohibited such funds' allocation to carceral and police uses defined power and duty of county's governing body, and thus, was authorized by constitutional provision allowing counties to provide for powers and duties of local officers and operation of local governments, even though amendment limited board's discretion as to budgeting duty; "power" set forth in amendment was allocation of locally generated unrestricted revenues, "duty" was directing 10% of such revenues to particular purposes, and Constitution did not preclude charter amendments from restricting or reassigning governing body's powers.

Voter-adopted amendment to county charter which required county board of supervisors to allocate portion of locally generated unrestricted revenues in general fund to direct community investment and alternatives to incarceration and prohibited such funds from being allocated to any carceral system or law enforcement agency comported with constitutional provision requiring county charters to provide for performance of functions required by statute; County Budget Act required county boards of supervisors to adopt county budgets on annual basis, and amendment guided board in such process by describing how portion of budget was to be allocated.

Constitutional provisions on local government authorized voters to approve ballot measure amending county charter to require county board of supervisors to allocate at least 10% of certain revenues in general fund to direct community investment and other specified purposes and precluding board from allocating such funds to carceral or police uses, even though Constitution did not expressly allow voters to have any role in county budgeting; Constitution required county charter to be amended only "in the same manner" as it was originally adopted, namely by majority vote of county's voters, such that voters had constitutional right to amend charter on any topic that was proper subject of county charter, which included budgeting.

Voter-adopted amendment to county charter, which required county board of supervisors to allocate 10% of locally generated unrestricted revenues in general fund to direct community investment and alternatives to incarceration and prohibited such funds' allocation for carceral or police uses, did not incapacitate county from performing public functions delegated to it by state, and thus, did not exceed scope of county's constitutionally permissible self-governance; amendment increased budgetary stability for certain expenditures that voters prioritized, board could reduce 10% set-aside in event of fiscal emergency or voters could amend charter again if amendment proved unduly constraining, and amendment, which was meant to reduce crime, did not facially impair public safety.

County Budget Act's references to "board of supervisors" as entity responsible for adopting county budget did not unambiguously indicate Legislature meant to exclusively delegate budgeting decisions to county boards of supervisors and preclude local electorates from exercising initiative and referendum powers on issues of county budgeting; Act, which applied only to counties, simply referred to boards because no other local legislative or governing body could enact county budget.

Voter-adopted ballot measure, which amended county charter to require county board of supervisors to allocate certain portion of revenue from general fund to direct community investment and other purposes and precluded such funds' allocation for carceral or police uses, did not allow electorate to exercise any powers or duties which County Budget Act granted to board and other county officials, including board's power to expend money to fund programs it deemed advisable or necessary, and thus, measure did not conflict with Act; measure did not allow voters to engage in statutory procedures for preparing recommended budget and adopting final budget or preclude board or officials from undertaking such duties, and board retained power to decide recipients and amounts of funding.

County Budget Act did not reflect legislative intent to delegate setting of budget priorities exclusively to local governing bodies in order to fulfill Act's statewide objectives, and thus, state's general interest in county budgeting, as reflected in Act, did not weigh in favor of finding that Legislature intended to preclude voters in county from amending county charter by initiative or referendum so as to require board of supervisors to annually expend certain funds on direct community investment and incarceration alternatives and preclude board from allocating such funds to carceral and police uses; Act set forth some general, procedural parameters for county budgeting, but left substance of budget allocations entirely to individual counties.

Voter-adopted ballot measure that required county board of supervisors to allocate 10% of locally generated unrestricted revenues in general fund to incarceration alternatives and other purposes and precluded board from allocating such funds to carceral or police uses did not conflict with statutes governing Public Safety Augmentation Fund, and thus, statutes did not reflect legislative intent to preclude voters' exercise of initiative and referendum rights regarding counties' public safety budgets; statutes were not abstract declarations of interest in public safety, but rather, set up concrete framework for collection of sales tax revenues and distribution to local governments through Fund, whereas measure concerned only locally generated, unrestricted revenues, not Fund revenues.

PREEMPTION - CALIFORNIA

[Chevron U.S.A. Inc. v. County of Monterey](#)

Supreme Court of California - August 3, 2023 - P.3d - 2023 WL 4940263

Mineral rights holders brought action for declaratory and injunctive relief challenging validity of county ordinances banning land uses in support of new oil and gas wells and land uses in support of wastewater injection in unincorporated areas of county.

The Superior Court entered judgment striking down the ordinances. County appealed, the Court of Appeal affirmed. The Supreme Court granted review.

The Supreme Court held that ordinance conflicted with state statute granting state oil and gas supervisor authority to supervise drilling operations and thus was preempted.

Local law enters an area that is “fully occupied” by general law, and is thus preempted, when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the’ locality.

County ordinance banning oil and gas wastewater injection and impoundment and the drilling of new oil and gas wells conflicted with state statute granting state oil and gas supervisor authority to supervise drilling operations and thus was preempted, as while statute mandated that the state “shall” supervise oil operation in a way that permitted well operators to “utilize all methods and practices” the state oil and gas supervisor has approved, the county ordinance provided that certain oil production methods could never be used.

IMMUNITY - CONNECTICUT

[Adesokan v. Town of Bloomfield](#)

Supreme Court of Connecticut - August 1, 2023 - A.3d - 347 Conn. 416 - 2023 WL 4915906

Motorist, individually and on behalf of her two minor children, brought action against town, police department, and police officer, alleging negligence, negligent supervision, and respondeat superior in connection with personal injuries sustained in collision when police officer’s vehicle, that was traveling southbound in response to a possible abduction with emergency lights and siren activated, collided with driver’s side of motorist’s vehicle that was also traveling southbound, when motorist made a left turn at intersection at the same time that police officer attempted to pass motorist in northbound lane.

The Superior Court granted defendants’ summary judgment motion. Motorist appealed.

Upon transfer from the Appellate Court, the Supreme Court held that defense of discretionary act qualified immunity does not apply to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by the emergency-vehicle statute.

ZONING & PLANNING - MAINE

Upstream Watch v. City of Belfast

Supreme Judicial Court of Maine - August 3, 2023 - A.3d - 2023 WL 4939323 - 2023 ME 43

Environmental organization that was dedicated to restoration of mid-coast rivers and streams to their natural habitats sought review of city zoning board of appeals' (ZBA) dismissal of organization's appeal of city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river.

The Superior Court affirmed. Organization appealed.

The Supreme Judicial Court held that:

- ZBA erred when it confined its review of organization's standing to information contained in application-to-appeal form, and
- Organization had associational standing to appeal to ZBA.

Whether city zoning board of appeals (ZBA) erred in confining its review of environmental organization's standing argument to organization's written response on its application-to-appeal form involved a legal interpretation of a land use regulation ordinance, and therefore Supreme Judicial Court would consider the issue de novo, in proceeding involving organization's challenge to city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river.

City zoning board of appeals (ZBA) erred when it confined its review of environmental organization's standing argument to organization's written response on the application-to-appeal form for a challenge to city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river, where land use regulation ordinance did not contain such a restriction and ordinance mandated that, when acting in an appellate capacity, the ZBA was to consider all evidence of record submitted in the underlying hearing.

Environmental organization that was dedicated to restoration of mid-coast rivers and streams to their natural habitats had associational standing to appeal to city zoning board of appeals (ZBA) to challenge city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river, where at least one of organization's members was an aggrieved person, either as an abutter or as a possessor of land directly affected by the project, and land use regulation ordinance did not explicitly require that a party show a particularized injury to qualify as an aggrieved party.

IMMUNITY - MISSISSIPPI

Phillips v. City of Oxford

Supreme Court of Mississippi - August 3, 2023 - So.3d - 2023 WL 4943506

Motorist, on behalf of herself and her minor child, brought action against city under Mississippi Tort Claims Act (MTCA), seeking to recover damages for injuries she and her child sustained when patrol car driven by police officer en route to emergency struck her vehicle in an intersection.

Following bench trial, the Circuit Court entered final judgment in favor of city. Motorist appealed. The Court of Appeals reversed. Writ of certiorari was granted.

The Supreme Court, en banc, held that evidence supported finding that city was entitled to police-protection immunity.

Evidence supported trial court's finding that police officer's conduct prior to automobile collision at intersection did not rise to high standard of reckless disregard, for purpose of determining city's entitlement to police-protection immunity under Mississippi Tort Claims Act (MTCA); officer exercised some measure of safety precaution by activating his lights and sirens throughout his response, he activated his horn for additional warning at intersections, he slowed as he approached intersections, and dash camera showed that all other cars at subject intersection yielded to officer except car driven by plaintiff motorist.

IMMUNITY - MISSOURI

[Brandy v. City of St. Louis, Missouri](#)

United States Court of Appeals, Eighth Circuit - July 28, 2023 - F.4th - 2023 WL 4835028

After city police officer deployed pepper spray against protestor and others in a crowd, protestor sued defendants including officer, city, and police chief, alleging various claims under federal and Missouri law, including First Amendment retaliation.

Defendants moved for summary judgment based on immunity grounds. The United States District Court denied officer's summary judgment motion in part, finding that he was not entitled to summary judgment on First Amendment retaliation claim based on qualified immunity, or on state-law claims based on official immunity, and reserved ruling on city's summary judgment motion based on sovereign immunity. Defendants appealed.

The Court of Appeals held that:

- Protestor's right to exercise his First Amendment rights without facing retaliation from government officials was clearly established;
- The Court of Appeals lacked jurisdiction to disturb district court's conclusion that fact issue existed as to whether protestor's taunts of officer amounted to a true threat;
- The Court of Appeals lacked jurisdiction to resolve whether fact issue existed as to whether deployment of pepper spray was motivated by protected First Amendment activity;
- The Court of Appeals lacked jurisdiction to reverse determination that fact issue existed as to whether officer acted maliciously; and
- District court would be required on remand to reach the merits of city's sovereign immunity defense.

Given that city was entitled to a thorough determination of its claims of sovereign immunity, district court would be required to reach the merits of city's sovereign immunity defense against protestor's claims arising from city police officer's deployment of pepper spray against him, on remand from city's interlocutory appeal from district court's order denying summary judgment, where district court had failed to rule on city's summary judgment motion, but had instead reserved ruling until after the conclusion of trial.

REFERENDA - OHIO

[State ex rel. LaChapelle v. Harkey](#)

Supreme Court of Ohio - August 7, 2023 - N.E.3d - 2023 WL 5012040 - 2023-Ohio-2723

Member of committee that was attempting to place referendum on city ordinance related to nonowner-occupied residential property filed action seeking writ of mandamus to order city official to transmit referendum petition to county board of elections.

The Supreme Court held that:

- Committee member lacked adequate remedy in ordinary course of law as required for writ of mandamus;
- City official had mandatory, ministerial duty to transmit referendum petition to county board of elections;
- Fact that there was dispute about whether copy of ordinance was properly certified copy did not remove city official's duty to transmit petition to county board of elections; and
- Fact that city ordinance may have been administrative in nature did not remove city official's duty to transmit referendum petition to county board of elections.

Member of committee that was attempting to place referendum on city ordinance related to nonowner-occupied residential property lacked adequate remedy in ordinary course of law, for purposes of obtaining writ of mandamus to compel city official to transmit referendum petition to county board of elections, due to proximity of election.

City official had mandatory, ministerial duty to transmit referendum petition for city ordinance related to nonowner-occupied residential property to county board of elections, thus warranting mandamus relief, where petition was filed with city official within 30 days of passing of ordinance

Fact that there was dispute about whether copy of ordinance governing nonowner-occupied residential property filed prior to circulating referendum petition related to ordinance was properly certified copy did not remove city official's duty to transmit petition to county board of elections; copy of ordinance contained certification attesting that it was true and exact replica of original ordinance, and city official's duty to certify sufficiency and validity of petition did not arise until after board of elections examined petition.

Fact that city ordinance related to nonowner-occupied residential property may have been administrative in nature and thus not subject to referendum did not remove city official's duty to transmit referendum petition to county board of elections; city official did not have discretion to withhold referendum petition on ground that required her to make judicial or quasi-judicial determination.

ZONING & PLANNING - RHODE ISLAND

[Green Development, LLC v. Town of Exeter](#)

Supreme Court of Rhode Island - July 28, 2023 - A.3d - 2023 WL 4832121

Solar field project owner brought action for declaratory and injunctive relief after town paused, and subsequently amended, its zoning ordinance, preventing the development of three commercial solar field projects.

The Superior Court denied relief, and project owner appealed.

