Bond Case Briefs

Municipal Finance Law Since 1971

Broker-Dealer Settles FINRA Charges for Systemic Supervisory Failures.

A broker-dealer settled FINRA charges for systemic failures, including failing to establish (i) a reasonable supervisory system for its mutual fund and municipal bond businesses, and (ii) a reasonable system of supervisory controls to verify its surveillance systems.

In a Letter of Acceptance, Waiver and Consent, FINRA found that the firm's automated surveillance system, which identified and flagged for review Class A Share switches, did not provide the critical data needed to evaluate the suitability of a transaction, such as the holding periods of the Class A Shares. FINRA found that the firm allowed its supervisors to clear alerts that were missing information significant to a suitability determination after obtaining an explanation from the registered representative but without further investigation.

FINRA also found that the firm (i) did not address suitability reviews specific to municipal bonds in its written supervisory procedures and (ii) failed to conduct a heightened review of a broker's short-term trading of Puerto Rican municipal bonds, which carried additional risks due to the restructuring of Puerto Rican debt. As a result, the firm violated FINRA Rule 3110 ("Supervision") and MSRB Rules G-27(b) and (c).

With regard to supervisory controls, FINRA stated, the firm's annual tests did not examine whether the system for supervising two active business lines (mutual funds and municipal bonds) was reasonably designed to achieve compliance with FINRA and MSRB suitability rules, in violation of FINRA Rule 3120 ("Supervisory Control System") and MSRB Rule G-27(f).

The above-mentioned conduct is also a violation of FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade").

To settle the charges, the firm agreed to (i) a censure, (ii) a $750,000 fine (including $225,000 for the MSRB Rule G-27 violations) and (iii) an undertaking to certify the implemented supervisory systems.

Cadwalader Wickersham & Taft LLP

July 14 2021

TAX - NEW JERSEY

Winberry Realty Partnership v. Borough of Rutherford

Supreme Court of New Jersey - June 28, 2021 - A.3d - 2021 WL 2639787

Taxpayers brought action under § 1983 and state Civil Rights Act against borough and borough's tax collector alleging violation of right of redemption arising from tax collector's refusal of taxpayers' attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home.

The Superior Court granted summary judgment for borough and tax collector. Taxpayers appealed. The Superior Court, Appellate Division, affirmed in part and reversed in part. Parties filed petition and cross-petition for certification, which were granted.

The Supreme Court held that:

- Tax collector was not entitled to qualified immunity, and
- Borough had potential municipal liability for tax collector's conduct.

Borough's tax collector did not act in an objectively reasonable manner and thus was not entitled to qualified immunity from taxpayers' civil rights suit alleging violation of right of redemption arising from tax collector's refusal of taxpayers' attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home, where tax collector withheld, or made no effort to secure, the information necessary for taxpayers to vindicate their substantive right to reclaim home under Tax Sale Law, apparently due to taxpayers' noncompliance with tax collector's policy requiring a written redemption request, and tax collector flatly refused to accept redemption payment at a point when right to redeem tax sale certificate had not been cut off.

Borough's tax collector had final policymaking authority on matters relating to redemption of tax sale certificates such that borough could be liable under § 1983 and state Civil Rights Act for her conduct that allegedly violated civil rights of taxpayers in refusing their attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home; Tax Sale Law identified a tax collector as sole person with authority to accept payment to redeem a tax sale certificate and, by her own account, tax collector implemented unwritten policies and procedures governing redemption during her tenure as tax collector including requirement of written redemption calculation requests before that practice was directly authorized by statute.

Opportunity Zones and the Return to Cities, with Riaz Taplin

Are there misperceptions in the market? Do investors overreact to sentiment? And is there an opportunity for level-headed contrarian view Opportunity Zone investors?

Riaz Taplin is principal and founder of Riaz Capital, an Oakland, California based real estate management firm focused on developing workforce housing in California's urban Opportunity Zones.

Click here to my conversation with Riaz.

Episode Highlights

- The investment thesis behind creating workforce housing in urban markets.
- Real estate market fundamentals and misperceptions, particularly in the California Bay Area.
- Early indicators of a return to urban areas: how 250,000 people returning to the Bay Area over a very short period may coincide with a collapse in supply, leading to a price spike.
- The impact that tax reform may have on the Opportunity Zones marketplace.
- How the Opportunity Zone incentive may be ideally suited to capitalize on ongoing demographic macro trends.
- Highlights of Opportunity Zone projects that Riaz Capital is developing and why they appeal to investors.

OPPORTUNITYDB

JIMMY ATKINSON

JULY 14, 2021

Factors Influencing Capital Inflows For Tax-Exempt Municipal Bond Funds.

Summary

- Tax-exempt municipal bond funds (including both conventional funds and ETFs) have recorded 19 straight weeks of estimated net inflows.
- Money market funds attracted $23.6 billion over that Lipper fund-flows week, and the VIX ended at 28.43 (currently around 17.01)-safe to say uncertainty was more abundant in the market at the time.
- The first week in March aside, tax-exempt municipal bond funds have recorded weekly inflows of more than $1 billion in 70.4% of the weeks this year.

Continue reading.

Seeking Alpha

Jul. 16, 2021

Tax-Increase Talk Prompts Wealthy to Splurge on Muni Bonds.

Municipal bond investments hit new highs in 2021 as Democrats consider proposals to raise taxes

Wealthy Americans eyeing potential tax increases are helping drive record amounts of money into municipal bond funds.

In the first six months of 2021, U.S. municipal bond funds attracted an estimated $56.9 billion in net new money—the most for any first half of the year going back to 1992, according to data from Refinitiv Lipper.

Advisers to high-income investors say the potential for higher taxes has been a focus of conversation in recent months, drawing attention to munis.

Continue reading.

The Wall Street Journal

By Karen Langley

July 19, 2021

Novogradac 2021 Affordable Housing Tax Credit and Bond Conference.

September 30 – October 1st, 2021, Hutton Hotel, Nashville TN & Online

Click here to learn more and to register.

Municipal Advisor Principal Qualification Exam: MSRB Reminder

Municipal advisor firms must ensure their municipal advisor principals are properly qualified.

The November 12, 2021 compliance deadline to take and pass the Municipal Advisor Principal Qualification (Series 54) Exam is approaching.

Learn more.

BLX/Orrick 2021 Post-Issuance Compliance Workshop - Hybrid Event: Registration Now Open

October 28-29, 2021
Hybrid Event At the Vdara Hotel and Spa and Virtual

REGISTRATION NOW OPEN:

Click here to register for limited IN-PERSON attendance
Click here to register for VIRTUAL attendance

A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing

The 2021 Workshop will be a hybrid event, with very limited in-person attendance and a livestream option. In-person attendance will be limited to 32 attendees, based upon the conference facilities and social distancing guidelines. In addition, through the livestream option, we will make available all the content on a virtual platform with the ability for participants to interact with the presenters and with other attendees throughout the workshop. Both the in-person and livestream options will allow participants to replay any of the sessions for up to 30 days after the event.

Our desire is to host an event for the community that provides timely and relevant information while following Orrick's recommended protocols and is safe for both the attendees and for our team. The livestream option represents an exciting way for us to bring our content to a much broader audience.

Please note: Due to the limited in-person capacity, live attendance at the Vdara will be restricted to one person per organization.

COVID-19 Safety Protocols for In-Person Attendance

Our goal at this event is to promote healthy behaviors and maintain a healthy environment for all participants. Accordingly, we will adhere to the following preventative measures for those attending the Workshop in person and while at Workshop events:

- Wear a mask
- Stay at least 6 feet away from others
- Wash your hands
- Use hand sanitizer
- Stay home when appropriate or exhibiting any symptoms

These safety protocols are subject to change. Please check back for updates.

In addition, for information on the Vdara's Seven-Point Safety Plan, please click here.

PROGRAM DESCRIPTION

The BLX/Orrick Workshop offers timely discussions of topics related to post-issuance compliance and tax law for the public finance and 501(c)(3) communities who borrow on a tax-exempt basis. With open forums allowing for attendee participation, BLX and Orrick professionals will lead the program and assist participants with understanding the IRS and SEC regulations and requirements relating to tax-exempt debt. The sessions encourage audience participation and address questions from participants relating to real life situations. The BLX and Orrick team strives to make the discussion of tedious tax laws understandable and relatable.

At the Workshop, learn valuable information relating to the following:

- Best practices for post-issuance tax compliance
- Private business use rules and regulations
- IRS safe harbor compliance for management and service contracts
- IRS safe harbor compliance for sponsored research agreements
- Using "floating equity" to mitigate private business use
- IRS Schedule K Secondary market disclosure and Rule 15c2-12 amendments
- Arbitrage rebate and yield restriction compliance

FINAL AGENDA – Please check back for updates.

BLX SENIOR REPRESENTATIVES & ORRICK TAX PARTNERS TO PRESENT AT THE WORKSHOP

All Workshop participants will have the opportunity to interact directly with BLX Representatives and Orrick Partners throughout the Workshop.

CLICK HERE for more information on Orrick.

WORKSHOP MATERIALS

Electronic, downloadable versions of all Workshop materials will be accessible via a secure log in site 3 days prior to the start of the Workshop so that all attendees may save and view the materials on their own device.