The Supreme Court held that:

- Owner's submissions were pre-applications rather than applications for development which had vested under provisions of the Zoning Enabling Act;
- Town had authority under town charter to issue moratorium;
- Statute did not preempt town's ability under town charter to adopt 60-day moratorium; and
- Vesting clause in town's emergency moratorium was not an improper modification of vesting requirements for zoning applications enacted outside ordinary notice and hearing procedures.

Solar field project owner's submissions to town planner for development of three solar field projects were pre-applications under Land Development and Subdivision Review Act, rather than applications for development which had vested under provisions of the Zoning Enabling Act, where project owner had selected the "pre-application" box on each of its three submissions and further included a letter of transmittal identifying the submissions as application materials for a pre-application plan review of its project, and town planner catalogued the submissions as "pre-applications" upon receipt.

Town had authority under town charter to issue moratorium on pending submissions for development of solar field projects; moratorium ordinance clearly characterized the emergency as a threat of an overdevelopment of solar-field projects in residential zones, and ordinance complied with the 60-day limitation for such emergency ordinances and affected only applications that had not vested under the applicable laws.

Statute authorizing a municipality to implement a "one-time moratorium, for the purpose of providing interim protection for a planned future land use or uses" for the first 12 months after a municipality adopts its local comprehensive plan was not exclusive and did not preempt town's ability, under town charter provision regarding emergency ordinances, to adopt 60-day moratorium on solar field project approvals.

Vesting clause in town's emergency moratorium ordinance prohibiting further solar field projects was not an improper modification of vesting requirements for zoning applications enacted outside ordinary notice and hearing procedures required for zoning amendments; valid and temporary emergency ordinance did not rise to the level of a de facto zoning ordinance, and town clearly provided vesting clause in an attempt to delineate which applications would proceed throughout the duration of the moratorium and which applications the town would place on hold.

EMINENT DOMAIN - WASHINGTON

[Maslonka v. Public Utility District No. 1 of Pend Oreille County](#)

Supreme Court of Washington - August 3, 2023 - P.3d - 2023 WL 4939152

Landowners brought action against public utility district, alleging district's operation of dam entitled landowners to damages based on inverse condemnation, trespass, nuisance, and negligence.

District counterclaimed for declaration of prescriptive easement. On summary judgment, the Superior Court declared a prescriptive easement in favor of utility district and dismissed landowners' claims. Landowners appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Review was granted.

The Supreme Court held that:

- As a matter of apparent first impression, the “subsequent purchaser rule,” prohibiting landowners from suing, through an inverse condemnation action, for property damage caused by governmental conduct that occurred prior to their ownership, is a doctrine of standing rather than an affirmative defense;
- Landowners were subsequent purchasers as to taking that occurred when dam was built, supporting finding that they were precluded from bringing an inverse condemnation claim;
- There was no evidence that alleged increase in flooding on property was attributable to district, as could render increased flooding a new taking that would allow inverse condemnation claim; and
- Landowners were precluded from asserting a nuisance claim against district based on same flooding as “backup” for inverse condemnation claim.

The “subsequent purchaser rule,” prohibiting landowners from suing, through an inverse condemnation action, for property damage caused by governmental conduct that occurred prior to their ownership, is a doctrine of standing rather than an affirmative defense.

Landowners were “subsequent purchasers” as to taking that occurred when dam was built and thus were precluded from bringing an inverse condemnation claim arising from public utility district’s dam operations that had flooded landowners’ property, where landowners bought property at a purchase price that represented known seasonal flooding from dam operations.

There was no evidence that alleged increase in flooding on landowners’ property was attributable to public utility district, as could render increased flooding a new taking that would allow inverse condemnation claim by landowners, as subsequent purchasers whose purchase of property was at a price that reflected known flooding from district’s dam operations.

Landowners were precluded from asserting a nuisance claim against public utility district, based on flooding of landowners’ property from district’s dam operations, as “backup” for landowners’ inverse condemnation claim, which was barred by subsequent-purchaser rule given that landowners had purchased property at a price that accounted for known flooding due to dam operations, where parties did not dispute that a taking occurred.

[2023 State Budget Trends.](#)

A look at the top trends emerging in state governments, from new taxes to planning for the next budget cycle.

[Download the eBook.](#)

Route Fifty

[Muni Implications of Fitch Surprise Downgrade.](#)

The UBS Chief Investment Office comments on the surprise downgrade by Fitch of the US’ sovereign credit rating, muni market implications, and portfolio positioning ideas.

We believe that investors should allocate some space to durable tax-exempt income to portfolios through longer-duration, high-quality municipal bonds. (UBS)

- On 1 August 2023, Fitch Ratings surprised the financial markets by downgrading its long-term foreign currency issuer rating of the United States to AA+ from AAA. The rating agency cited a “deterioration in the standards of governance” and “repeated debt-limit political standoffs and last-minute resolutions” to recurring debt ceiling stalemates as contributing factors in its decision to reduce its assessment of the credit quality of US government securities.
- Following this rating revision, Fitch also downgraded certain municipal bonds that are linked to the US government debt rating due to their reliance on the sovereign credit for repayment. The related downgrades include USD 21.5bn of power bonds issued by the Tennessee Valley Authority, USD 3.5bn of pre-refunded municipal bonds, and USD 1.8bn of municipal housing bonds, as reported by Bloomberg. We do not expect the Fitch downgrade of the muni linked credits to have a material impact on spreads. Despite the rating action, we view AA+ rated municipal bonds as high credit quality fixed income investments.
- Last week, munis sold off taking their cues from weakness witnessed in the US Treasury market. Yields on high grade munis increased by 17bps to 22bps across the curve. Despite the sell-off, tax-exempt munis (+2%) have outperformed taxable government related debt (+0.6%) on a year-t-date basis.
- In the new issue market, the largest deal expected to price this week is ~USD 1.015bn New York City general obligation bonds. Overall, net supply remains negative this month, representing a tailwind for the market.
- Short-dated tax-exempt municipal bonds have cheapened relative to their taxable fixed income counterparts. As a point of reference, the 2-year AAA muni-to-Treasury yield ratio now sits at 65%, up from only 60% in mid-July. That said, muni investors can obtain better relative values further out on the curve (12-year spot and beyond).

Buy high-quality munis

We continue to favor positioning muni assets in high-quality sectors rather than lower-rated high yield munis in the face of macroeconomic uncertainty. Municipal electric utilities, state governments, and essential service water and sewer debt are all good examples of muni sectors that we believe should exhibit credit quality resilience in an economic slowdown. By contrast, not-for-profit hospital bonds and pockets of the private higher-education sector face more challenges from a credit standpoint. That said, our credit team has identified select opportunities from larger obligors with strong credit metrics within the higher risk hospital sector.

Add some duration

Rather than waiting for the Fed to confirm an end to the rate hiking cycle, we believe that investors should allocate some space to durable tax-exempt income to portfolios through longer-duration, high-quality municipal bonds. Yields on longer-dated 20-year high grade AA munis now sit at about 3.8%. By comparison, these yields are roughly 35 basis points higher than the average over the past 20 years, and 250bps higher than the all-time historical low (1.3%) witnessed in 2021 July.

by UBS Editorial Team

08 Aug 2023

Main contributor: Kathleen McNamara

[Office Exodus: Can US Cities Survive?](#)

Flagging office occupancy rates have municipal bond investors concerned. But US cities have more than one card to play in the revenue game.

From the Bay Area to Boston, shrinking office footprints have been generating gloomy headlines. With talk of downtown death spirals, some municipal bond investors fear that declining office occupancy—a side effect of increased workplace flexibility—could deplete large cities' coffers. But while office vacancies remain a concern, most US cities have mechanisms to protect their finances—and those of municipal bondholders.

Cities Have a Wide Range of Funding Sources

First off, we need to address a misconception: US cities aren't nearly as dependent on commercial and office taxes as many believe. It's true that property taxes are typically the largest source of tax revenue for large cities, but they account for just 30% of total revenue, on average, according to the Urban Institute—with office contributing just a portion of that. In fact, of the largest US cities by debt outstanding, commercial or office property taxes account for just 6.8% of total revenues, on average.

[Continue reading.](#)

Alliance Bernstein

by Richard Schwam, CFA| High Yield Research Analyst—Municipal Credit

AUGUST 10, 2023

[Regulate AI? Here's What States Need to Know.](#)

A new report by the National Conference of State Legislatures provides a primer for lawmakers on how they might approach oversight of artificial intelligence.

An increasing number of state legislatures are grappling with what to do about the rapid rise of artificial intelligence.

In the absence of federal legislation, some states have been passing laws to protect citizens from the potential harms of AI, such as assessing whether its use is leading to discrimination or requiring public disclosure when it is being used.

But the majority of AI measures passed by legislatures have simply created task forces to advise states as they get up to speed on the complex issues involved, according to a [new report](#) by the National Conference of State Legislatures released Thursday.

[Continue reading.](#)

ROUTE FIFTY

by KERY MURAKAMI

AUGUST 11, 2023

Wall Street's Projected Tab on Muni Price-Fixing Suits Expected to Plunge.

- **BI analyst Stein sees banks settling for about \$900 million**
- **Illinois settled near-decade of litigation on VRDO pricing**

Wall Street banks' potential bill to settle bond price-fixing lawsuits has been slashed, falling to around \$900 million from about \$2.5 billion penciled in just a month ago.

That's the thinking of Elliott Stein, senior litigation analyst at Bloomberg Intelligence, after Illinois settled for \$68 million, roughly 20% of damages last month, likely setting a template for other settlements of the three remaining False Claims Act lawsuits.

Stein estimates that lawsuits in California, New Jersey and New York will cost the dozen banks involved — including Bank of America Corp., Citigroup Inc. and JPMorgan Chase & Co. — around \$220 million in total. A class action case filed in New York with similar allegations could be resolved for as much as \$600 million. Before the Illinois settlement, Stein had estimated the tab on all five suits at \$2.5 billion.

[Continue reading.](#)

Bloomberg Markets

By Joseph Mysak Jr

August 10, 2023

Analysis Suggests Municipal Bond Market Prices Race But Not Climate Risk.

DURHAM, N.C. — The U.S. municipal bond market does not consider physical climate risks when deciding where to invest, but it generally requires higher interest payments from predominantly Black communities seeking to borrow, according to an [analysis](#) published Aug. 9.

The findings from researchers at Duke University, Northeastern University and Breckinridge Capital Advisors appear in the open-access journal PLOS ONE.

“The results of our study point to mispricing of risk in the municipal bond market — climate risk should matter to investors, but the racial makeup of communities should not,” said lead author Erika Smull, a 2022 Ph.D. graduate of the Nicholas School of the Environment who now works as a research analyst at Breckinridge Capital Advisors.

“Our analysis shows that climate risk is not priced, but that a ‘Black Tax’ exists in the market,” Smull said. “That is problematic for a country that has to grapple with both increasing climate risks and racial disparities.”

States, cities, counties and other governmental entities rely on the \$4 trillion municipal bond market to help fund essential infrastructure and services, such as schools, roads and water and sewer systems. Bond issuers repay investors through taxes or fees collected within their service areas. How much investors charge borrowers in interest depends on their perception of each service area's unique environmental, economic or demographic risks.

Few studies have examined the relationships between municipal bond pricing and two particular factors: climate risk and race. The analysis in PLOS ONE used data from price at issue of more than 700,000 municipal bonds to better characterize those relationships. The authors focused on a measure called credit spread — the difference between a bond issuer’s interest cost to borrow and a benchmark “risk-free” municipal rate.

When adjusting for both bond structure and other service area characteristics, the analysis found that communities with majority Black residents face larger credit spreads on municipal bonds than communities with non-Black majorities. Applying this borrowing penalty to the entire municipal bond market results in Black Americans paying an estimated \$900 million in additional interest costs each year.

“There are numerous reasons that could explain why we find race to be meaningful for municipal bond spreads, including implicit and explicit biases of organizations or individual investors, statistical discrimination, where risk perceptions of decades past have proliferated, and/or circular reasoning on the part of investors who expect others to hold a bias and therefore price accordingly,” the authors write. “Regardless of any sort of explanation, race alone should not influence municipal credit spreads.”

In contrast, no statistically meaningful penalty emerged from the analysis for climate risk. All other factors being held equal, communities at higher risk from climate effects, such as sea level rise or wildfires, pay roughly the same rate as lower-risk communities to issue debt for needed infrastructure improvements.

“Municipal bonds are long-term financial liabilities, so any biases priced into the market have profound implications for communities and their residents,” said coauthor Martin Doyle, director of the Water Policy Program at Duke’s Nicholas Institute for Energy, Environment & Sustainability and professor of river science and policy at the Nicholas School of the Environment.