Please note, for in-person attendees, hard copies of Workshop materials will NOT be provided. Please download and save the electronic materials to your device prior to the Workshop or print off and bring copies of the materials with you.

CPE and MCLE Credits offered

HOTEL INFORMATION

BLX has secured a limited number of rooms at a special discounted rate of $135* (plus applicable fees) at the Vdara. The last day to book a room will be October 6, 2021. To reserve your room, click here.

GENERAL SCHEDULE – For Travel Planning Purposes

Thursday, October 28th
7:00 am – 8:00 am Registration & Breakfast
8:00 am – 12:00 pm Workshop Sessions
12:00 pm – 1:00 pm Lunch
1:00 pm – 5:30 pm Workshop Sessions
5:30 pm – 7:00 pm Cocktails (details to be determined)

Friday, October 29th
7:30 am – 8:00 am Breakfast
8:00 am – 12:00 pm Workshop Sessions
12:00 pm Workshop Concludes

WORKSHOP PRICING

Nonprofit organizations:

- In-person: $695
- Virtual: $595 (includes 12 sessions)

Issuers / governmental organizations:

- In-person: $695
- Virtual: $545 (includes 11 sessions)

Other professionals**:

- In-person: $1,095
- Virtual: $995

An invoice with payment instructions will be sent once registration is received.

**** Who May Attend**

In general, this educational workshop is for representatives from nonprofit organizations and state and local governments. In addition, the Workshop will be open for certain Industry Professionals. For information on Industry Professional attendance, please contact Cynthia Quezada Sixtos at csixtos@blxgroup.com.

Refunds, Cancellation and Concerns

For in-person registrations, requests to refund registration fees must be received in writing by October 1, 2021 and will be subject to a $100 cancellation fee. No refunds will be granted after October 1.

For virtual registrations, requests to refund registration fees must be received in writing by October 24 and no cancellation fee will apply. No refunds will be granted after October 24.

Refunds or cancellations of hotel bookings need to be requested from the Vdara and are subject to their policies.
For additional information or any questions on the Workshop and/or invoicing, please contact:

Cynthia Sixtos
csixtos@blxgroup.com
or call 213-612-2207

*** Hotel Fees**

A Daily Resort Fee of $39.00 plus the current applicable Clark County room tax for the Vdara of 13.4% will be charged in addition to room rates.

DISCLOSURES

ATTORNEY ADVERTISING: Prior results do not ensure a similar outcome.

BLX is a subsidiary of Orrick. BLX does not provide legal services.

Alabama Weighs Covid Aid for Prisons After Wall Street's Rebuff.

- **Earlier state effort to borrow from Wall Street fell apart**
- **State was sued by Justice Dept. in 2020 over prison conditions**

Alabama asked the U.S. Treasury Department whether Covid-19 relief aid can be used to fund correctional system projects, months after the state was unable to tap Wall Street for financing to build two new prisons.

The Alabama Department of Corrections asked Treasury to allow certain prison infrastructure projects as an eligible use of federal aid, according to a July 15 dated letter to the Treasury. The letter sent by Commissioner Jefferson S. Dunn was sent as part of a comment period on federal rules guiding how to spend the $350 billion American Rescue Plan aid that states and municipalities are receiving.

The request to the Treasury department comes months after the state attempted to borrow from the capital markets to raise funds for two new prisons to be owned by CoreCivic Inc. and leased to the state corrections department. The financing drew sharp rebuke from investors and activists and ultimately fell apart after Barclays Plc, the original underwriter, backed out.

It's unclear whether the state wants to use its federal aid to fund those new prisons. Spokespeople at Governor Kay Ivey's office and the corrections department did not respond to requests for comment.

After a multi-year investigation, the Alabama Department of Corrections and the state were sued by the Department of Justice in December for failing to protect male prisoners from violence and unsanitary conditions. Ivey, the architect of the CoreCivic partnership, said the new facilities would help the state improve its prison system.

The state is receiving $2.1 billion of aid as part of the Treasury's Coronavirus State and Local Fiscal

Recovery Funds, meant to help state and local governments fight the pandemic and foster economic recovery. The Treasury's guidelines on how the money can be used is broad, allowing governments to fund everything from stimulus checks to water and sewer infrastructure projects.

The federal guidelines also emphasize using the money to promote equity and targeting the aid to underserved populations. The Alabama Department of Corrections letter said its prison population was disproportionately impacted by the pandemic, saying that Covid-19 stalled things like educational programs.

The state said that allowing certain infrastructure projects to be funded through federal aid would help it respond to the disproportional impact of the pandemic on correctional systems and people who are incarcerated.

After the original financing fell apart, lawmakers floated other options including selling bonds for new facilities that would be owned by the state and using federal stimulus funds to help finance the project, according to AL.com.

"From ADOC's perspective, any ambiguity associated with the Interim Rule should be clarified and additional guidance provided for correctional systems and incarcerated populations to ensure ADOC realizes the benefit and full use of State Fiscal Recovery Funds," the state said in the letter.

Bloomberg Business

By Amanda Albright and Danielle Moran

July 16, 2021, 9:36 AM PDT

D.A. Davidson Closes Bonds on Second-Ever Limited Property Tax Public Infrastructure District.

Transit-Oriented Community to Support Sustainable and Balanced Growth in Payson City, Utah

SALT LAKE CITY–(BUSINESS WIRE)–D.A. Davidson is pleased to announce the company's Special District Group has priced $24 million of tax-exempt bonds in the second-ever limited property tax Public Infrastructure District (PID) financing in Utah.

Red Bridge PID No. 1 will use the bond proceeds to finance critical water, sewer and road infrastructure to serve the Red Bridge Station community as well as key growth areas on the west side of Payson City, Utah. The community is planned for more than 1,000 homes, consisting of primarily multifamily residences. The site is also planned for a number of retail and other general commercial projects, including the potential expansion of the Mountainland Technical College (MTECH) and is in the long term planning for a new Utah Transit Authority Frontrunner and Bus Rapid Transit station (BRT).

"We are proud to partner with the Red Bridge Station development team in conjunction with the City of Payson on this financing. This transit-oriented community is a significant collaborative effort between the developer and Payson to create new zoning, higher density and a PID to finance the critical infrastructure that will get Red Bridge Station off the ground," said Brennen Brown, managing director at D.A. Davidson, Special District Group. "As we continue our expansion in Utah, this landmark community is a perfect example of how public financing through Utah PIDs is an effective tool to unlock sustainable and balanced growth for communities statewide."

D.A. Davidson's Special District Group has experienced significant growth this past year in Utah and Colorado, successfully completing more than 100 transactions, totaling more than $2 billion to fund public infrastructure to support development projects.

"D.A. Davidson's Special District Group made infrastructure funding of Red Bridge Station happen through their unmatched expertise and financial tools," said Joe Spencer, project manager and chairman of Red Bridge PID. "Together we developed a unique financing structure and closely collaborated every step of the way. We simply could not have done it without the D.A. Davidson team and are looking forward to our vision becoming a reality."

A nationally recognized market leader, the D.A. Davidson Special District Group is a team of capital markets professionals principally focused on financing public infrastructure for land development through the issuance of municipal bonds. Powered by decades of industry experience, the team drives groundbreaking solutions with hands-on partnership from project inception to completion.

Construction within the community is anticipated to commence in fall of 2021 and full buildout of the community is anticipated in 2026. For more information, please contact sdgmd@dadco.com.

About D.A. Davidson Companies

D.A. Davidson Companies is an employee-owned financial services firm offering a range of financial services and advice to individuals, corporations, institutions and municipalities nationwide. Founded in 1935 and headquartered in Montana, with corporate offices in Denver, Los Angeles, Portland and Seattle, the company has approximately 1,400 employees and offices in 28 states.

Subsidiaries include: D.A. Davidson & Co., the largest full-service investment firm headquartered in the Northwest, providing wealth management, investment banking, equity and fixed income capital markets services, and advice; Davidson Investment Advisors, a professional asset management firm; D.A. Davidson Trust Company, a trust and wealth management company; and Davidson Fixed Income Management, a registered investment adviser providing fixed income portfolio and advisory services.

For more information, visit dadavidson.com.

July 13, 2021 11:54 AM Eastern Daylight Time

[Preston Hollow Capital Completes Bond Funding for Farms of New Kent Development in Virginia.]

DALLAS–(BUSINESS WIRE)–Preston Hollow Capital ("PHC"), an independent specialty municipal finance company based in Dallas, today announced the successful issuance of two new series of tax-exempt refunding bonds totaling $90 million, the proceeds of which cure the previously defaulted Series 2006 Bonds and adds new liquidity intended to fuel and accelerate residential and commercial growth within the Farms of New Kent Development ("the Development"). The Development is a planned, mixed-use community comprised of four separate land tracts situated on 2,113 acres of land within New Kent County, approximately 20 miles east of Richmond, Virginia and 25 miles west of Williamsburg. When complete, the Development is expected to contain 2,525 diverse residential units, including approximately 1,550 age-restricted units, commercial and retail space. The community is complemented by amenities in the Development, including the Viniterra Winery, Talleysville Brewing Company, and the Club at Viniterra – an 18-hole championship golf course designed by Rees Jones.