“While the effects of climate change are manifesting more frequently, bond buyers are still treating cities with as wide a range of risk as Miami and Omaha the same,” Doyle said. “Meanwhile, Black communities that are often on the front lines of climate risks and disasters appear to face higher costs to make their infrastructure more resilient.”

Funding for the analysis by the Duke researchers was provided by Spring Point Partners.

[Read full paper.](#)

Nicholas Institute for Environmental Policy Solutions

AUGUST 9, 2023

CITATION: “Climate, Race, and the Cost of Capital in The Municipal Bond Market,” Erika Smull, Evan Kodra, Adam Stern, Andrew Teras, Michael Bonanno, and Martin Doyle. PLOS ONE, August 9, 2023.

DOI: 10.1371/journal.pone.0288979

[S&P: What U.S. CDFI Ratios’ Resilience Through Changing Economic Landscapes Means For Long-Term Credit Quality.](#)

Key Takeaways

- We expect U.S. CDFIs' net equity will decrease modestly in the near term but remain strong and sufficient to absorb additional leverage, reducing the likelihood of widespread negative rating actions.
- CDFIs will continue to employ diligent underwriting standards to limit repayment risk, protecting their capital and supporting asset quality as a key credit strength.
- Increasing interest rates could relieve institutions of recent spreads compression, with stronger profitability expected in the near term.

[Continue reading.](#)

10 Aug, 2023 | 18:02

Revisiting WIFIA Sub-UST Interest Rates for SRFs.

The WIFIA loan program offers an interest rate derived from current U.S. Treasury (UST) yields at loan closing. Other large-scale federal infrastructure loan programs like TIFIA and CIFIA do the same. The underlying idea is that the loan should cover the government's interest cost of funding it. The program's appropriations can then be devoted primarily to offset expected credit losses. Since very few losses are expected from investment-grade loans to infrastructure projects, WIFIA's surprisingly small annual appropriations can go a long way. It's not a bad approach to federal infrastructure lending in general.

For most borrowers, a rate based on the federal government's own cost of borrowing should be attractive. It's a little more complicated for WIFIA because nearly all the program's borrowers so far are highly rated water agencies that can issue very cost-effectively in the tax-exempt municipal bond market where yields are often close to (or even below) the UST curve. Still, if a WIFIA loan's interest rate is at least roughly comparable to a borrower's muni bond alternatives, the loan's other features (term, flexibility, construction rate lock and reset, etc.) are highly beneficial for financing large-scale, long-lived infrastructure projects. For this class of WIFIA borrower, a sub-UST rate isn't necessary.

SRF-WIN Sub-UST Proposals

WIFIA's base UST rate has worked well so far, but it's not intrinsic to the program's mission. In 2018, the proposed SRF-WIN Act included a 20 percent discount to WIFIA's base UST rate (subject to certain adjustments and limitations) for those SRFs which receive less than 2 percent of annual federal grant funding. This is a significant discount, amounting to about 10 percent of loan principal on an NPV basis. As you'd expect, there was a lot of support for the proposal among qualifying SRFs and related stakeholders. But two serious objections were raised by advocacy groups representing WIFIA's water agencies, which as noted above are by far the largest component of program borrowers to date:

[Continue reading.](#)

waterfm.com

By John Ryan

[EPA Announces \\$50 million in Grants for Stormwater, Sewer Needs.](#)

The U.S. Environmental Protection Agency (EPA) recently announced the availability of nearly \$50 million in regular funding through the Sewer Overflow and Stormwater Reuse Municipal Grant program to help communities address stormwater and sewer infrastructure needs.

States may now apply for grant assistance to fund projects that will help municipalities strengthen their stormwater collection systems against increasingly intense rain events made worse by the climate crisis and prevent contaminants from polluting waterways. Thanks to program updates made by the Biden-Harris Administration's Investing in America Agenda, the Sewer Overflow and Stormwater Reuse Municipal Grant program will also ensure small and financially distressed communities receive grant assistance at no cost.

"Against the backdrop of extreme weather fueled by the climate crisis, heavy rainfall can flood communities, overload facilities that treat wastewater, and contaminate our waterways with sewage and pollution. Through President Biden's Investing in America agenda, we're providing communities with critical resources to manage stormwater and sewer overflows with resilient infrastructure to prevent these serious challenges," said EPA Assistant Administrator for Water Radhika Fox. "With \$50 million in grant funding and new requirements under the Bipartisan Infrastructure Law, the Biden-Harris Administration is helping address the threat of stormwater inundation in communities that need it most."

Stormwater management is a complex environmental challenge for communities across the country. The cost to construct, operate, and maintain stormwater infrastructure can be significant, which can strain ratepayers, especially those in small and financially distressed communities. This investment follows changes made by the Bipartisan Infrastructure Law to prioritize projects for small and/or financially distressed communities and prevent cost share requirements from being passed on to these communities. Learn more about the [Sewer Overflow and Stormwater Reuse Municipal Grant](#) program.

Stormwater

Per EPA, stormwater can be a significant source of water pollution and a public health concern. Stormwater can collect various pollutants including trash, chemicals, oils, and dirt/sediment and convey them to nearby waterways. When mixed with domestic and industrial wastewater in combined sewers, stormwater can also contribute to combined sewer overflows during heavy storm events.

EPA is working with local and state partners to leverage the resources of the federal government to meet the needs of these communities. In the past, states and communities shared a fixed portion of the costs associated with all projects funded through the Sewer Overflow and Stormwater Reuse Municipal Grant program. The Bipartisan Infrastructure Law changed the program so that 25% of Sewer Overflow and Stormwater Reuse Municipal Grant program funds go to available projects in small and/or financially distressed communities; it also limited states' abilities to pass on the burden of cost sharing to these communities.

To encourage investment in these critical projects, EPA modified the Sewer Overflow and Stormwater Reuse Municipal Grant program so that state grantees are not required to contribute

cost share money for Sewer Overflow and Stormwater Reuse Municipal Grant program projects located in small or financially distressed communities. However, grant portions that go to communities other than small or financially distressed communities will include a cost share requirement.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

AUGUST 14, 2023

[Public Pensions: Double-Check Those ‘Shadow Banker’ Investments](#)

Private credit has gained a growing share of pension portfolios over the past decade. It's time to take a second look under the hood.

For almost a decade leading up to 2021, bond yields were suppressed by low inflation and central bank stimulus. To make up for scanty interest rates on their bond investments, many public pension funds followed the lead of their consultants and shifted some of their portfolios into private credit funds. These “[shadow bankers](#)” have taken market share from traditional lenders, seeking higher interest rates by lending to non-prime borrowers.

Even during the pandemic, this strategy worked pretty well, but now [skeptics are warning](#) that a tipping point may be coming if double-digit borrowing costs trigger defaults. It's time for pension trustees and staff to double-check what's under the hood.

For the most part, the worst that many will find is some headline risk with private lending funds that underwrite the riskiest loans in this industry. Even for the weakest of those, however, the problem will not likely be as severe as the underwater mortgages that got sliced, diced and rolled up into worthless paper going into the global financial crisis of 2008. And until and unless the economy actually enters a full-blown recession, many of the underwater players will still have time to work out their positions.

[Continue reading.](#)

governing.com

Aug. 8, 2023 • Girard Miller

[MSRB Demystifies Structured Data with Newest Addition to EMMA Labs.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today debuted its third entry on EMMA Labs - the MSRB's free innovation sandbox for transparency enhancements to the municipal securities market - with a new lab aimed at demystifying structured data. The lab explains what structured data is, features case studies from municipal issuers who have prepared their financial statements in a machine-readable format and illustrates potential future capabilities of the Electronic Municipal Market Access (EMMA®) website.

“Our goal with this Lab is first and foremost education,” said Chief Product Officer Brian Anthony. “Issuers and other market participants need a common understanding of structured data as technology continues to evolve and new legislation is being implemented to require the greater use of structured data in regulatory filings with the MSRB.”

The Lab features case studies from two early adopters of structured data for financial management: the City of Flint and the College of DuPage. The Lab also illustrates how the EMMA website could be enhanced with dynamic comparison tools leveraging structured data.

“Since EMMA Labs launched in 2022, it has served as a place for market participants to collaborate on innovative prototypes and ideas that have the power to improve transparency in our market,” Anthony said.

EMMA Labs is free to use. The structured data lab is one of three “Active Labs” that serve as a proving ground for functional prototypes that could eventually be deployed on the EMMA website. The first Lab is a powerful search engine that the MSRB plans to bring to future-state EMMA to enable keyword searches across the hundreds of thousands of disclosure documents submitted to EMMA as unstructured PDFs. The second Lab is a dynamic dashboard for market data analysis that empowers users to discover and visualize market trends. An additional Idea Labs section provides a forum for users to submit and provide feedback on ideas for potential future Active Labs.

Date: August 07, 2023

Contact: Leah Szarek, Chief External Relations Officer

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[Buying Opportunity Now in Munis: Pearce Fitts](#)

Appleton Partners Fixed Income Portfolio Manager Whitney Pearce Fitts discusses why there is now a buying opportunity in munis and why issuance has fallen in 2023. She speaks to Bloomberg’s Romaine Bostick and Katie Greifeld on “Bloomberg Markets: The Close.”

[Watch video.](#)

August 9th, 2023, 1:26 PM PDT

[Lawmakers Probe Nonprofit Hospitals, Challenge Tax-Exempt Status.](#)

- **Grassley, Warren ask IRS, Treasury to investigate charity care**
- **Senators say they’re concerned about abuse of tax exemption**

A bipartisan group of four US senators wants the Internal Revenue Service and Treasury Department to investigate whether nonprofit hospitals are abusing their tax-exempt status.

The lawmakers pointed to cases of nonprofit hospitals charging full price for services that should have been free or discounted. They also said some of these institutions pursued indigent patients for medical debt, including placing liens on their homes.

More than half of approximately 5,200 community hospitals in the US are nonprofit, and are supposed to provide charity care in return for their tax-exempt status.

“We are alarmed by reports that despite their tax-exempt status, certain nonprofit hospitals may be taking advantage of this overly broad definition of ‘community benefit’ and engaging in practices that are not in the best interest of the patient,” senators including Elizabeth Warren of Massachusetts and Chuck Grassley of Iowa wrote in a letter this week. Bill Cassidy, a Republican from Louisiana, and Democrat Raphael Warnock of Georgia were also signatories.

There aren’t explicit rules for what constitutes meeting charity-care guidelines. Lawmakers have previously said that disclosure requirements are vague, allowing institutions to duck their responsibilities. The hospital industry has disputed these findings.

In the Monday letter, the senators called for the government to update the forms hospitals file to disclose charity care. They also want to identify hospitals whose tax-exempt status was revoked, as well as those that were audited or deemed at risk for non-compliance.

Lawmakers had addressed this issue at a House Ways and Means hearing in April, calling for more clarity and consistency in how hospitals disclose and meet their charity contributions.

States and municipalities have also pushed back on nonprofit hospitals. Colorado has a new law requiring more extensive reporting on the community care these institutions provide. Pittsburgh has questioned the tax-exempt status of some of the property owned by the University of Pittsburgh’s medical center, which has outlined its disagreement. And the New York City Council in June voted unanimously to establish an Office of Healthcare Accountability that would scrutinize the prices hospitals charge and the charity-care provisions they have in place.

More than three quarters of the 1,773 nonprofit hospitals examined by health-care think tank Lown Institute spent less on charity care and community investment than the estimated value of their tax break, according to the most recent Fair-Share Spending report. This created what Lown called a “fair-share deficit” of \$14.2 billion in 2020.

Bloomberg Politics

By Lauren Coleman-Lochner

August 9, 2023

[Muni Selloff Is an Opportunity: Appleton's Pearce Fitts](#)

Whitney Pearce Fitts, Appleton Partners fixed income portfolio manager, discusses the decline in municipal bond issuance and the selloff in the municipal bond market with Romaine Bostick and Katie Greifeld on “Bloomberg Markets: The Close.”

[Listen to audio.](#)

Muni Moment - Bloomberg Markets: The Close

August 9th, 2023, 12:45 PM PDT

[State Budget Creates Uncertainty in Local Michigan ARPA Project Commitments.](#)

In late June, Michigan passed a bipartisan \$81.7 billion budget for Fiscal Year 2024, which included \$26.7 million to provide a 5% increase in statutory revenue sharing to counties, cities, townships and villages. This is great news for local governments which have often felt slighted by Michigan's fractured municipal finance system.

However, the press release proclaiming budget victory contained only a single sentence on the revenue sharing increase (See "Gov. Whitmer Applauds Passage of 'Make it in Michigan' Budget," press release, Executive Office of the Governor, (June 28, 2023), <https://rb.gy/ikv21>.)

As always, the devil is in the details. In this case, the details could leave some communities scrambling to obligate millions of dollars in federal funding before year end.

[Continue reading.](#)

By: BridgeTower Media Newswires//August 10, 2023

By Brandon M. Grysko

[A Top-Performing Muni Fund That Ventures Where Others Don't.](#)

Avoiding big losses is much more important to bond investors than scoring significant wins. "They're in the market for principal preservation and tax-free income," says Lyle Fitterer, who has been a municipal bond fund manager for over 30 years.

Fitterer, the co-lead manager of the \$644.5 million Baird Strategic Municipal Bond fund (ticker: BSNSX), manages to both avoid losses and deliver wins, though his strategy might strike some as unconventional. The no-load fund's largest position is five-year U.S. Treasury note futures, for example, and it holds a significant amount of high-yield issues.

The fund saw inflows during 2022's bond rout when other muni bond funds saw outflows. That allowed Fitterer to add some higher-yielding bonds with slightly lower-quality credits, which has helped Strategic Muni outperform this year.

[Continue reading.](#)

Barron's

By Debbie Carlson

Updated Aug. 9, 2023

TAX - OHIO

Stingray Pressure Pumping, L.L.C. v. Harris

Supreme Court of Ohio - August 2, 2023 - N.E.3d - 2023 WL 4913160 - 2023-Ohio-2598

Taxpayer challenged decision of Ohio Board of Tax Appeals (BTA) concluding that some of taxpayer's equipment used in its fracking operations did not qualify for exemption from Ohio's sales and use tax for equipment used directly in the production of crude oil and natural gas.

The Supreme Court held that:

- Blender was exempt from sales and use tax;
- Hydration unit was exempt from sales and use tax;
- Chemical-additive unit was exempt from sales and use tax;
- Sand king was exempt from sales and use tax;
- T-belt was exempt from sales and use tax;
- Data van was not exempt from sales and use tax; and
- Equipment, aside from data van, was used directly in production of oil and gas.

Primary use of taxpayer's blender equipment was to mix together water, chemicals, and sand, notwithstanding blender's holding function, and thus blender was directly used in performing taxpayer's hydraulic fracking services for the production of crude oil and natural gas, and therefore blender qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, such that blender was exempt from Ohio's sales and use tax; blender mixed critical ingredients in fracking recipe seconds before mixture was inserted into well.

Primary use of hydration unit was in mixing water and various chemicals, not storage, and thus hydration unit was directly used in performing hydraulic fracking services for the production of crude oil and natural gas, and therefore hydration unit qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and thus taxpayer's hydration unit equipment was exempt from Ohio's sales and use tax.

Taxpayer's chemical-additive unit was not primarily used for holding, but rather, primary function of unit was to provide chemicals to hydration unit and blender by way of hoses, and therefore chemical-additive unit was tangible personal property directly used in hydraulic fracking services, such that chemical-additive unit qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and thus chemical-additive unit was exempt from Ohio's sales and use tax.

Primary use of taxpayer's sand king equipment, which holds sand for a brief period before it is injected into pressurized mixture that is immediately injected into well, was to feed sand into blender, and thus sand king was tangible personal property directly used in hydraulic fracking services, such that sand king qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and therefore sand king was exempt from Ohio's sales and use tax.

Taxpayer's data van equipment, a motor vehicle containing various screens and monitoring devices did not act directly on fluid and material and did not control production equipment, and thus data van did not qualify as a "thing transferred" directly in production of crude oil and natural gas for sale, and therefore data van was not exempt from Ohio's sales and use tax.

Taxpayer's equipment used in taxpayer's fracking operations, including blenders, hydration units, chemical-additive units, sand kings, and t-belts, which was used in unison with manifold and pumps to create injection of mixture that was sent downhole to free oil and gas was used directly in production of oil and gas, and thus equipment qualified for exemption from Ohio's sales and use tax, even if equipment's use was preliminary and preparatory to production.

TAX - RHODE ISLAND

[Apex Oil Company, Inc. v. State by and through Division of Taxation](#)

Supreme Court of Rhode Island - July 14, 2023 - 297 A.3d 96

Oil trader brought two tax aggrievement actions challenging Division of Taxation's denial of trader's claim for a refund of \$4,280,039.44 paid for Motor Fuel Tax assessed on the purchase and sale of 300,000 barrels of oil, as part of chain transaction in which oil trader was contractually responsible to its seller for the tax.

The Sixth Division District Court dismissed. Oil trader petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Oil trader demonstrated it suffered injury in fact in order to establish standing to bring tax aggrievement action challenging
- Division's denial of trader's claim for a refund of Motor Fuel Tax;
- There was causal connection between Division's imposition of Motor Fuel Tax on trader's purchase of oil and trader's injury in fact, as required to establish standing to bring tax aggrievement actions challenging Division's denial of trader's claim for a refund of Motor Fuel Tax;
- Seller of oil's assignment of its rights to oil trader did not establish that they were in privity at time settlement was reached between seller and Division, and thus, claim preclusion did not apply to trader's challenge to Division's denial of claim for refund of Motor Fuel Tax; and
- Doctrine of administrative finality did not apply to bar trader's challenge to Division's denial of its claim for refund for Motor Fuel Tax.

Doctrine of administrative finality did not apply to bar oil trader's challenge to Division of Taxation's denial of trader's claim for a refund of \$4,280,039.44 paid for Motor Fuel Tax assessed on purchase and sale of 300,000 barrels of oil as part of chain transaction in which oil trader was contractually responsible to its seller for the tax; seller's request for relief in the initial agency proceedings sought only penalty and interest abatement, while oil trader's request for relief requested a refund of the tax itself based upon its assertion that the tax was improperly imposed, thus, the two requests were not the same or substantially similar.

[Fitch: U.S. Home Price Declines Concentrated in the West; Tax Effects Limited](#)

Fitch Ratings-New York-10 August 2023: Significant home price declines from peak levels following the pandemic are concentrated in a dozen counties in western states, Fitch Rating says. The price drops have varied, but there are limited downside implications for property tax revenues in the impacted municipalities due to property tax formulas that smooth home price swings.

National home prices have begun to level off after declining from peaks during the pandemic, showing resilience amid constrained supply and relatively stable demand. Fitch expects U.S. nominal home prices to fall between 0% and 5% in 2023 relative to 2022, per our Global Housing and Mortgage Outlook.

We expect broad property tax collections to remain healthy, as roughly half of U.S. counties have not

seen home price declines in the post-pandemic period. Property valuations take roughly 18 months to two years to feed through to property tax assessments, and local governments have time to adjust tax rates and budgets in response to changes in property valuations. Aggregate U.S. property taxes are likely to grow to varying degrees in 2023 and 2024, reflecting high 2021 and 2022 home values.

[Continue reading.](#)

[New York City, New York: Fitch New Issue Report](#)

The 'AA' Issuer Default Rating (IDR) and GO bond rating reflect the city's exceptionally strong budget monitoring and controls, supporting Fitch's high assessment of operating performance. Federal stimulus aid relieved fiscal pressure that would have otherwise resulted from the city's lagged economic recovery from the pandemic and has supported structural budgetary balance. The record revenue performance and strong recovery, as well as improvement in reserve levels will help management navigate through future economic downturns, including near-term challenges due to an expected deceleration of revenue growth, rising labor costs and other uncertainties associated with a high-inflation environment.

[ACCESS REPORT](#)

Tue 08 Aug, 2023

[Municipal Securities Regulation and Enforcement: 2023 Mid-Year Review - Ballard Spahr](#)

In the first half of 2023, several rule changes have been proposed by the Municipal Securities Rulemaking Board (MSRB) and the U.S. Securities and Exchange Commission (SEC), including changes to "Best Execution" requirements and new data transparency requirements. The SEC's "Regulation Best Execution" proposal has been met with particularly strong pushback, with many in the municipal market encouraging that it be dropped altogether.

[View the Ballard Spahr Mid-Year Review.](#)

August 1, 2023

[California Lawyers Association 2023 State and Local Tax Annual Meeting Roundup: Greenberg Traurig](#)

Go-To Guide:

- California Lawyers Association's SALT Committee held its first fully in-person annual meeting since the start of the pandemic.
- California taxing agencies provided legislative, regulatory, and litigation updates of interest.

The Taxation Section of the California Lawyers Association held its annual State and Local Tax

Meeting on July 27, 2023, at the Franchise Tax Board (FTB)'s Central Office in Rancho Cordova, California. This meeting provided practitioners and industry members an opportunity to hear from several leaders at the FTB, California Department of Tax and Fee Administration (CDTFA), California Board of Equalization (BOE), and the Office of Tax Appeals (OTA).

For those who missed the event or who want a double serving of tax, keep reading for the latest developments in California state and local tax.

[Continue reading.](#)

Greenberg Traurig LLP - Bradley R. Marsh, Shail P. Shah, James T. Smith and Jennifer A. Vincent

August 8 2023

State of Tennessee: Fitch New Issue Report

Revenue Framework - 'aaa' Consistent with Tennessee's recent experience, Fitch expects long-term state revenue growth, predominantly sales tax, to be in line with or above national economic growth. The state retains an unlimited legal ability to raise operating revenues. Expenditure Framework - 'aaa' Spending is dominated by Medicaid and education. The natural pace of spending growth in Tennessee is expected to equal or marginally exceed expected revenue growth over time, requiring ongoing cost control. The state retains ample flexibility to cut spending throughout the economic cycle. Long-Term Liability Burden - 'aaa' The state's liability position is among the lowest of the states, driven by a historical reluctance to rely on debt issuance to fund capital projects and a consistently disciplined approach to pension funding. Operating Performance - 'aaa' Tennessee retains exceptional gap-closing capacity stemming from a willingness to cut spending (even in high-priority areas) and strong reserves, including both a budgetary reserve and a separate Medicaid program reserve.

[ACCESS REPORT](#)

Thu 10 Aug, 2023

Bankrupt Arizona Sports Park Wins Ruling Backed by Bondholders.

- **Judge rejects US request for independent supervision of venue**
- **Park's sale staying on track benefits \$280 million muni bonds**

Legacy Cares Inc., the non-profit owner of a bankrupt Phoenix-area sports complex, won a court fight to keep the venue's planned sale on track after an Arizona judge rejected a federal monitor's plea to appoint a trustee for the site.

The decision is a victory as well for holders of \$280 million in municipal bonds, unsecured creditors and the landlord of the 320-acre complex. The trustee for Vanguard Group, AllianceBernstein Holding LP and other bondholders and other creditors opposed the federal monitor's request.

Judge Daniel Collins of the US Bankruptcy Court for the District of Arizona ruled that naming a trustee for the complex would "gravely jeopardize" the sale of the facility and its ability to continue

as a going concern. Legacy Cares asked the court to set a Sept. 18 deadline for bids on the venue and to complete the sale in early October.

[Continue reading.](#)

Bloomberg Markets

By Martin Z Braun

August 10, 2023

[The Mid-August Muni Bond Market \(Bloomberg Audio\)](#)

Eric Kazatsky, Senior Municipal Bond Strategist at Bloomberg Intelligence, joins to discuss the latest on the muni bond market. Hosted by Matt Miller and Simone Foxman.

[Listen to audio.](#)

Bloomberg

Aug 11, 2023

[The Higher Your Tax Bracket, the More Attractive Municipal Bonds May Look.](#)

- **The \$1 billion bond deal drew retail, institutional buyers**
- **Muni bonds' tax-exempt status promises rich yields for wealthy**

US investors looking to match the long-term returns provided by equities need look no further than the seemingly modest municipal bond market.

Case in point: the \$1 billion deal sold by New York City this week. The Big Apple — rated AA by two ratings companies — sold 30-year debt that was priced to yield 4.35%. It sounds modest, but with tax adjustments, the richest New Yorkers snapping up the securities earned yields equivalent to 10% taxable debt, an online tool from Eaton Vance Management shows.

The \$4 trillion municipal bond market, like other parts of the fixed income universe, is offering elevated yields not seen in years. But the state and local debt market has an added allure that other asset classes don't: the income is tax-exempt. That means that the yields on muni bonds are even higher after adjusting for taxes. And the higher your tax bracket, the more attractive the bonds look.

[Continue reading.](#)

Bloomberg Markets

By Amanda Albright

August 11, 2023

[NFMA Advanced Seminar on Transportation.](#)

The NFMA will hold an Advanced Seminar on Transportation in **Chicago on October 12 & 13**. This event is open to members and non-members, but not the press.

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

To register, [click here](#).