Ramiro Albarran, Managing Director at Preston Hollow Capital, said, "We are deeply gratified that our work with both the County and project homebuilders, Ryan Homes and DR Horton, has revived what was a stalled effort and catalyzed an exciting and vibrant community in New Kent County. The refunding we have announced today is a key milestone in our long-term commitment to the community, and we are excited to see the future continue to unfold."

Additional development activity at The Development includes the following:

- **The Arbors**– This D.R. Horton-led development includes the construction of over 300 additional residential family homes in an existing neighborhood that has now grown to over 200 families.
- **The Groves**– Similarly, Ryan Homes has commenced home building on the first phase of The Groves, an active-adult, age-restricted community which is part of 1,164 lots under contract for sale to Ryan Homes. The Groves will augment the existing 155-home Four Seasons age-restricted neighborhood with additional amenities and connectivity. Ryan Homes started its marketing activities and recently closed on the lots for construction of the initial four model homes.
- **Clubhouse and Related Amenities** – Construction of an 8,000 square foot luxury clubhouse with resort-style pool, and an extensive walking and hiking path trail system is underway.

Patricia A. Page, who serves as a Member of the Board of Supervisors for District #3, which includes the Farms of New Kent, added, "I am extremely encouraged by the relationship with Preston Hollow and I'll continue to work closely as The Arbors and The Groves move from a rendering to a beautiful community reality."

In 2006, the original developers through Farms of New Kent Community Development Authority issued $85 million Series 2006 special assessment bonds to finance the construction of certain roads, water and sewer system extensions and other public improvements for the Development. The majority of this infrastructure was completed in 2009. Subsequently, some of the original developers defaulted on their payments of special assessments, ultimately leading to a default of the Series 2006 bonds in 2013 and eventual transfer of approximately 900 acres of the Development's land to the Series 2006 bond trust.

PHC acquired all the defaulted Series 2006 bonds in 2017 and 2018 and instituted its plan to restart residential and commercial development. Since that time, PHC has worked with the Series 2006 Trustee, the Farms of New Kent Community Development Authority, New Kent County, Ryan Homes and D.R. Horton, among others, to reestablish land development and commence homebuilding throughout the community.

About Preston Hollow Capital

Preston Hollow Capital provides specialized impact financing solutions for projects of significant social and economic importance to local communities in the United States. As a team, we bring a decades-long track record of helping communities achieve their financial, sustainability and community impact goals. We do so through a unique partnership model, rigorous and disciplined credit underwriting and creative investment structuring built around delivering speed, certainty, and flexibility to our borrowers.

Contacts

Greg May, Preston Hollow Capital
214.389.0835
gmay@phcllc.com

July 14, 2021 10:25 AM Eastern Daylight Time

- NFMA White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus
- National Public Finance Guarantee Corporation, et al. v. UBS Financial Services Inc., et al: SIFMA Amicus Brief
- SIFMA US Municipal Bonds Statistics.
- Eminent domain case from the US Supremes here.
- Supreme Court of Ohio case on the taxability of airport owned and operated by state university here.
- And finally, Keeping It Classy, Phil is brought to us this week by *Beasley v. Georgia Department of Corrections*, in which Phil Beasley ran into a bit of bother and subsequently sued the Georgia Dept. of Corrections for "creating a public nuisance." Mr. Beasley pointed out in his complaint that – although physically unharmed by the nuisance – he continued to suffer symptoms such as "sadness" following the event. Ya' see, Phil had come to a stop behind a prison transfer bus when these two charmers burst out the bus and jacked Phil's ride. What followed was three days of manhunts, car chases, gun battles, and home invasions. Not to mention the two corrections officers who died on the bus. That's some nuisance. But let's be sure to keep the focus where it belongs: Phil's Very Bad Day of Sadness and Nuisance.

EMINENT DOMAIN - FEDERAL

PennEast Pipeline Company, LLC v. New Jersey

Supreme Court of the United States - June 29, 2021 - 141 S.Ct. 2244 - 21 Cal. Daily Op. Serv. 6471

Natural gas company filed actions under Natural Gas Act (NGA) to condemn properties owned by State of New Jersey for construction of interstate gas pipeline.

The United States District Court for the District of New Jersey denied State's motion to dismiss and granted company's requests for orders of condemnation and preliminary injunctive relief for immediate access to the properties. State appealed. The United States Court of Appeals for the Third Circuit vacated and remanded. Certiorari was granted.

The Supreme Court held that:

- Court of Appeals below had jurisdiction over State's appeal, and
- Actions brought by natural gas companies pursuant to the NGA to condemn rights-of-way in which a State has an interest do not offend state sovereignty.

State of New Jersey's appeal of district court's grant of natural gas company's requests for orders condemning state-owned land, pursuant to Natural Gas Act (NGA), to construct interstate gas pipeline was not collateral attack on certificates of public convenience and necessity issued to company by Federal Energy Regulatory Commission (FERC) to build the pipeline, and thus, State's appeal did not have to be filed in Court of Appeals hearing challenges to FERC's certificate order, which had exclusive jurisdiction to affirm, modify, or set aside that order; State's argument on appeal that NGA did not delegate the right to file condemnation actions against nonconsenting States did not seek to modify FERC's order, but instead asserted a defense against company's condemnation proceedings.

Natural Gas Act (NGA) provision authorizing natural gas companies that hold certificates of public convenience and necessity from Federal Energy Regulatory Commission (FERC) to acquire, through eminent domain, any right-of-way needed to build natural gas pipeline was passed specifically to solve the problem of States impeding interstate pipeline development by withholding access to their own eminent domain procedures.

Condemnation actions brought under the Natural Gas Act (NGA) provision authorizing natural gas companies, which hold certificates of public convenience and necessity from the Federal Energy Regulatory Commission (FERC) to build an interstate pipeline, to condemn all necessary rights-o--way, including land in which a State holds an interest, do not offend state sovereignty, because the States consented at the founding to the exercise of the federal eminent domain power, whether by public officials or private delegatees.

IMMUNITY - GEORGIA

Beasley v. Georgia Department of Corrections

Court of Appeals of Georgia - June 22, 2021 - S.E.2d - 2021 WL 2548838

Citizen and his wife brought action against Georgia Department of Corrections (GDOC), which arose from an incident in which two inmates killed the two corrections officers who were transporting them, confronted citizen, who had stopped his vehicle behind halted prison bus, at gunpoint, and stole his vehicle, alleging that officers created a public nuisance by failing to abide by certain departmental policies in transporting inmates and seeking damages for emotional distress under the Georgia Tort Claims Act (GTCA).

The trial court granted GDOC's motion to dismiss on sovereign-immunity grounds. Plaintiffs appealed.

The Court of Appeals held that:

- Citizen's asserted damages were solely caused by assault and battery perpetrated by inmates, and thus action fell under assault-and-battery exception to GTCA's waiver of sovereign immunity, entitling GDOC to sovereign immunity;
- Citizen's asserted damages were personal injuries, as opposed to a taking of personal property via a public nuisance for which GDOC could be held liable, thus supporting GDOC's entitlement to sovereign immunity; and
- GDOC was entitled to sovereign immunity for its alleged creation of a public nuisance.

ZONING & PLANNING - MISSISSIPPI

Board of Supervisors of Hancock County v. Razz Halili Trust

Supreme Court of Mississippi - June 24, 2021 - So.3d - 2021 WL 2587103

Trust brought action challenging decision by county zoning board to deny trust's application to use its property as a marina.

The Circuit Court reversed. Board appealed.

The Supreme Court held that:

- Board's denial of trust's application was arbitrary and capricious, and
- Board's denial of trust's application was not supported by substantial evidence.

Zoning board's denial of trust's application to use its property as a marina was arbitrary and capricious, despite board's assertion that trust's proposed use of property to load and unload shipments of oysters was prohibited based on definition of a "seafood processor" under state licensing statute; marina was allowed as a matter of right in zone where property was located, whether trust's proposed use of property would classify it as a seafood processor under licensing statute was irrelevant to whether trust was engaged in seafood processing prohibited under local zoning ordinance, and there was no evidence that definition of a marina or prohibited use of seafood processing precluded unloading and loading oysters.

Zoning board's denial of trust's application to use its property as a marina was not supported by substantial evidence, despite board's assertion that trust intended to use property to process seafood, which was a prohibited use in zone where property was located; all evidence presented to board in trust's application and board meetings indicated that trust was applying to operate a marina as defined by local zoning ordinance, specifically that trust intended to use property to receive shipments of oysters, to unload oysters, to load them into refrigerated trucks, and to ship them out of state, and board was presented with no evidence that trust's intended use of property constituted a prohibited processing use under ordinance.

EMINENT DOMAIN - NEBRASKA

Sanitary and Improvement District No. 67 of Sarpy County v. Department of Roads

Supreme Court of Nebraska - June 25, 2021 - N.W.2d - 309 Neb. 600 - 2021 WL 2603414

County sanitary and improvement district brought inverse condemnation action against state arising from re-routing of highway.

The District Court dismissed on the pleadings. Sanitary and improvement district appealed.

The Supreme Court held that sanitary and improvement district, a state political subdivision, lacked standing to bring inverse condemnation action against state.

County sanitary and improvement district was not a person having private property, and thus it was not the real party in interest and lacked standing to bring inverse condemnation action against state arising from re-routing of highway.