[Overview of a Bond Issuance: GFOA eLearning Course](#)

August 15, 16, 17 2023 | 1-4 p.m. ET

Details:

Governmental entities have been using debt for over 200 years to fund public infrastructure such as government buildings, water distribution systems, schools, police stations, and many other projects that require significant capital investment.

Debt issuance is a significant undertaking for governments, whether an entity frequently or infrequently issues debt. This includes engaging in a great deal of work prior to the transaction and ongoing for the lifetime of the bond. Issuers must manage the financing, make decisions about the structure and type of debt being issued, understand market conditions and the timing of the issuance, select and manage a number of external professionals during this process, and execute all post issuance debt management requirements. This course will provide an overview of the debt issuance process and explain the obligations finance officers must address when taking on a bond issuance, with a focus on GFOA's best practices as guidance.

Who Will Benefit: CFO/Finance Director, Controller, Budget Manager, Treasurer, Debt Manager

Learning Objectives:

Those who successfully complete this seminar should be able to:

- Learn about GFOA's Debt Management Best Practices and Debt Issuance Checklist
- Be aware of the internal and external professionals involved in a debt issuance
- Understand how to evaluate and select the method of sale
- Know the factors in determining timing, structure and type of bonds to issue
- Understand the process of obtaining a credit rating
- Identify post issuance responsibilities, including those related to federal tax and securities laws

Member Price: \$315.00

Non-member Price: \$630.00

[REGISTER](#)

- [US Downgrade Hits Muni Market as Fitch Cuts Billions of Debt.](#)

- [Fitch: U.S. Downgrade Has Limited Effect on Public Finance Ratings](#)
- [Muni Bank Loans Top \\$200 Billion to Near Record.](#)
- [Illinois Feared Losing to Wall Street Banks Over Muni Price-Fixing Case.](#)
- [New GFOA Video: Legacy Lease Accounting](#)
- [BDA Forms Fixed Income Technology Clearinghouse to Facilitate Information Sharing, Tech Intel, and Deliverables for US-Focused Bond Dealers.](#)
- Interesting tax case out of New Mexico [here](#).
- [Matter of Oklahoma Turnpike Authority](#) - Supreme Court of Oklahoma holds that Oklahoma Turnpike Authority was authorized by statute to issue additional bonds for the construction of two connections to finalize outer loop around city; while statute restricted bonds for construction of any of four proposed turnpikes to one issue under one bond indenture, that provision only applied to initial bond issue to begin construction of the four proposed turnpikes, and Authority had statutory authorization to pay "all or any part of the cost of any one or more turnpike projects," which allowed authority to later issue bonds for the two connectors. **Ed. Note:** To truly understand this case, don't miss the dissent filed by three of the Justices.
- And Finally, Oh. Crap. is brought to us this week by [Sunrise Resort Association, Inc. v. Cheboygan County Road Commission](#), in which the Supreme Court of Michigan informed us that the state has a "sewage-disposal-system-event exception to governmental immunity." We don't know about you (and, frankly, have no interest in doing so), but could there possibly be a more glorious phrase than "sewage-disposal-system-event?" We were planning to clue you in on the dirty little secret that we will henceforth be blaming sewage-disposal-system-events for any/all BCB disruptions in service. But it quickly occurred to us that we should not be crying wolf on this one, given the near certainty that the BCB workplace will soon be experiencing an all-too-real one. Crap.

IMMUNITY - KENTUCKY

[New Albany Main Street Properties v. Watco Companies, LLC](#)

United States Court of Appeals, Sixth Circuit - July 27, 2023 - F.4th - 2023 WL 4777172

Lessee of port facility brought action against riverport authority's executive director in her official capacity, alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation, and seeking damages and an injunction.

The United States District Court for the Western District of Kentucky denied director's motion to dismiss. Director filed interlocutory appeal.

The Court of Appeals held that:

- Director was not entitled to pure sovereign immunity;
- Authority performed a function integral to state government;
- Authority performed a statewide function; and
- Lessee brought action against director in her official, rather than individual, capacity.

Kentucky's rule of pure immunity does not apply to cities, which the Kentucky Supreme Court treats as municipal corporations, rather than arms of the government, and it does not apply to state or county employees sued in their individual capacities who must instead rely on the distinct doctrine of qualified immunity.

Executive director for riverport authority, a quasi-government agency, was not entitled to pure sovereign immunity under Kentucky common law, in action by lessee of port facility, alleging state-law claims against director for tortious interference with contractual and business relationships,

civil conspiracy, and defamation.

The development of transportation infrastructure qualifies as a government, not a proprietary, task, for purposes of establishing that a corporate entity performs a function integral to state government for governmental sovereign immunity to apply; this transportation infrastructure includes not just the airports that planes use or the roads that cars use, but also the docks and wharves that ships use.

Riverport authority, a quasi-government agency that leased industrial property for public purpose of developing ports, performed a function integral to state government, rather than a proprietary function, as would support finding that authority's executive director was entitled to governmental sovereign immunity in lessee's action alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation; authority did not act with a profit motive as it could only charge reasonable rates for use of port facility, was required to devote any surplus revenue to maintaining facility, and was eligible to rely on revenue bonds and taxpayer funds to subsidize its activities, and authority did not own the ships that hauled cargo, but rather owned transportation infrastructure of port facility that shippers used.

Riverport authority, a quasi-government agency that leased industrial property for public purpose of alleviating a statewide concern relating to developing ports, performed a statewide function, rather than a regional function, as would support finding that authority's executive director was entitled to governmental sovereign immunity in lessee's action alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation, even though authority had a limited regional jurisdiction; need to ensure that individuals living in state had adequate means to ship their cargo to the other side of the commonwealth represented a classic governmental problem that extended beyond any one region.

Port facility lessee brought action against executive director of riverport authority, a quasi-government agency, in her official, rather than individual, capacity, as would support finding that director was entitled to governmental sovereign immunity in lessee's action alleging claims including defamation, absent argument that anything in course of proceedings would have put director on notice that lessee sued her in her personal capacity; claim was ambiguous in that it merely identified director as "Executive Director of Louisville/Jefferson County Riverport Authority," and claim never alleged that it sought money damages from director in her individual capacity.

ZONING & PLANNING - SOUTH DAKOTA

[Dakota Constructors, Inc. v. Hanson County Board of Adjustment](#)

Supreme Court of South Dakota - July 26, 2023 - N.W.2d - 2023 WL 4778243 - 2023 S.D. 38

Quarry owners filed petition for writ of certiorari, contesting conditions which county board of adjustment attached to conditional use permit and arguing that quarry was a prior nonconforming use in agricultural district.

The Circuit Court denied the writ, and quarry owner appealed.

The Supreme Court held that:

- As a matter of first impression, in passing on the meaning of a zoning ordinance, the courts will consider and give weight to the construction of the ordinance by those administering the ordinance, and

- Determination that previous operation of quarry had ceased for more than one year and was thus not a prior nonconforming use was not wrong or erroneous.

In passing on the meaning of a zoning ordinance, the courts will consider and give weight to the construction of the ordinance by those administering the ordinance; however, an administrative construction is not binding on the court, which is free to overrule the construction if it is deemed to be wrong or erroneous.

County board of adjustment determination that previous operation of quarry in agricultural district had ceased for more than one year and was thus not a prior nonconforming use under zoning ordinance that could continue without a conditional use permit was not wrong or erroneous, nor was it in willful disregard of the indisputable proof; extraction of sand, gravel, or minerals was not a permitted principal use within an agricultural district under the ordinance, board differentiated between the extraction of material from the ground and the removal of previously extracted and stockpiled material from the site, and there was no evidence contradicting reports filed by quarry owner's predecessor that zero tons of gravel were removed from their natural state on the site for 17 years, but rather predecessor removed stockpiled aggregate.

IMMUNITY - MICHIGAN

[Sunrise Resort Association, Inc. v. Cheboygan County Road Commission](#)

Supreme Court of Michigan - July 24, 2023 - N.W.2d - 2023 WL 4713823

Real property owners brought action against county road commission arising from damage to their properties allegedly caused by an overflow and backup of a storm water drainage system, seeking monetary damages under the sewage-disposal-system-event exception to governmental immunity and injunctive relief to abate the ongoing trespass or nuisance.

The Circuit Court granted commission's motion for summary disposition. Owners appealed, and the Court of Appeals reversed and remanded. The Supreme Court granted leave to appeal.

The Supreme Court held that:

- Claim under the sewage-disposal-system-event exception to immunity was timely, and
- County commission had immunity from common law trespass-nuisance claim.

Sewage overflow or backup was a distinct event which occurred within three years of filing complaint, and thus property owners' complaint against county road commission under the sewage-disposal-system-event exception to immunity under the Government Tort Liability Act (GTLA) was timely, even if other overflow or backup events also had occurred more than three years before the complaint.

County road commission had immunity under the sewage-disposal-system-event (SDSE) exception to Government Tort Liability Act (GTLA) from landowners' common law trespass-nuisance claim arising from overflow or backup of a sewage disposal system, and thus landowners were prohibited from seeking injunctive relief in connection with that claim.

ZONING & PLANNING - NEW HAMPSHIRE

Raymond, Trustee of J&R Realty Trust v. Town of Plaistow

Supreme Court of New Hampshire - July 28, 2023 - A.3d - 2023 WL 4831447

Real property owner appealed decision of the zoning board of adjustment denying variance request to convert property from non-conforming residential use to commercial use to house home improvement business engaged in the sale, service, and installation of windows, siding, roofing, decks, and gutters.

The Superior Court upheld the denial, and property owner appealed. The Supreme Court remanded for articulation, and the Superior Court issue order determining that the decision was reasonable.

The Supreme Court held that proposed use of property fell with definition of a “trade business” permitted in commercial zone.

Proposed use of property fell with definition of a “trade business” permitted in commercial zone, rather than a contractor’s storage yard; primary purpose of building would be to house home improvement business engaged in the sale, service, and installation of windows, siding, roofing, decks, and gutters, and allow business to operate a retail showroom to provide trade services directly to the public, ordinance expressly provided examples of a trade business that included “electricians, plumbers, and HVAC contractors,” and company intended to store all materials inside a 3,400 square foot warehouse building.

REVENUE BONDS - OKLAHOMA

Matter of Oklahoma Turnpike Authority

Supreme Court of Oklahoma - August 1, 2023 - P.3d - 2023 WL 4881238 - 2023 OK 84

Oklahoma Turnpike Authority brought original proceeding seeking approval of revenue bonds to finance the construction of three turnpike projects, update and repair turnpike facilities and infrastructure, refund prior revenue bonds and notes, and pay other costs.

The Supreme Court held that:

- Authority was statutorily authorized to construct proposed southern extension of turnpike, and
- Authority was authorized by statute to issue additional bonds for the construction of two connections to finalize outer loop around city.

Oklahoma Turnpike Authority was statutorily authorized to construct proposed southern extension of turnpike, even if extension did not begin or end in exact locations specified in statute; proposed extension moved easterly from beginning point at spur and crossed river as required in statute, and ended in the vicinity of city as stated in statute, and Turnpike Authority had broad authority to determine the route, as well as the discretion to determine routes that were feasible and economically sound.

The interpretation or construction of an undefined statute by the agency charged with its administration is entitled to the highest respect from the courts, especially when the administrative construction is settled and uniformly applied for several years; in such cases, the administrative construction will not be disturbed except for very cogent reasons, provided that the construction so given was reasonable.

Oklahoma Turnpike Authority was authorized by statute to issue additional bonds for the

construction of two connections to finalize outer loop around city; while statute restricted bonds for construction of any of four proposed turnpikes to one issue under one bond indenture, that provision only applied to initial bond issue to begin construction of the four proposed turnpikes, and Authority had statutory authorization to pay “all or any part of the cost of any one or more turnpike projects,” which allowed authority to later issue bonds for the two connectors.

SCHOOLS - RHODE ISLAND

[Purcell v. Johnson](#)

Supreme Court of Rhode Island - July 18, 2023 - A.3d - 2023 WL 4567587

Unelected candidate for school committee brought a petition in quo warranto against town council, its appointee to school committee, and school committee, seeking a determination that she was entitled to be appointed to fill a vacancy on school committee.

Appointee and town council also brought a petition in quo warranto for a determination that appointee had the right and title to the position on the school committee.

The Supreme Court held that:

- Town charter was inconsistent with and could not be reconciled with legislative act regarding appointments to vacancies on regional school committee, and
- More specific town charter governed, and unelected candidate was entitled to be appointed to regional school committee.