LAND USE & DEVELOPMENT - OKLAHOMA

[Immel v. Tulsa Public Facilities, Authority]

Supreme Court of Oklahoma - June 22, 2021 - P.3d - 2021 WL 2548600 - 2021 OK 39

Taxpayers brought action seeking declaratory judgment that city's public facilities authority and city could not sell 8.8 acres of park land to a prospective private developer for the construction of a commercial shopping center because the land was held in a public trust expressly as a park for the people.

The District Court granted authority's and city's motions for summary judgment. Taxpayers appealed.

The Supreme Court held that:

- Taxpayers had standing to bring action in equity, rather than qui tam, seeking declaratory judgment against authority and city;
- Authority and city were prohibited from selling tract of park to developer, unless the public use had been abandoned or the park had become unsuited for continued use;
- Factual issue existed as to whether tract of park had been lawfully abandoned, and as such relinquished, by authority and/or city, as would have authorized its sale without special legislative authority, thus, precluding summary judgment in taxpayers' action; and
- Factual issue existed as to whether the expenditure of public funds by authority and city, namely, sale of tract of park and allocation of tax funds for infrastructure development to same developer met the constitutional public purpose requirement for investment of public funds in private enterprises, thus, precluding summary judgment in taxpayers' action.

Taxpayers had standing to bring action in equity, rather than qui tam, seeking declaratory judgment that city's public facilities authority and city could not sell 8.8 acres of park land to a private developer for the construction of a commercial shopping center because the land was held in a public trust expressly as a park for the people; taxpayers asserted that the $570,000 in city funds to be paid to prospective private developer would have been an illegal expenditure.

City's public facilities authority and city were prohibited from selling tract park to prospective private developer, unless the public use had been abandoned or the park had become unsuited for continued use, despite the fact that legal title had been transferred via a quit claim deed from city to a public trust; the park land was held by authority, a public trust, for the use and benefit of the citizens as a public park, the park land was held in a governmental capacity for use by the public, such that it could not be sold without special legislative authority, and it was undisputed that there was no special legislative authorization empowering authority and city to sell that tract of the park to a private developer for commercial use.

Genuine issue of material fact existed as to whether tract of park which city's public facilities authority and city was attempting to sell to private developer for construction of a commercial shopping center, had been lawfully abandoned, and as such relinquished, by authority and/or city, as would have authorized its sale without special legislative authority, thus, precluding summary judgment in taxpayers' action seeking declaratory judgment that authority and city could not sell that tract to prospective private developer.

Genuine issue of material fact existed as to whether the expenditure of public funds by city public facilities authority and city, namely, sale of tract of park for 20% of its market value to private developer and allocation of a half million dollars in tax funds for infrastructure development to same developer met the constitutional public purpose requirement for investment of public funds in private enterprises, thus, precluding summary judgment in taxpayers' action seeking declaratory judgment that authority and city could not sell that tract to prospective private developer.

IMMUNITY - PENNSYLVANIA

Degliomini v. ESM Productions, Inc.

Supreme Court of Pennsylvania - June 22, 2021 - A.3d - 2021 WL 2546382

Bicyclist who was injured when he rode into unmarked and un-barricaded sinkhole on city street during charity bike ride brought negligence action against city, among other parties.

Following jury verdict in favor of bicyclist, the Court of Common Pleas denied city's motion for post-trial relief and granted bicyclist's motion for delay damages. City appealed. The Commonwealth Court reversed. Bicyclist petitioned for discretionary review.

The Supreme Court held that pre-injury exculpatory release granting city immunity from duty to maintain city streets violated public policy, and was thus invalid.

Enforcement of pre-injury exculpatory release to grant city immunity in negligence action by bicyclist who was injured when he rode into unmarked and un-barricaded sinkhole during charity bike ride would have jeopardized health, safety, and welfare of public at large by removing any incentive for city to exercise minimal standards of care due to maintain public streets in reasonably safe condition for reasonably foreseeable uses, thus rendering release invalid as it violated public policy principles definitively stated in Political Subdivision Tort Claims Act; city's duty to exercise reasonable care in discharging its independently-derived and essential function of street repair arose long before event, when city had actual notice or could reasonably have been charged with notice of existence of sinkhole.

ZONING & PLANNING - SOUTH CAROLINA

Croft as Trustee of James A. Croft Trust v. Town of Summerville

Supreme Court of South Carolina - June 16, 2021 - S.E.2d - 2021 WL 2448236

Residents and public interest groups sought judicial review of decision by town board of architectural review approving construction of proposed development project.

The Court of Common Pleas affirmed. Residents and public interest groups appealed. The Court of Appeals affirmed. Residents and public interest groups filed petition for writ of certiorari, which was granted.

The Supreme Court held that:

- Appeal from decision affirming board's approval of project was moot;
- Exception to mootness doctrine for issues capable of repetition, yet evading review, did not apply; and
- Public interest exception to mootness doctrine did not apply.

Appeal from decision affirming decision by town board of architectural review approving construction of proposed development project was moot; issue was whether developer could build the project as approved by the board, controversy ended when developer decided not to build project while appeal was pending, and decision rendered for either party would not provide any practical relief and would be a purely academic exercise by appellate court.

Exception to mootness doctrine permitting appellate court to decide merits of moot appeal for issues capable of repetition, yet evading review, did not apply to appeal filed by residents and public interest groups challenging decision affirming approval of proposed development project by town board of architectural review on grounds of purported Freedom of Information Act (FOIA) and town ordinance violations, which was rendered moot when developer decided not to build project while appeal was pending; although issues related to purported FOIA and ordinance violations were capable of repetition, they did not evade review, since appeal did not become moot because there was insufficient time to challenge board's approval before controversy ended.

Public interest exception to mootness doctrine did not apply to permit appellate court to decide merits of appeal filed by residents and public interest groups challenging decision affirming approval of proposed development project by town board of architectural review on grounds of purported Freedom of Information Act (FOIA) and town ordinance violations, which was rendered moot when developer decided not to build project while appeal was pending; while it was important that citizens had the ability to stay informed of the activities of public bodies, there was no imperative or manifest urgency requiring appellate court to issue opinion on application of FOIA and town ordinances to board's activity.

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 June) $228.2 billion, +8.5% Y/Y
Trading (as of June) $9.3 billion ADV, -33.8% Y/Y
Outstanding (as of 1Q21) $4.0 trillion, +2.7% Y/Y

Download XLS

July 6, 2021

States Finalize Fiscal 2022 Budgets (Updated 7/9)

As of July 9, 46 states have enacted a full-year budget for fiscal 2022. States have been enacting fiscal 2022 budgets during a time when fiscal conditions continue to strengthen as the economy recovers from the pandemic and additional federal aid flows to state and local governments. As noted in NASBO's Spring 2021 Fiscal Survey of States, 40 out of 50 states saw revenue declines compared to pre-pandemic projections over the two-year period from fiscal 2020 to fiscal 2021. However, most states' enacted fiscal 2022 budgets include an increase in both state spending and revenue.

Forty-six states began their fiscal years on July 1. New York starts its fiscal year on April 1; Texas begins on September 1; and Alabama and Michigan start their fiscal years on October 1. Forty-eight states are enacting a new budget for fiscal 2022. Virginia and Wyoming, which both enacted two-year budgets for fiscal 2021 and fiscal 2022 in calendar year 2020, approved budget adjustments to their biennial budgets. Kentucky, which would normally have passed a two-year budget in calendar year 2020, passed a one-year budget only for fiscal 2021 due to revenue uncertainty created by COVID-19, and enacted a new budget for fiscal 2022 this year. Of the 48 states passing a new budget for fiscal 2022, 17 states are enacting a biennial budget for both fiscal 2022 and fiscal 2023.

Below is additional information on the states that have yet to enact a full-year budget for fiscal 2022:

1. **Massachusetts** – The legislature finalized the budget of July 9, and the governor has ten days to act on the bill.
2. **Michigan** – The state's fiscal year does not begin until October 1. The legislature is finalizing the budget.
3. **North Carolina** – The Senate passed the budget on June 25 and the House is now considering the bill. State law allows spending to continue at current levels until a new budget is enacted.
4. **Oregon** – The governor is completing acting on agency budget bills. The state is currently operating under a continuing resolution for the unsigned bills.

Please click here for links to proposed and enacted budgets, as well as prior budget summaries.

NASBO

By Brian Sigritz

S&P U.S. State Ratings And Outlooks: Current List

View the Current List.

S&P: COVID-19 Activity In U.S. Public Finance

Here are links to coronavirus-related activity in U.S. public finance. This file will be updated regularly.

Download

Fitch Ratings Revises Outlook for U.S. Colleges and Universities to Stable.

Fitch Ratings-Chicago-07 July 2021: U.S. colleges and universities are heading into the second half of this year with more cautious optimism as they plan for largely in-person instruction heading into the 2021–2022 academic year, according to Fitch Ratings in a new report.

Fitch has revised both the sector and Rating Outlook to Stable with affirmations likely to dominate rating activity for colleges and universities in the coming months.

‘The $76 billion federal stimulus offset tuition and auxiliary losses associated with the coronavirus pandemic, as well as unplanned coronavirus expenses,’ said Fitch Senior Director Emily Wadhwani. ‘The application pipeline is growing, especially for top choice schools, while improved revenue prospects for state budgets could lead to improved auxiliary and student fee revenues in the coming academic year as students return to campus.’

Areas of risk still remain. The benefits of federal stimulus continue to prop up operations and have aided in improving state budget conditions and funding expectations. Some near-term downgrades are possible for institutions with persistent and insurmountable operating and cash flow pressures due to constrained revenues from enrollment, auxiliary systems, fundraising and state appropriations.

Enrollment will be a key area to watch, with undergraduate enrollment likely to recover somewhat this fall. A rise in test-optional admissions has led to a meaningful increase in applications, though FAFSA application rates have lagged, forcing some institutions to extend their application deadlines. A more uncertain fall 2021 admissions cycle may disproportionately affect regional public colleges/universities and less selective private institutions.

‘Although the risk of a resurgence in the pandemic remains, colleges and universities are generally better positioned to navigate these conditions after a year of hybrid delivery,’ said Wadhwani.

‘Fitch Ratings 2H21 Outlook: U.S. Public Finance Colleges and Universities’ is available at ‘www.fitchratings.com.’

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Fitch: Post-Coronavirus Pressures to Worsen Credit Gap for U.S. Colleges

Fitch Ratings-Chicago/New York-07 July 2021: Elevated revenue pressure and slowing tuition growth will exacerbate an already widening credit gap for U.S. colleges and universities, according to Fitch Ratings in its annual medians report for the sector.

The annual change in net tuition revenue was the lowest in recent history at 1.9% for private institutions, and the median student fee percentage of total revenue fell to 34.5% for public institutions, its lowest since fiscal 2011. Colleges rated ‘BBB’ and below are the most vulnerable to rating pressure in the coming months. According to Fitch Senior Director Emily Wadhwani, ‘These colleges are often smaller in enrollment size, have limited endowments and tend to attract more local and regional students.’

Conversely, median ratings were steadier at ‘AA’ for public institutions and ‘A–’ for private institutions. Notably, the ‘A’ rating category had some of the strongest operating and cash flow margins in fiscal 2020, as this group has very little healthcare-oriented services, which were significantly pressured by the pandemic at the end of fiscal 2020.

Liquidity has improved while leverage is holding steady for colleges, both of which have helped the sector in recent months. The Biden administration’s American Rescue Plan (ARP), American Jobs Plan (AJP) and American Families Plan (AFP) has also helped to blunt the pandemic’s impact for colleges, but this temporary aid will run off beyond 2022. Most revenue from of the three federal stimulus rounds to higher education will be recognized in fiscal years 2021 and 2022.

‘While federal stimulus provided a significant boost to the sector, the likelihood of additional direct aid authorizations in the event of a resurgence in the pandemic is unlikely,’ said Wadhwani.

Fitch’s ‘Fiscal 2020 Median Ratios for U.S. Colleges and Universities’ is available at ‘www.fitchratings.com’.

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How the West’s Searing Heat Wave Could Affect Muni Bonds.

It probably isn’t the first asset class investors think about with regard to climate change and scorching temperatures, but municipal bonds may be worth closely monitoring as soaring temperatures punish the western part of the U.S.

Still, the iShares National Muni Bond ETF (NYSEArca: MUB) is modestly higher over the past month. All things considered, that’s a solid showing, particularly against the backdrop of 44 million Americans living in drought-ravaged regions. As Charles Schwab’s Cooper Howard points out, severe droughts and other heat-related conditions could carry negative implications for some issuers of municipal debt.

"The drought and severe heat wave could lead to negative credit implications for some muni issuers, but we anticipate that most issuers will be able to adequately manage through the risks," notes Howard. "The drought and heat wave could impact issuers in numerous ways, such economic disruption leading to reduced revenues, increased expenses due to recovery efforts, damage to physical infrastructure, increased energy demands, and the potential for outmigration."

That's relevant for investors considering MUB or any number of municipal bond exchange traded funds because California, as one of the largest issuers of municipal debt, is often among the biggest state exposures in muni ETFs. It's one of five states – the others are New York, Texas, Florida, and Illinois – that combine for half of outstanding muni bonds.

California's current drought is so severe that some almond farmers are simply giving up. Additionally, there's ongoing debate about water rights in the Golden State, as some towns are without water entirely and customers in other locations are complaining about the quality of their drinking water.

Fortunately, California's drought won't kill the case for municipal bonds, particularly for investors accessing these bonds via broad-based ETFs.

"We do not expect the drought to affect returns for the broad municipal bond market. Historically, no issuer that Moody's rates has ever defaulted, or missed an interest or principal payment, due to a natural disaster, which includes wildfires. Moreover, the geographical diversity of the muni market helps to mitigate the impact of the severe heat and the drought," notes Howard.

California is home to one of the largest state budget surpluses in the country, which could help it avoid muni defaults, if they arise by way of droughts and wildfires. Another avenue for investors to consider is to focusing on shorter-duration munis.

"Focusing on shorter-term bonds can help to reduce the risk that outmigration and an erosion of the tax base may have on muni issuers," according to Howard.

ETF TRENDS

by TOM LYDON

JULY 7, 2021

Congress Fails Schoolkids Struggling to Learn Online.

The pandemic exposed the gaps in the U.S. broadband infrastructure.

The Covid-19 pandemic exposed the weaknesses of the U.S. broadband infrastructure — a problem that hit schoolchildren especially hard. Millions of them had to struggle through online learning with little internet access, or none at all.

The compromise infrastructure package announced last month by a bipartisan Senate committee and supported by President Joe Biden includes $65 billion for much-needed broadband expansion. That would help solve the problem, but gaps would remain.

In wide swaths of the U.S., many children live in households without internet access at home; in some places the number exceeds 50%. Among those that have access, download speeds often do not meet the Federal Communication Commission's minimum standard for broadband, defined as download speeds of 25 megabits per second and upload speeds of 3 mbps.

Continue reading.

Bloomberg Opinion

By Andrea Gabor

July 9, 2021, 4:00 AM PDT

How Governments Can Leverage Federal Funds to Partner With Local Nonprofits.

The American Rescue Plan allows states and localities to funnel federal relief dollars to nonprofit organizations, which the National Council of Nonprofits says could be key to local economic recovery.

State and local governments can use federal coronavirus relief funds to partner with nonprofit organizations in their communities, aiding local recovery efforts by expanding existing programs or creating new ones, the National Council of Nonprofits advises in a new report.

"Nonprofits and governments are natural partners, serving the same constituents in the same communities," the document says. "Partnerships between the sectors allow for leveraging of resources, relationships, and strengths to serve those communities even better."

The report seeks to serve as a resource for government officials who may not know that the guidelines for relief funds distributed through the American Rescue Plan Act specifically allow for assistance to nonprofit organizations. That funding is desperately needed, as most nonprofits have seen increased need from constituents while also facing layoffs and reduced donations during the pandemic, said Tiffany Carter, policy counsel at the National Council of Nonprofits and the report's lead author.

Continue reading.

Route Fifty

By Kate Elizabeth Queram

JULY 2, 2021

Fitch Ratings Updates Public Finance and Global Infrastructure ESG Dashboard.

Fitch Ratings-New York/London-08 July 2021: Fitch Ratings has updated the interactive ESG dashboard for public finance and global infrastructure and its interactive ESG relevance heatmap for 2Q21.

The dashboard is a tool that shows the distribution of Fitch's ESG Relevance Scores (ESG.RS) for 2,750 issuers and transactions across the Global Infrastructure Group (Infrastructure), International Public Finance Local and Regional Governments (IPF LRG), IPF Government Related Entities (IPF GRE), and U.S. Public Finance Tax Supported (USPF Tax) and USPF Revenue sectors.

The heatmap shows the highest ESG.RS for a given ESG issue that applies to a minimum percentage of rated issuers within a given sector.

We updated scores for 529 issuers and transactions in 2Q21. IPF LRG had 117 issuers updated with two entities with a decrease from a '4' to a low impact ('3') in the environmental and social categories.

USPF Tax had 280 updates with two entities seeing increased ESG.RS to '4' in governance issues for 'Rule of Law, Institutional & Regulatory Quality, Control of Corruption'. USPF Revenue had 316 updates, with seven increases to an ESG.RS of '4' or '5'. Most of the changes were seen in governance issues, followed by environmental and one in social issues.

Infrastructure had 99 updates with one entity decreasing from a '4' to a low impact ('1' to '3') in governance.

IPF GRE had 56 updates and remained stable in ESG.RS changes.

The reports, 'ESG Public Finance Interactive Dashboard – 2Q21' and 'Public Finance ESG Relevance Heatmap – 2Q21', are available at fitchratings.com.

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Covid Stimulus Offers Trove of Cash for Infrastructure.

Talks over a spending deal are dragging on in Washington. The good news is, the fine print in the latest pandemic relief package already sets up an influx of funds for critical projects.

When it comes to fixing the nation's crumbling roads and sewers, all eyes are on a $579 billion bipartisan framework brokered by the White House last month. Like most things in Washington, the path forward for that spending bill is riddled with political potholes. The good news for manufacturers, though, is that the U.S. has actually already signed off on a potentially meaningful influx of fresh infrastructure spending through the latest $1.9 trillion Covid stimulus program passed in March.