Town’s charter that specified that, in the event of a vacancy on the regional school committee, the town council “shall appoint the unelected candidate who received the greatest number of votes for that office in the most recent general or special election” was inconsistent with and could not be reconciled with legislative act authorizing towns to incorporate and form a regional school district, where act placed no limitation on whom the council could elect to fill a vacancy on the regional school committee.

Unelected candidate for regional school committee who had received the greatest number of votes for that office in the most recent election was entitled to be appointed by town council to fill vacancy on school committee, as provided by town charter, where town charter was more specific in its outline of a substantive procedure to fill a vacancy on regional school committee and was precise in who the appointee would be, and thus controlled over legislative act authorizing towns to incorporate and form a regional school district which placed no limitation on whom the council could elect to fill a vacancy.

PUBLIC CONTRACTS - GEORGIA

[City of Brookhaven v. Multiplex, LLC](#)

Court of Appeals of Georgia - July 27, 2023 - S.E.2d - 2023 WL 4779591

City brought action against contractor for breach of contract to replace park and build new elementary school, seeking attorney fees and liquidated damages under contract’s delay clause. Contractor asserted counterclaims.

The Superior Court granted contractor's motion for summary judgment on city's claim for liquidated damages and denied city's cross-motion for summary judgment, finding that delay clause was unenforceable penalty. City appealed.

The Court of Appeals held that:

- Undisputed difficulty of estimating damages did not preclude summary judgment on enforceability of delay clause;
- Parties intended that delay clause create penalty; and
- At time of contracting, delay clause did not set forth reasonable estimate of damages that might result from breach.

Undisputed difficulty of estimating damages that might result from any breach of public works contract between city and contractor, which called for swift replacement of public park, did not preclude contractor from showing, on its motion for summary judgment on city's claim seeking liquidated damages for breach of contract, that liquidated damages clause was unenforceable penalty, even though contractor would have burden at trial to show that provision was penalty; at summary judgment, contractor only had to point to absence of evidence on any one of the three factors provision needed to satisfy in order to constitute enforceable liquidated damages clause rather than penalty, and difficulty in estimating damages was only one of those three factors.

City and contractor intended that delay clause in contract to demolish public park, build new park, and build new elementary school, which provided for "Liquidated Damages at the rate of \$1,000.00 per calendar day" in event of delay, would deter breach, and thus, clause was unenforceable penalty; contract contained no language indicating that liquidated damages were not intended as penalty, city testified that timely construction of new park was important to minimize time that area residents would need to go without a park, and city conceded that intent of delay clause was to "disincentivize delays" by requiring contractor to pay \$1,000 per day from its net profits if project were not completed on time.

At time of contracting, delay clause in contract between city and contractor for demolition of old park, swift construction of new park, and construction of elementary school, which provided for "Liquidated Damages at the rate of \$1,000.00 per calendar day" of delay, was not reasonable estimate of probable loss that might result from contractor's delay in construction of park, and thus, clause constituted unenforceable penalty; city did not attempt to estimate damages that might result from late completion of construction before contract was executed, and city representative testified that \$1,000-per-day number was not project-specific, but rather, was chosen because it was "standard" number for liquidated damages clauses, which city stated were very common in its construction contracts.

[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 July) \$207.6 billion, -15.8% Y/Y
- Trading (as of July) \$12.6 billion ADV, -10.4% Y/Y
- Outstanding (as of 1Q23) \$4.0 trillion, -0.8% Y/Y

[Download xls](#)

August 2, 2023

[How Fitch's US Debt Downgrade Impacts Municipal Bonds.](#)

Arlene Bohner, Fitch Ratings head of US public finance, says most municipal bond ratings won't be affected by Fitch's downgrade of its US credit rating by one level on "Bloomberg Markets: The Close."

[Watch video.](#)

Muni Moment - Bloomberg Markets: The Close

August 2nd, 2023

[Fitch's US Credit Downgrade Sparks Criticism Along With Unease.](#)

- **Decision reflects expected fiscal deterioration, Fitch says**
- **Bond market shrugs off downgrade, eyes Wednesday US refunding**

Fitch Ratings' downgrade of US government debt sparked criticism from Washington and Wall Street even amid unease that swollen fiscal deficits risk eventual turbulence in markets, the economy and next year's presidential election.

Fitch cut the US's sovereign credit grade one level from AAA to AA+. The move comes just two months after it warned the rating was under threat as lawmakers flirted with default by battling over raising the nation's debt limit.

The credit grader justified the shift by arguing the country's finances will likely deteriorate over the next three years given tax cuts, new spending initiatives, economic shocks and repeated political gridlock.

[Continue reading.](#)

Bloomberg Markets

By Benjamin Purvis and Simon Kennedy

August 1, 2023

US Downgrade Hits Muni Market as Fitch Cuts Billions of Debt.

Fitch Ratings downgraded billions of dollars worth of public finance credits that are linked to the rating company's landmark decision to strip US government debt of its AAA status.

Thursday's move lowers the credit ratings of the local debt by one notch to AA+, the second-highest ranking, according to Fitch. The cut affects \$21.5 billion of the federally-owned Tennessee Valley Authority's global power bonds.

It also includes \$3.5 billion of pre-refunded municipal bonds with repayments that are wholly dependent on US government and agency obligations held in escrow as well as \$1.8 billion of municipal housing bonds that are mainly secured by mortgage-backed securities issued by Ginnie Mae, Fannie Mae or Freddie Mac, according to Fitch. The outlook is stable.

The municipal-bond downgrades weren't a surprise. In May, Fitch had warned it could downgrade some public finance credits because of their dependence on sovereign credit for repayment. About \$42.5 million of debt related to the Federal Home Loan Banks of Atlanta and Des Moines is still on watch negative, according to Fitch.

On Tuesday, Fitch lowered the US government debt rating to AA+, citing its outlook that the country's finances will likely deteriorate over the next three years given tax cuts, new spending initiatives, economic shocks and repeated political gridlock.

A spokesperson for the Tennessee Valley Authority, which provides electricity for power companies serving Tennessee and surrounding states, said in an emailed statement that the authority doesn't expect any material impact from the downgrade. "This is not driven by any TVA credit event," the statement said.

Bloomberg Markets

By Nic Querolo and Amanda Albright

August 3, 2023

Fitch: U.S. Downgrade Has Limited Effect on Public Finance Ratings

Fitch Ratings-New York-04 August 2023: The recent downgrade of the U.S. sovereign Long-Term Foreign Currency Issuer Default Rating (IDR) to 'AA+' /Stable from 'AAA' /Rating Watch Negative does not directly affect the risk profile of most state, local government, and revenue-supported entities' ratings within the U.S. Public Finance (USPF) sector, Fitch Ratings says. Most USPF ratings are not affected, except where bond repayment depends on federal agencies or instruments.

U.S. state and local governments possess significant autonomy to provide services that they believe appropriate and impose the taxes needed to fund those services. The very high ratings assigned to many states and local governments reflect their record of using these powers to balance budgets and limit leverage. While the U.S. sovereign and U.S. sub-sovereigns share certain credit characteristics, the downgrade to 'AA+' does not lead Fitch to re-evaluate state or local government 'AAA' ratings absent a direct reliance on federal agencies or instruments.

Federal budgets directly support a wide range of functions carried out by USPF entities, and

broader federal spending is meaningful to the economic activity that underpins the credit quality of issuers in the USPF sector. The ability of state and local governments to respond to changes in federal funding, primarily with their own spending adjustments, reflects their significant autonomy within the U.S. federal structure. States benefit from strong legal and fiscal powers enshrined in the U.S. Constitution, and states in turn delegate substantial fiscal powers to local governments. Local governments bear the added risk of having to absorb potential state tightening, although they typically have broad budgetary tools and reserves to cushion unforeseen developments. Additionally, many states and local governments exercise prudent fiscal management and currently benefit from unusually high reserves and solid liquidity given federal economic stimulus and extraordinary tax revenue growth in recent years. Rated revenue-supported USPF entities are also generally well-positioned to adjust to federal funding fluctuations.

Bonds directly linked to the sovereign rating include municipal housing bonds primarily secured by mortgage-backed securities issued by Ginnie Mae, Fannie Mae and/or Freddie Mac, pre-refunded municipal bonds where escrowed funds deposited with a trustee to advance refund the bonds are invested in U.S. government treasuries or federal agency obligations, and bonds fully enhanced by FHLB letters of credit.

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[The Weekly Fix: No Country Has 'God-Given' Right To AAA Rating](#)

Welcome to The Weekly Fix, the newsletter that's never been downgraded. I'm cross-asset reporter Katie Greifeld.

Your Move, Moody's

Fitch Ratings' surprise move to strip US government debt of its top-tier rating this week sparked passionate criticism from Washington and Wall Street alike, with Treasury Secretary Janet Yellen deriding the downgrade as "arbitrary." But to David Beers, former head of S&P Global Ratings' sovereign debt scoring committee and one of the analysts behind the controversial ratings cut in 2011, it's an important reminder that the US isn't entitled to the top grade.

“The underlying fiscal position and underlying debt trajectory has picked up pace,” Beers, who is now a senior fellow at the Center For Financial Stability, told Romaine Bostick and I on Bloomberg Television. “AAA is the top rating any rating agency can assign, but of course, the US and any other sovereign that’s being rated has no god-given or automatic right to that.”

[Continue reading.](#)

Bloomberg

By Katherine Greifeld

August 4, 2023 at 2:00 AM PDT

America’s Credit Rating Was Just Slashed. America Should Be Worried.

Herbert Hoover famously said that “blessed are the young for they shall inherit the national debt”. However, it is doubtful that even in his darkest moments, he would have imagined that the US public debt would reach the lofty heights that it has reached today. Nor could he have imagined that there would still be no serious constituency on either side of the political aisle to address the country’s large budget deficit and dangerous public debt trajectory.

It is against this background that one should welcome the Fitch rating agency’s decision to be the second rating agency, after Standard and Poor’s, to strip the United States of its coveted AAA credit rating. Hopefully that might serve as a wake-up call to our political class to get serious about addressing the country’s chronic budget deficit with a view to getting the country’s debt back on to a sustainable path.

The non-partisan Congressional Budget Office (CBO) provides us with a good picture of the dismal state of our public finances. According to their most recent estimates, our public debt presently stands at close to 100 percent of GDP. That is a level similar to that reached in the immediate aftermath of the second world war. However, given the country’s aging population and rising interest rates, there is little prospect that we can somehow grow our way out of our debt problem like we did in the 1950s.

As if to underline this point, the CBO estimates that on present policies, the country’s debt as a share of GDP will rise to around 120 percent by 2033 and to 170 percent by 2050. Those are levels that are more reminiscent of a country like Greece than one that is wanting to remain the world’s leading economy and to maintain the dollar as the world’s dominant international reserve currency.

In citing the reasons for its decision to downgrade the US rating, Fitch pointed to the deterioration of US economic governance over the past twenty years. While to be sure, Fitch’s assessment will be disputed, especially by the Biden Administration, there would seem to be much substance in Fitch’s view.

The sad truth of the matter is that both political parties have become fiscally irresponsible though in different ways. The Republicans when in office are ever so keen to cut taxes but are loath to reduce public spending to finance the tax cuts. By contrast, the Democrats when in office are ever so keen to increase public spending but are loath to raise taxes to pay for their spending largesse. Meanwhile the nation’s debt keeps growing.

Judging by the excessive budget stimulus policy response to the 2020 Covid-induced recession, our public finance matters seem to be going from bad to worse. Indeed, the total amount of government money thrown at the Covid problem amounted to close to a staggering \$5 trillion, or some 20 percent of GDP. Little wonder then that former Treasury Secretary Larry Summers characterized this response as the least responsible fiscal policy in the past forty years. Little wonder too that inflation surged to a multi-decade high of 9 percent by June 2022.

Although the United States is already heavily indebted to foreigners, including most notably China, it is fortunate in that it borrows in its own currency. As such, it is highly improbable that it will ever default on its debt since the Federal Reserve can always print the dollars to pay the foreigners. However, before we take too much comfort in that fact, we should spare a thought to what massive Fed money printing would do to the dollar and to inflation.

Let us hope that Washington pays heed to Fitch's timely wake-up call before the dollar tanks and inflation takes off again. However, in Washington's currently polarized state, I do not recommend that you hold your breath for that to happen anytime soon.

American Enterprise Institute

By Desmond Lachman

19fortyfive.com

August 03, 2023

[Ratings Firms Struggle With Climate Risk in \\$133 Trillion Market.](#)

Global warming is poised to increase borrowing costs for cities, countries and companies as record heat waves emerge worldwide.

With 46 straight days of 100-degree heat and coastal waters approaching hot-tub temperatures, Miami can seem like a clear example of the costs of a warming world. But analysts at S&P Global Inc. aren't sweating it.