The American Rescue Plan — Congress's sixth bout of fiscal stimulus to combat the pandemic by my count — is better known for its $1,400 stimulus checks and the extension of enhanced unemployment benefits. But the package also includes $123 billion in K-12 education-related spending and $350 billion in state and local aid, among other things. The first priority for this money is fighting the virus and its myriad effects on the economy, but infrastructure-related expenditures — such as air-conditioning upgrades and investments in improving the quality of drinking water — are also among the acceptable uses for those two buckets of funds. Because the total appropriations are so large, even a partial contribution to water and education-facility projects could translate into a level of extra infrastructure spending that's comparable or larger than what was included in the 2009 financial crisis bailout, Bank of America Corp. analyst Andrew Obin wrote in an April report.

Continue reading.

Bloomberg Opinion

By Brooke Sutherland

July 9, 2021, 6:00 AM PDT

Infrastructure Legislation And Its Impact On The Municipal Market.

Summary

- While political forces could alter their course, we believe that passage of these infrastructure bills would have a positive impact on the municipal market.
- If enacted into law, taxes for high income earners are likely to increase, which could fuel additional demand for tax-free municipal bonds, particularly in high tax states.
- In short, we believe infrastructure legislation would provide investors with new and expanded investment opportunities and issuers with additional opportunities to issue debt in a cost-effective manner.

Continue reading.

Seeking Alpha

Jul. 09, 2021

What Regional Leaders Want From Biden's Infrastructure Bill.

Federal infrastructure policy has the power to transform America's cities and suburbs, including where they grow and who benefits from federal investments. But leaders in Washington can't achieve that transformative impact without understanding the needs of regional leaders who grapple with infrastructure challenges every day.

Today, we are living with the legacies of the federal government's last grand infrastructure vision developed over the past century. Transportation investments such as the interstate highway system and port expansions boosted business competitiveness and accelerated the development of suburban housing, but also uprooted families and increased pollution. The National Flood Insurance Program and other environmental regulations aimed to reduce climate risks in neighborhoods, but often failed to insulate households from harm—particularly, homes constructed in flood plains and sensitive coastal areas. Too often, 20th century federal policies incentivized metropolitan economies to expand outward but did not offer enough flexible resources to help independent jurisdictions coordinate regional strategies.

Now with a major congressional negotiation on infrastructure underway and a new presidential administration in place, federal leaders have a historic opportunity to revisit past policies to better support today's metropolitan leaders and their contemporary ambitions. That process, though, must start with a clear understanding of what regional leaders need—and not just infrastructure agencies, but also the business leadership and community groups that all collaborate to build competitive, inclusive, and resilient economies.

Continue reading.

The Brookings Institution

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

Thursday, July 8, 2021

'Trying to Strangle Local Governments:' What Happens When States and Their Cities Become Adversaries?

'The relationship and potential antagonism between a city and its state is widely underinvestigated,' says one public-finance analyst

Last September, presenting his proposed 2021 budget, Milwaukee Mayor Tom Barrett laid out a somber picture of his city's finances.

Even before COVID-19 hit, Barrett said, "our budget challenges reached a crescendo." Just weeks earlier, the city sustained a debt-rating downgrade, in part because it was spending down reserves.

"We've [spent those reserves] to maintain our vital services without any growing revenue," Barrett continued. "This, of course, is a direct result of our relationship with the state of Wisconsin and legislature in particular."

Continue reading.

MarketWatch

By Andrea Riquier

July 8, 2021

A Look at What’s Driving Muni Bonds in 2H 2021.

Municipal bonds have always been an attractive fixed income asset class thanks to their tax-advantaged status and government safety net – especially for investors that fall into higher tax brackets. These benefits have become even more pronounced with potential capital gains tax increases for high earners and rising inflation.

According to Municipal Market Analytics, investors snapped up more than $40 billion worth of muni bonds during the first half of the year, which was the most over the same period since 2008.

Let’s look at these trends and three reasons they are poised to continue into the second half of the year.

Stabilizing Quality

Moody’s Investors Service raised its outlook for state and local governments to “stable” from “negative” after the $1.9 trillion pandemic relief bill passed in March, saying that the funds would stabilize state finances and help avoid local government funding cuts. The upgrade helped draw many investors back into muni bonds after the sell-off.

State governments have also been able to raise billions of dollars on highly favorable terms in recent months. For example, Illinois saved millions of dollars when it borrowed $1.26 billion in mid-March, paying just 1.09% compared to 3.42% on comparable bonds. These sales have helped increase supply, while refinancing has improved credit ratings.

Rising Interest Rates

Interest rates have been on the rise over the past year. For instance, 10-year Treasury yields have risen from a low of nearly 0.5% during the middle of last year to about 1.75% earlier this year. In addition, annual inflation rates have been running at about 5%, thanks to a nearly 50% increase in lumber prices and a 30% increase in energy prices.

Municipal bonds aren’t nearly as sensitive to interest rates as Treasuries or corporate bonds. This is because many investors hold the bonds until maturity, creating stickier prices unless rates truly start to accelerate. The tax-advantaged status of muni bonds also offsets some interest rate risks, as many investors prefer to avoid taxes – even if rates rise.

Taxes & Incentives

The Biden administration’s proposed tax changes could make municipal bonds even more attractive to investors. In particular, the president’s proposal to hike top capital gains rates to 39.6% could make after-tax muni yields attractive. After all, the after-tax yield of a 5% muni bond is closer to an 8% corporate bond for investors in the 35% tax bracket.

The latest bipartisan infrastructure plans could incentivize municipalities to issue more public-private bonds, private activity bonds and direct-pay bonds on the supply side. While Build America Bonds have been popular since 2009, there is substantial demand for additional types of bonds that could offer higher interest rates than general obligation issues.

Risks Remain

There are many different types of municipal bonds. Each bond has its issuer, structure, creditworthiness, income potential and other factors that investors must consider. During today's low-yield environment and supply-demand imbalance, investors cannot rely on high-quality municipal bonds to meet income requirements.

High-quality state general obligation bonds may not have a lot of upside in today's environment, which means investors may have to seek out sectors where post-pandemic recoveries still offer the potential for improvements. These higher-yielding opportunities provide more cushion against rising rates but come at potentially greater risk.

The Bottom Line

Municipal bonds have always been an attractive asset class due to their unique tax advantages and government safety net. That said, with rising interest rates, improving credit quality and the prospect of higher taxes, these bonds have become even more attractive in recent months, setting the stage for further outperformance during 2H 2021.

Other trends could continue driving the sector higher beyond 2021. For example, the rise of impact investments has boosted interest in climate and social change muni bonds, from bonds funding K-12 schools in underserved communities to alternative energy investments. These trends could accelerate in 2022 and beyond.

dividend.com

by Justin Kuepper

Jul 07, 2021

Janney Set to Be Ousted From Stalled N.J. Water Park Muni Deal.

- **Developer seeks to draw families to East Coast gambling hub**
- **Debt sale pushed back as underwriter pitched deal to buyers**

Janney Montgomery Scott LLC is set to be ousted as the underwriter of $95 million of municipal bonds that will finance the construction of an indoor water park in Atlantic City, New Jersey, after the sale failed to close as planned.

Developer Bart Blatstein said in an interview Monday that he would like to hire Citigroup Inc., which he termed "better equipped to handle such a large and unique transaction." The bonds would be issued through the Atlantic County Improvement Authority, which would have to approve the new appointment.

Such a change in underwriters after a deal has already been set to price is rare in the municipal bond market, where recently even the riskiest securities have easily found buyers as cash pours into high-yield funds. The Atlantic City bonds were initially set to be sold in late May but were shifted to so-called day-to-day status, a step underwriters take when they need more time to drum up buyers.

"Investor demand has not been as robust as hoped," Jeffrey Winitsky, a lawyer at Parker McCay, the developer's counsel, wrote in an email on Wednesday. He said the deal was pulled with the expectation that a new underwriter would be hired to "give the transaction a fresh perspective and marketing effort."

Citigroup is the municipal market's second-largest underwriter and, like other big Wall Street banks, has a broad national reach. The Philadelphia-based Janney is a regional investment bank ranked 31 this year, underwriting a fraction of what Citigroup has, according to data compiled by Bloomberg.

The project marks a wager by the Philadelphia developer that more families can be lured to the struggling gambling city, which has seen its one-time monopoly on gambling in the East Coast steadily erode as other states legalized casinos. That forced several to shut down in Atlantic City and drove New Jersey to rescue the city from bankruptcy in 2016.

But Blatstein said he's optimistic about the city's prospects. "I'm incredibly bullish on Atlantic City," he said, adding that he expected to buy $10 million of the new bonds.

Citi spokesperson Scott Helfman said via email that the bank had no comment. Janney spokesperson Bradd DelMuto also said via email that the bank had no comment.

The original deal for the 100,000-square foot "Island Water Park" was unrated and being offered only to accredited investors and qualified institutional buyers capable of bearing the risk, according to the preliminary offering memorandum dated May 18 and posted on the MuniOS website. The bonds will be repaid with revenue from the park's operations.

The theme park will include a looping "lazy river," multiple water slides, three pools and five bars, including a swim-up bar and a two-level treehouse bar. The feasibility study attached to the original deal, by William L. Haralson & Associates, projected attendance at 626,523 in its first year of operation, rising to 773,523 in year five. Admission would range from $99.99 for adults to $69.99 for children, and there would be off-peak rates and hotel package discounts. The park was expected to be ready by May 31, 2022.

Bloomberg Business

By Joseph Mysak Jr

July 7, 2021, 8:49 AM PDT

[Yankees Spat With Nuveen Over Spaces Delays Parking Deal.]

- **City says club wanted last minute change to bond restructuring**
- **Deal would remove obstacle to new soccer arena in the Bronx**

A deal to restructure $240 million of municipal bonds sold for underutilized parking garages at Yankee Stadium is on hold because of a spat over parking spaces.

New York last month delayed a Bronx Borough Board vote on a preliminary deal to resolve the long-running default after the New York Yankees sought to change key terms just days before the meeting, city officials said. The team wanted Nuveen LLC, the majority holder of debt for the underused garages, to guarantee 5,500 parking spaces for events, a provision that wasn't included in a term sheet signed by Nuveen, the Yankees and the city.

"After years of negotiations with the Yankees and other parties, we are disappointed they will not commit to promises already made to the city and the community," said Rachel Loeb, president and chief executive officer of New York's Economic Development Corporation in a statement. "The underutilized parking lots around Yankee Stadium can be so much more than they are today, and the South Bronx deserves a plan to build a healthier and stronger community."

The debt restructuring would remove an obstacle to the construction of a new soccer arena for Major League Soccer's New York City Football Club as part of a $1 billion development project. Municipal bonds issued in 2007 to finance the construction of three garages and the renovation of other parking facilities at the new baseball stadium have been in default for eight years. The garages never generated enough revenue to pay the debt or rent to the city as fans preferred public transportation or ride-sharing services or sought out cheaper spots to park.

The preliminary agreement called for the city to split the current lease for 13 parking facilities near the stadium between Nuveen and Maddd Equities, which has proposed building the 25,000-seat soccer arena, affordable housing and a hotel on parking lots near the stadium.

Maddd would pay bondholders $46.3 million for its share of the current lease and bondholders would retain the lease for the remaining four parking garages and two lots, which have 5,611 spaces, according to the city, a number the Yankees dispute. Nuveen, which held $156 million of the parking debt as of May 31, intends to hire a firm to operate the remaining facilities.

The parking garage bonds last traded June 7 in blocks at 82 cents on the dollar. The trades, which came days after the preliminary restructuring deal was disclosed, were almost 70% higher than May.

City officials said that from the start Nuveen told the Yankees that the investment firm wouldn't provide additional rights beyond those in the current lease. However, Yankees president Randy Levine maintains that city had provided a guarantee for the number of spaces to be used at team events.

"I am extremely disappointed and heartbroken over the city's reneging on guaranteeing parking spots for Yankee stadium events and the community," Levine said in a telephone interview. "The whole purpose of the bond issuance was to provide for parking spots for Yankee stadium events and the community."

Jessica Greaney, a Nuveen spokeswoman, said Nuveen remains committed to a deal "set forth in the term sheet and looks forward to a continued strong relationship with the Yankees and the City." The parties have been working on a plan to build the soccer stadium and resolve the bond default for more than two years.

City officials also said they were committed to reaching a resolution with the parties that benefits the Bronx and the city. New York delayed a Bronx Borough Board vote on the lease until the fall to give the parties more time to negotiate.

Bloomberg Markets

By Martin Z Braun

July 8, 2021, 9:17 AM PDT Updated on July 8, 2021, 2:12 PM PDT

Munis In Focus: Latest On Stalled N.J. Waterpark Deal (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

July 9, 2021

High-Yield Munis Still Have ‘Room to Go’: Columbia Threadneedle's Stienstra

Catherine Stienstra, head of municipal investments at Columbia Threadneedle Investments, says BBB rated and other high-yield municipal bonds could still have “room to go” on “Bloomberg Markets: The Close.” (Source: Bloomberg)

Watch video.

Bloomberg Markets: The Close

July 7th, 2021, 1:28 PM PDT

TAX - OHIO

O'Keeffe v. McClain

Supreme Court of Ohio - June 30, 2021 - N.E.3d - 2021 WL 2671329 - 2021-Ohio-2186

Property owner sought judicial review of a decision of the Board of Tax Appeals affirming tax commissioner’s denial of owner’s complaint challenging an exemption from property taxation for parcel on which state university operated a full-service airport.

The Supreme Court held that:

- University had burden of proving its entitlement to exemption;
- Exemption could be predicated on operational relationship between use of airport and university’s activities;
- University established its right to exemption; and
- Hangars and offices leased for private use did not have to be split-listed as taxable.

State university had the burden of proving its entitlement to an exemption from property taxation for parcel on which the university operated a full-service airport, in action challenging the exemption brought by another property owner.

State university could predicate an exemption from property taxation for parcel on which the university operated a full-service airport on the operational relationship between the use of the airport and the university’s activities, subject to a primary-use test.

State university established its right to an exemption from property taxation for parcel on which the university operated a full-service airport; student flight education, course in airport management, and course in airport planning and design were examples of how university's operating a public airport directly served educational purposes, of the approximately 100 employees who maintained airport operations, 35 were student employees, and there were two research facilities on the property, namely, a gas-turbine lab and an aerospace-research center.

Hangars and offices leased for private use on parcel on which state university operated a full-service airport did not have to be split-listed as taxable; statute governing exemption from taxation for property of a state university did not say that property had to be used exclusively in an operational relationship with university activities, but instead the statute used the phrase "used for the support of" the university, which encompassed the receipt of income from ancillary activities on the property.

TAX - GEORGIA

Jones v. City of Atlanta

Court of Appeals of Georgia - June 25, 2021 - S.E.2d - 2021 WL 2621445

Water and sewer customer, on behalf of a class similarly situated, sought review of decision of appeals board for the city department of watershed management finding that it lacked jurisdiction to rule on legality of city ordinances authorizing department to impose a franchise fee and a payment in lieu of taxes (PILOT), which customer alleged were illegal taxes for which he and similarly situated customers were entitled to a refund.

The Superior Court granted city's motion to dismiss, finding that it lacked subject matter jurisdiction over customer's claims due to customer's failure to meet 30-day deadline for applying for a writ of certiorari, and, alternatively, granted city's motion for judgment on the pleadings, concluding that the fees were not illegal taxes. Customer appealed.

On transfer from the Supreme Court, the Court of Appeals held that:

- Limitation period in statute governing refunds of erroneously or illegally assessed taxes, rather than 30-day limitation period for seeking a writ of certiorari, applied to customer's suit seeking review of appeal board's decision, and
- Customer exhausted his administrative remedies.

Limitation periods in statute governing refunds of erroneously or illegally assessed taxes, providing that "no suit may be commenced until the earlier of the governing authority's denial of the request for refund or the expiration of 90 days from the date of filing the claim" and "under no circumstances may a suit for refund be commenced more than five years from the date of the payment of taxes or fees at issue," rather than 30-day limitation period for applying for writ of certiorari, applied to suit seeking review of agency's decision on water and sewer customer's claim for refund of franchise fee and payment in lieu of taxes (PILOT) paid to city department of watershed management; tax refund statute did not reference certiorari procedure or its 30-day limitation period.

Water and sewer customer, who claimed that franchise fee and a payment in lieu of taxes (PILOT) paid to city department of watershed management were illegal taxes for which he was entitled to a refund, exhausted his administrative remedies, where customer received a final decision from appeals board for department, pretermitting whether department was proper "governing authority" with whom to challenge tax, and customer's remaining course of action was to seek judicial review of appeal board's decision.

National Public Finance Guarantee Corporation, et al. v. UBS Financial Services Inc., et al: SIFMA Amicus Brief

Court:
Puerto Rico Appeals Court

Amicus Issue:
Whether plaintiffs claim that they reasonably relied upon the due diligence conducted by underwriters, where underwriters included standard industry disclaimers to the effect that underwriters do not guarantee the accuracy or completeness of the information in the offering documents, can survive a motion to dismiss.

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Read the SIFMA Amicus Brief.

NFMA White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus

White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus Released

- White paper, dated June 2021
- Press release, dated July 6, 2020

Eaton Vance's Trachtenberg to Retire After Decades Trading Munis.

- **Co-chair of Municipal Bond Women's Forum recalls career arc**
- **Love for trading started at United California Bank in the '70s**

When she was starting out in the 1970s, Debe Trachtenberg discovered she loved everything about working on bond-trading desks — but gaining a foothold in the male-dominated industry required a good bit of grunt work for young women at the time.

Now she's set to retire in September after more than four decades in fixed income, having founded the municipal trading desk at Eaton Vance Management and earned a reputation as an advocate for women in finance and a mentor for younger colleagues.

Trachtenberg, 67, got her start in municipal debt helping United California Bank participate in local governments' short-term note auctions. Back then, cities would advertise debt offerings in The Bond Buyer newspaper. But there was a catch: The sales took place in person, nationwide. So Trachtenberg's job was to call local banks in various states to recruit someone willing to go to the auction and submit a bid in person.

That bank was where Trachtenberg first gained an appreciation for the buzz and pace of the trading desk.

"I just loved the sound of everything," she said.