They recently upgraded Miami's credit rating, citing a robust tax base and labor market. The city's "elevated" environmental risks, S&P says, are offset by mitigation projects such as those designed to counter rising sea levels.

As the world reels from the mounting impact of heat waves, droughts and fiercer storms, there is growing concern that credit rating analysts are misreading climate risks in the \$133 trillion global bond market, to the detriment of creditors and borrowers alike.

[Continue reading.](#)

Bloomberg Green

By Gautam Naik

July 31, 2023

[Most States End Fiscal 2023 With a Budget Surplus as Revenues Exceed Forecasts: NASBO Budget Blog](#)

Most states ended fiscal 2023 with a budget surplus as tax collections once again came in above projections. Entering fiscal 2023, states assumed smaller revenue levels following double-digit growth in tax collections in both fiscal 2021 and fiscal 2022. While year-over-year revenue collections grew at record high levels of 16.6 percent in fiscal 2021 and 16.3 percent in fiscal 2022, states forecasted fiscal 2023 revenues would decline 3.1 percent in their originally enacted budgets. States forecasted less revenue growth in fiscal 2023 due to several factors, including the high baseline established in fiscal 2022; the impact of both recurring and one-time tax policy changes; the assumption of slower economic growth, weaker capital gains, and modest declines in consumption; and consumer behavior shifting towards spending more on services (less often taxed) rather than goods. As fiscal 2023 progressed, many states saw higher than projected growth in tax collections and revised revenue forecasts upward for the remainder of fiscal 2023. Whereas original forecasts projected a 3.1 percent decline in revenue in fiscal 2023, revised forecasts assumed only a 0.3 percent annual decline, according to the [Spring 2023 Fiscal Survey of States](#).

To date, the vast majority of states who have reported full-year fiscal 2023 tax collections have come in above original forecasts, with many also seeing revenues above revised forecasts, leading to a third consecutive year of surpluses. While most states have reported budget surpluses, the amount in nearly all cases has been less than the substantial surpluses seen in fiscal 2022. States are examining the best use of these smaller surpluses, including further building up rainy day funds, reducing unfunded pension liabilities, paying down debt, investing in education and other spending priorities, and providing tax relief, while also focusing on ensuring one-time revenues are not used for ongoing obligations.

As states prepared to move into fiscal 2024, they were anticipating a small decline in tax collections partly due to economic uncertainty at the time revenue estimates were adopted. [Recommended budgets](#) for fiscal 2024 are based on general fund revenues totaling \$1.17 trillion, which would represent a slight decline of 0.7 percent compared to estimated fiscal 2023 levels. In recent years states have taken steps to prepare for a slowdown in tax collections through actions including using one-time funds for one-time purposes, paying down debt, making supplemental pension payments, and increasing the size of rainy day funds to record levels.

[Continue reading.](#)

by Brian Sigritz

NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS

[States Finalize Fiscal 2024 Budgets: NASBO Budget Blog](#)

As of July 5th, 45 states have enacted a full-year budget for fiscal 2024. Overall, states remain in a strong fiscal position as they enter fiscal 2024. According to [NASBO's Spring 2023 Fiscal Survey of States](#), state general fund spending growth in fiscal 2024 is expected to slow following two consecutive years of sharp increases which were driven in part by an uptick in one-time expenditures. Similarly, revenue growth is expected to decline following double-digit percentage increases in both fiscal 2021 and fiscal 2022. While state spending and revenue growth are showing

signs of returning to more normal levels, rainy day fund balances are projected to remain at or near all-time highs in fiscal 2024. As states begin fiscal 2024, they remain well positioned due to previous actions such as building up rainy day funds to record levels, paying down long-term debt, making additional pension payments, and using one-time funds for one-time purposes.

Governors in 47 states, the territories, and the District of Columbia are enacting a new budget for fiscal 2024. Thirty-one states are approving a one-year budget for fiscal 2024, while 16 states are enacting a two-year budget for fiscal 2024 and fiscal 2025. Kentucky, Virginia, and Wyoming previously enacted a biennial budget for both fiscal 2023 and fiscal 2024, with Wyoming approving revisions to its current biennial budget. Forty-six states begin their fiscal year on July 1, while New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1.

Below is additional information on states that have yet to enact a full-year budget for fiscal 2024. Additionally, Table 12 of NASBO's [Budget Processes in the States](#) has information on procedures if no budget is enacted by the start of the fiscal year.

[Continue reading.](#)

By Brian Sigritz posted 06-30-2023

NATIONAL ASSOCIATIONS OF STATE BUDGET OFFICERS

[Fitch: State Revenues Weakened in FY2023 but Resilience Remains High](#)

Fitch Ratings-New York-01 August 2023: State financial resilience remains robust despite weakening tax revenue growth or revenue declines in fiscal 2023, Fitch Ratings says. A combination of conservative revenue forecasting and large surpluses accumulated in 2021 and 2022, due to extraordinary tax revenue growth fueled by high inflation and federal pandemic stimulus, cushioned the revenue contraction. This will enable most states to maintain spending plans without threatening their improved financial positions.

Through the 12 months ending in June 2023, tax revenue was down from the prior year in 17 states, while another six states had growth of less than 1%, based on Fitch's review of 37 states with reported collections. States' monthly revenue reports vary greatly and use different presentations of tax revenue. This data is timely and indicative, but not necessarily definitive.

Revenue tracked above or close to last year for most of fiscal 2023 (July 2022-June 2023 for 46 states) until the spring, when monthly state personal income tax collections fell at a median rate of more than 30% in April 2023 from record high collections in 2022, based on data from the Urban Institute. Almost every state with an income tax had a large drop in April collections, as taxpayers reflected 2022 stock market losses and lower non-wage income on their final returns. From July 2022 through May 2023, total state tax collections were about 5% below the prior year.

[Continue reading.](#)

Muni Bank Loans Top \$200 Billion to Near Record.

- **Chicago Fed says governments tapping the debt seek flexibility**
- **Private lending attractive to borrowers facing revenue deficit**

State and local governments are increasingly turning to banks for capital during financial distress and market volatility.

Outstanding municipal bank loans are just \$1 billion away from the record \$210 billion reached in 2022, according to a Federal Reserve Bank of Chicago [working paper](#). Rather than issuing debt in the public markets to raise money, US governments are going directly to banks as they did during the Great Recession and more recently, the Covid-19 pandemic.

Private lending comes in handy during periods of big change, said Chicago Fed senior economist Ivan Ivanov, one of the authors of the working paper, in an interview. He added that bank loans give borrowers a chance to adjust terms when credit quality changes and can provide local governments money when budget strains arise from pension and health care costs.

“The major take away is that bank loans give borrowers in this case local governments such as cities, counties, school districts and special districts substantial financial flexibility that they are not able to find in the municipal bond market,” said Ivanov, who declined to comment on the future trajectory of muni bank loans.

As governments face further fiscal pressure, access to capital in a way the \$4 trillion muni bond market can't provide could be appealing. Revenue growth is expected to slow after billions in stimulus aid runs out, tax collections decline and costs rise from the Federal Reserve's historic interest-rate hiking campaign.

Bank debt is “most attractive” to government borrowers that have stable revenue but are facing shortfalls, higher borrowing costs, reduction in bond market access and credit downgrades, according to the report. During the pandemic, for instance, Chicago tapped \$450 million from a revolving line of credit from JPMorgan Chase & Co. to cover revenue losses in 2020.

The Chicago Fed research shows that higher credit risk translates to more bank loans as governments with agency ratings of AA, A, and BBB, or lower, are as much as 9 percentage points more likely to take one than AAA-rated issuers.

Muni borrowers are following corporations in fueling the broader global growth in private credit. Along with bank loans, state and local governments are also using more private placements, in which an agent sells securities directly to investors to raise capital rather than selling them in the market, especially for riskier projects. But while these tools provide options, they aren't a panacea for fiscal pressures.

Bank loans in particular “may be costlier than municipal bonds for some governments” due to fees, costs to renegotiate contracts or covenants, according to the report.

However, more environmental, social and governance rules and financial data transparency and disclosures regulations could push governments to bank loans and private placements, said David Erdman, a managing director at Baker Tilly Municipal Advisors.

Private lending “is not a win-win situation,” for municipalities, Erdman said.

Bloomberg Markets

By Shruti Singh

August 4, 2023

[Bringing Local Government Budgeting Up to the Speed of Change.](#)

Current government budgeting processes are not up to the demands of a world where the future looks less and less like the past.

In Brief:

- It's been the norm for governments to make budget plans based on past decisions.
- This "backward-looking" approach is not well suited to the present speed of change in society, or the emergence of environmental and public health impacts that have not been seen before.
- Government associations and technology companies are working to develop data-driven systems that can be agile in the face of the unexpected.

[Continue reading.](#)

governing.com

by Carl Smith

Aug. 4, 2023

[S&P U.S. Public Finance Housing Rating Actions, Second-Quarter 2023.](#)

[View the S&P Ratings Actions.](#)

31 Jul, 2023

[Illinois Feared Losing to Wall Street Banks Over Muni Price-Fixing Case.](#)

- **Trial featuring JPMorgan, Citigroup was scheduled for Aug. 7**
- **Attorney General says no evidence of VRDO price-fixing claim**

Illinois is defending its decision to accept a \$68 million settlement from a cohort of Wall Street banks to conclude an almost decade-long lawsuit over municipal bond price-fixing by questioning the claims of the firm that filed the case on its behalf.

The lawsuit, originally filed under seal in 2014 by an entity called the Edelweiss Fund LLC, sought around \$349 million in pre-trebled damages and another \$350 million in statutory damages. Edelweiss brought the False Claims Act lawsuit as a "relator," or someone filing a lawsuit on behalf of an injured party — in this case, the state of Illinois — in return for a portion of any recovery.

Edelweiss alleged that a group of banks inflated interest rates on bonds that finance public projects

to discourage investors from returning them for cash and also colluded in setting the rates. Bank of America Corp., Barclays Capital Inc., BMO Financial Corp., William Blair & Co. LLC, Citigroup Inc., Fifth Third Bancorp, JPMorgan Chase & Co. and Morgan Stanley were expected to go to trial in Illinois on Aug. 7 for this case.

While Illinois agreed to settle on July 17, this is the first time any state has defended its decision to do so. Not settling before the case went to trial “would almost certainly have resulting in a loss,” according to a filing by Attorney General Kwame Raoul.

The motion for approval of the settlement says that “the actual language of the contracts at issue does not require Defendants to reset ‘at the lowest possible rate,’” as Edelweiss occasionally implies.

The filing also says that “testimony from State officials involved in managing and monitoring the bonds at issue would very likely rebut Relator’s claim that the State was even defrauded in this case.”

And it says that “the evidence in the record does not support any version of the Relator’s argument, including its basic assertions about the expectations issuers would have had for how the rate-reset process and liquidity facilities worked together in practice.”

Edelweiss, which represents Minnesota financial adviser Johan Rosenberg, has objected to the settlement, saying the \$15 million stipulated for expenses and attorneys’ fees is insufficient.

Daniel W. Levy, a principal with McKool Smith PC, counsel to Edelweiss, said “I will respond when able.”

Barclays, Citigroup, Morgan Stanley and William Blair & Co. all declined to comment. The other banks didn’t respond to emailed requests for comment.

‘Highlights Weakness of Claims’

While it is common in motions seeking approval for a settlement to highlight the risk of not recovering, the one Illinois put forward “really seems to go beyond that in highlighting the weakness of the claims and the lack of evidence of any false claims act violations,” Elliott Stein, a senior litigation analyst with Bloomberg Intelligence, said in an email.

“This certainly explains the low settlement amount and will embolden the defendant banks to keep fighting the similar cases in other states until they win outright or get a sufficiently low settlement amount,” Stein said.

The Illinois lawsuit was the first of five such cases originally filed under seal in 2014. One of them, in Massachusetts, has been dismissed. The remaining lawsuits — in California, New Jersey and New York — seek a collective \$1.15 billion in damages and restitution of triple that amount. Another \$6.5 billion in damages is at stake in antitrust litigation in New York.

A dozen banks are defendants across the four lawsuits, which allege that from 2008 until relatively recently the banks — acting as remarketing agents for long-term bonds with periodic rate adjustments, called variable-rate demand obligations or VRDOs — failed to get issuers the lowest possible interest rates on securities where rates were typically reset on a daily or weekly basis to discourage investors from returning them for cash.

Bloomberg Markets

By Joseph Mysak Jr and Shruti Singh

August 4, 2023

[S&P: Economic Momentum Expected To Wane For Mineral-Producing U.S. States As Tailwinds Abate](#)

Key Takeaways

- Oil and natural gas prices fell from a recent peak in 2022 as an economic slowdown takes hold, but many mineral-producing U.S. states are poised to lead economic (real gross state product [GSP]) growth in calendar 2023, with five ranking among the top 10 for real GSP growth nationally.
- By 2024, however, S&P Global Market Intelligence forecasts that Texas will be one of only two states forecast to remain in the top 10, and it is projected to be the only state in the top 10 by 2025, with its GSP growth ranking third among all states.
- While we do not expect a sharp pull-back in oil exploration and production, mineral producing states may need to prepare financial tools, including tighter spending controls, conservative forecasting, and upkeep of high reserves to guard against potential strain on their economies and revenues.

[Continue reading.](#)

3 Aug, 2023

[S&P Sustainability Insights: California's Evolving Insurance Market Has Mixed Impacts - Spotlight On U.S. Public Finance](#)

Key Takeaways

- The recent move by a few major insurers to discontinue writing new homeowners' business in California is not unique compared with the wider U.S. insurance market.
- Higher insurance premiums in California could exacerbate homeowner affordability pressures, potentially leading to weaker credit quality in the long term for USPF entities.
- Rising insurance premiums are unlikely to affect our credit ratings on RMBS because various aspects in the securitization serve as adequate risk mitigants.

[Continue reading.](#)

2 Aug, 2023

[As Water Reuse Expands, Proponents Battle the 'Yuck' Factor.](#)

Treated wastewater could be the answer to communities' looming concerns over water shortages. Despite skepticism and, often, disgust at the idea, experts say reused water is a glass-half-full solution.

When Janet Cruz lost an April election for a Tampa City Council seat, she became a political casualty of an increasingly high-stakes debate over recycled water.

During her time in the Florida Legislature, Cruz had supported a new law allowing the use of treated wastewater in local water systems. But many Tampa residents were staunchly opposed to a plan by their water utility to do just that, and Cruz was forced to backtrack, with her spokesperson asserting she had never favored the type of complete water reuse known as “toilet to tap.” She lost anyway, and the water plan has been canceled.

Tampa’s showdown may be a harbinger of things to come as climate change and drought cause water shortages in many parts of the country. With few alternatives for expanding supply, cities and states are rapidly adding recycled water to their portfolios and expanding the ways in which it can be used. Researchers say it’s safe—and that it’s essential to move past the 20th century notion that wastewater must stay flushed.

[Continue reading.](#)

Route Fifty

By Jim Robbins,
KFF Health News

AUG 4, 2023

[Arkansas Development Finance Authority: Fitch New Issue Report](#)

Portfolio Credit Risk: The program exhibits higher concentration than similar ‘AAA’ pools rated by Fitch, and overall credit quality is about average. The pool consists of a relatively few 73 obligors, which contributes to high single- and top 10-obligor concentration. Implied pool quality, measured by the aggregate rating and loan term and as measured in Fitch’s Portfolio Stress Model, is ‘BBB’. Obligor security is solid with over 95% of the pool backed by water and/or sewer revenue pledges and the remaining 4% secured by sales or special tax revenues. **Financial Structure:** The program’s cash flows are very favorable, as minimum annual debt service coverage is about 3.4x. As a result, Fitch’s cash flow modeling demonstrates that program resources are sufficient to withstand hypothetical pool defaults in excess of Fitch’s ‘AAA’ liability rating stress hurdle without causing an interruption in bond payments. **Program Management:** The Arkansas Natural Resources Commission, which manages the program, maintains sound underwriting and loan monitoring procedures. To date, the pledged portfolio has not experienced a permanent loan default.

[ACCESS REPORT](#)

03 Aug, 2023

[The Risks Hidden in Public Pension Funds.](#)

Attracted by promises of high returns, many public pension funds have been loading up on private equity but may not fully appreciate the dangers, our columnist says.

The Oregon Public Employees Retirement Fund prides itself on being open about its investments, publishing [monthly reports](#) that provide more timely information than most other state and local government pension plans across the country.

But like many plans, Oregon's state pension fund is perpetually hungry for high returns on its investments — higher than it expects from stocks and bonds alone.

So Oregon's plan has been pouring money into private equity funds that are, by definition, illiquid and opaque. Those funds engage in debt-fueled takeovers of companies and promise their investors high returns. But the funds contain hidden risks that are not widely understood or clearly reported.

[Continue reading.](#)

The New York Times

By Jeff Sommer

Aug. 4, 2023

[State of Wyoming to Require Training to Reduce Mismanagement of Funds.](#)

CASPER — To better guard against fraud in Wyoming's small towns, the state recently established its first training requirements for officials on how to manage public funds.

The state Legislature in 2022 directed the Department of Audit to develop the new rules amid growing concerns about rogue communities evading compliance with financial regulations.

"This was kind of borne out of findings and things that were coming out of audits of local governments and special districts and smaller towns and cities," said Department of Audit Public Funds Administrator Michael Hansen.

[Continue reading.](#)

Gillette News Record

By Mary Steurer Casper Star-Tribune Via Wyoming News Exchange Aug 2, 2023

[Rising Yields Are Making Municipal Bonds an Attractive Option.](#)

Fixed income investors experienced the pull of rising yields during the first half of 2023, which included attractive options within the municipal bond market.

"With the highest yields in years, the muni bond market looks increasingly attractive," an [AllianceBernstein blog post](#) noted.

With an eye on yield, investors may have also sought out munis for their tax-free income advantages. Whatever the reason, major indicators of municipal bond activity portrayed upside that could continue through the rest of the year following a bearish turn in 2022.

“After the worst showing in four decades in 2022, the muni market regained some ground in 2023,” the blog added. “There was some chop along the way, but the Bloomberg Municipal Bond Index etched a 2.67% return through June 30.”

The expectation that the U.S. Federal Reserve would taper its interest rate hikes certainly played a factor in the increased demand for munis. However, the underlying fundamentals of the muni bond space also propelled interest.

“Most were attracted by strong muni issuer fundamentals, the likelihood the Fed is nearing the end of its rate-hike cycle and historically high yields,” the blog said further.

[Continue reading.](#)

ETF TRENDS

by BEN HERNANDEZ

AUGUST 1, 2023

TAX - NEW MEXICO

[Process Equipment & Service Company, Inc. v. New Mexico Taxation Revenue Department](#)

Court of Appeals of New Mexico - July 25, 2023 - P.3d - 2023 WL 4874874

Taxation and Revenue Department (TRD) appealed decision from the Administrative Hearing Office (AHO), Brian Van Denzen, Hearing Officer, which, as part of taxpayer’s administrative tax protest after Department denied taxpayer’s applications for tax credit, concluded that taxpayer met requirements for a tax credit under the Technology Jobs and Research and Development Tax Credit Act.

The Court of Appeals held that:

- As a matter of first impression, “cost accounting method” for tax credit purposes is a method for capturing a company’s total cost of production by assessing the variable costs at each step in production;
- Finding that taxpayer used a “cost accounting method” to allocate wages was grounded in a rational basis based on the record; and
- Substantial evidence supported finding that taxpayer’s “cost accounting method” was informally used in its other business activities.

A “cost accounting method” within meaning of the Technology Jobs and Research and Development Tax Credit Act’s definition of “qualified expense” is a method for capturing a company’s total cost of production by assessing the variable costs at each step in production.

Finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer used “cost accounting method” to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act’s definition of “qualified expense,” was grounded in a rational basis based on the record; officer found that taxpayer’s accounting firm sent staff to inspect records, interview witnesses, and develop method to quantify and assess time and wage costs associated with taxpayer’s research and development activities, found that firm determined which projects qualified

for tax credit by reviewing drafting logs created contemporaneously during time work was performed, and found that taxpayer used same method to apply for state and federal tax credits and that method only accounted for finished projects.

Substantial evidence supported finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer's "cost accounting method" used to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense," was also informally used in taxpayer's other business activities; officer found that taxpayer informally used same methodology to determine continuing viability of research and development project by comparing drafting time shown on drafting logs against potential results/outcome/viability of project, and when asked at hearing if taxpayer used cost accounting methodology designed by its accounting firm, vice president of engineering and chairman of taxpayer's board stated that taxpayer did use this method.

[SEC Adopts Significant Money Market Fund Reforms; Enhances Private Liquidity Fund Reporting on Form PF: Dechert](#)

[View the pdf.](#)

Dechert LLP - Brenden P. Carroll, Nicholas Carroll, Stephen T. Cohen, Jonathan Blaha, Kathleen Hyer, Austin G. McComb, Devon Roberson and Ashley N. Rodriguez

August 2 2023

[IRS Seeks States' Input On Its Direct File Pilot.](#)

States have until Sept. 4 to tell the IRS if they're interested in participating.

States will have the chance to collaborate with the IRS on how they may integrate with the agency's forthcoming direct file pilot.

In a [July 16 letter to the Federation of Tax Administrators](#), which serves state tax collection agencies, IRS Commissioner Danny Werfel wrote that the tax agency is "interested in continuing to learn from states directly, and from [Federation of Tax Administrators], about the challenges they may face when integrating with a Direct File pilot, be they technological, policy-driven or other concerns."

States that want to be involved in the pilot have until Sept. 4 to tell the IRS, the letter states.

[Continue reading.](#)

Route Fifty

By Natalie Alms,
Staff Reporter, Nextgov/FCW

JULY 31, 2023

[S&P Pension Spotlight: Ohio](#)

Key Takeaways

- Ohio's pension plans' statutory contribution framework has generally followed actuarial recommendations, which helps maintain funded ratios as long as contribution increases continue.
- While we view the state's pension position as stable with adequate funding discipline, the state's current contribution amounts are likely insufficient to maintain funding levels going forward due to their fixed status (versus annual increases) and aggressive assumptions.
- Recent changes to retiree medical other postemployment benefits have helped control costs and limit risk to governments across the noneducation plans.

[Continue reading.](#)

31 Jul, 2023

[Muni Market Projection for August \(Bloomberg Audio\)](#)

Joe Myask, editor of Bloomberg Brief: Municipal Bonds with Bloomberg News joins us to discuss the muni bond market. Hosted by Paul Sweeney and Simone Foxman.

[Listen to audio.](#)

Aug 04, 2023

[BDA Forms Fixed Income Technology Clearinghouse to Facilitate Information Sharing, Tech Intel, and Deliverables for US-Focused Bond Dealers.](#)

Today, the Bond Dealers of America - Washington DC's only dedicated Fixed Income Advocate - is pleased to announce the creation of the Fixed Income Technology Clearinghouse intended to help US focused bond dealers navigate their technology and back-office options including costs and deliverables.

The Fixed Income Technology Clearinghouse will bring together professionals at BDA full member firms with responsibility for and focus on technology decisions and adoption.

This group will be managed by BDA staff working alongside outside consultant Stephen Winterstein of SP Winterstein & Associates LLC, a long-time municipal market leader, previously as Head of Capital Markets at Alphaledger and as the Head of Municipal Fixed Income at MarketAxess.

Mission

To bring together fixed-income market leaders to address the most pressing fixed income technology issues of the day. Providing a platform to help facilitate solutions to technology and back office or operational challenges being faced by securities firms and banks active in the US bond markets.

Whether having a conversation with a vendor about issues with an existing product, or proposing a new idea, this group provides BDA members a forum to discuss issues, while working with industry professionals to identify and implement proper solutions.

The Fixed Income Technology Clearinghouse will also work with regulators where the membership sees fit, providing additional opportunities with dialogue with the MSRB, FINRA, and SEC to help direct and better inform the respective staffs.

The main objectives of the Clearinghouse include:

- To collaborate and develop ideas to improve existing vendor products, or present new ideas
- Provide a unified voice and solutions to regulators on key issues such as the Financial Data Transparency Act and one-minute trade reporting
- Hold an annual Roundtable to discuss key technology topics and assist in drafting the agenda for key BDA events such as the NFIC to ensure proper topics are incorporated.

Membership

The BDA's Fixed Income Technology Clearinghouse will have cross-product representation from all BDA full member firms that wish to participate. Each full member interested in participating would select a delegate to represent them within the group.

We will also work to ensure BDA associate members are engaged while finding parity in representation from both the municipal and taxable markets and in sizes of firms.

If you or your firm is interested in participating in the BDA Fixed Income Technology Clearinghouse, please contact Mike Nicholas at mnicholas@bdamerica.org.

Bond Dealers of America

August 3, 2023

[GASB Financial Accounting Foundation Board of Trustees.](#)

[Meeting Notice](#)

07/28/23