Trading appealed to Trachtenberg in part because of her aptitude with numbers and her memorization skills, something she honed playing Italian card games like Briscola with her family while growing up in Brooklyn, New York.

She found those talents came in handy in municipal trading given the need to remember figures like credit spreads and coupons, not to mention during volatile events like the 2020 pandemic-induced market chaos and the 2008 recession, she said.

Trachtenberg traded munis for dealers including Dean Witter Reynolds before moving to Fidelity Investments, and then Eaton Vance in 1997. She now oversees municipal trading for the firm, which manages $18 billion in municipal debt and about $176 billion overall.

Advocate for Women

The muni industry has changed dramatically from the days of in-person bond auctions, in terms of both process and culture.

At 22, Trachtenberg says she and other women at her bank were tasked with handing out lunch to coworkers. Then one day she decided she wouldn't perform that chore anymore because she deemed other responsibilities to be more important.

"'At some point,' I said, 'I have to put my foot down,'" she recalled.

She's now known in the industry for being involved in groups like the Municipal Bond Women's Forum. The group hosts an annual gathering that features networking events and panels at a time when women are still struggling to break into the top ranks in some areas of finance.

Trachtenberg was one of the forum's early advocates while others expressed doubts that it would work, said Rachel Perlman, director of institutional sales at Boenning & Scattergood and chairwoman of the group.

"Debe kind of looked at me and said, 'You just keep on moving. Tune them out,'" Perlman said. "She was a real cheerleader."

Trachtenberg, the forum's co-chairwoman, said she sees mentoring as key to helping diversify the industry. Over the years she says she's mentored people like Kevin Dyer, a trader at MFS Investment Management, and Sara Chanda, a portfolio manager at Breckinridge Capital Advisors. Both previously worked at Eaton Vance.

She's also passed her love of trading — and her affinity for numbers — down to her children: Her daughter trades municipals and her son trades cryptocurrency.

Looking Forward

After retirement, she'll continue to be involved with the forum and work with organizations like the Matthew Larson Foundation for Pediatric Brain Tumors. She's also looking forward to tending her garden at her home in Scituate, Massachusetts, and to a trip to Italy planned for soon after she leaves her job.

She's confident that Eaton Vance's state and local-debt group is in good hands with longstanding senior traders like Christopher Berry and Simone Santiago. The company this year also hired Alisa Fitzgerald and Don Schatz as senior traders on the municipals team. Cynthia Clemson and Craig Brandon are co-directors of municipal investments.

The team was excited about Fitzgerald's hiring, because no woman had interviewed for a trading role that opened up previously.

"We were all over the moon," Trachtenberg said. "Women have really come into their own in municipals."

Bloomberg

By Amanda Albright

July 6, 2021, 10:15 AM PDT

- Amendments to Rule G-10 Notification Requirement for Dealers: SIFMA Comments
- BDA Supports Proposed Changes to MSRB Rule G-10
- S&P ESG Brief: Cyber Risk Management In U.S. Public Finance
- Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction, Second Edition – ABA
- 2021 P3 Airport Summit.
- CDFA Publishes New Private Activity Bond Volume Cap Data and Resource Center.
- A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund: Squire Patton Boggs
- Somewhat interesting eminent domain case from the U.S. Supreme Court here.
- Somewhat interesting municipal insurance case here.
- And finally, Great Moments in Forensic Science is brought to us this week by *State v. Wright*, in which a small town police officer received a tip that, "a male nicknamed 'Beef' was selling drugs." The officer began secretly collecting Beef's trash. He then enlisted the technological might of the state crime lab to identify the suspicious material he had recovered. According to the Supreme Court of Iowa, "The crime lab confirmed that the poppy seeds were poppy seeds." The State of Iowa's entire criminal investigation system was subsequently brought to its knees when Beef discarded the remains of an everything bagel.

EMINENT DOMAIN - CALIFORNIA

Pakdel v. City and County of San Francisco, California

Supreme Court of the United States - June 28, 2021 - S.Ct. - 2021 WL 2637819 - 21 Cal. Daily Op. Serv. 6305

Partial owners of a multi-unit residential building organized as a tenancy-in-common brought § 1983 action against city, its board of supervisors, and its department of public works, alleging a city ordinance effected an unconstitutional regulatory taking by conditioning the conversion of the building to a condominium arrangement on the partial owners offering the tenant in their unit a lifetime lease.

The United States District Court for the Northern District of California granted defendants' motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Owners appealed. The United States Court of Appeals for the Ninth Circuit affirmed, and denied rehearing en banc.

Upon granting certiorari, the Supreme Court held that owners did not have to comply with administrative procedures for seeking relief, in order to satisfy finality requirement for bringing regulatory taking claim.

Partial owners of a multi-unit residential building organized as a tenancy-in-common did not have to comply with city's administrative procedures for seeking relief, in order to satisfy finality requirement for bringing their § 1983 action alleging city ordinance effected an unconstitutional regulatory taking by conditioning the conversion of the building to a condominium arrangement on the owners offering the tenant in their unit a lifetime lease; having denied the owners' requests for an exemption from the ordinance, there was no question about the city's position, as the owners either had to execute the lifetime lease or face an enforcement action.

IMMUNITY - GEORGIA

Young v. Johnson

Court of Appeals of Georgia - June 14, 2021 - S.E.2d - 2021 WL 2410699

Driver of vehicle that was hit by city vehicle being driven by motorist, a city employee, brought negligence action against city and motorist.

The trial court granted city's and motorist's motion to dismiss based on sovereign immunity. Injured driver appealed.

The Court of Appeals held that driver's failure to explicitly plead a waiver of city's sovereign immunity barred her from bringing negligence action against city and motorist.

Failure of driver of vehicle that was hit by city vehicle being driven by motorist, a city employee, to explicitly plead a waiver of city's sovereign immunity, barred her from bringing negligence action against city and motorist; driver did not explicitly plead a waiver of city's sovereign immunity in her complaint, she failed to amend her complaint to allege such a waiver, she did not raise sovereign immunity in any of her filings in the court below, she failed to respond to city's motion to dismiss based on sovereign immunity, and she did not otherwise contest the motion to dismiss.

CRIMINAL LAW - IOWA

State v. Wright

Supreme Court of Iowa - June 18, 2021 - N.W.2d - 2021 WL 2483567

Following denial of his motion to suppress, defendant was convicted in the District Court of possession of controlled substances, and he appealed. The Court of Appeals affirmed, and defendant appealed.

The Supreme Court held that:

- Officer “seized” garbage bags and papers and effects contained therein;
- Officer engaged in “search” when he opened garbage bags he had seized;
- Garbage bags and their contents were “papers” and “effects” protected by state constitution’s prohibition against unreasonable searches and seizures;
- Defendant did not abandon all right, title, and interest in property he put in garbage bags; and
- Officer’s warrantless seizure of bags and examination of their contents violated state constitution’s prohibition against unreasonable seizures and searches.

POLITICAL SUBDIVISIONS - MAINE

[Fair Elections Portland, Inc. v. City of Portland]()

Supreme Judicial Court of Maine - June 17, 2021 - A.3d - 2021 WL 2460648 - 2021 ME 32

Voters group sought judicial review of city council’s decision not place a citizen-initiated ballot question on the ballot as a proposed charter amendment and asserted independent claims seeking declaratory judgment and injunctive relief, as well as violations of state and federal law pursuant to § 1983.

The Superior Court affirmed city council’s decision. Voters group appealed.

The Supreme Judicial Court held that:

- As a matter of first impression, the Home Rule Act authorizes municipal officers to review a proposed charter modification to determine whether it constitutes a revision rather than an amendment;
- As a matter of first impression, distinction between a charter amendment and a charter revision for purpose of the Home Rule Act is in terms of breadth and in terms of depth; and
- City council’s failure to make findings of fact to explain its decision precluded meaningful judicial review.

The Home Rule Act authorizes municipal officers to review a proposed charter modification to determine whether it constitutes a revision rather than an amendment, even where the petition presenting the proposed modification does not include the statute’s optional language regarding requests for revision of the charter.

For purposes of the Home Rule Act, the distinction between a charter amendment and a charter revision is one of scope, in terms of breadth of what would be affected and depth of what would be altered, in that a proposed amendment would not, if enacted, materially affect the municipality’s implementation, in the course of its operations, of major charter provisions that are not mentioned in the proposed amendment, and in terms of depth, an amendment would not, if enacted, make a profound and fundamental alteration in the essential character or core operations of municipal government; if a petition proposes a change to the charter that is either so broad or so profound, or both, as to justify a revisitation of the entire charter by a charter commission, the proposal is for a revision.

City council’s failure to make findings of fact to explain its decision not place a citizen-initiated ballot question on the ballot as a proposed charter amendment precluded meaningful judicial review; given that whether a particular charter proposal would be an amendment or a revision focused on the proposal's effect on the current municipal charter and operations, city council's adjudication of that question was highly fact-specific, but the record contained no statement of city council's basis in law and fact for whether or not it deemed the petition to propose a revision rather than an amendment of the charter, and without that, the court could not determine whether the rejection of the petition involved legal error, abuse of discretion, or findings not supported by substantial evidence.

ZONING & PLANNING - NORTH CAROLINA

Cheryl Lloyd Humphrey Land Investment Company, LLC v. Resco Products, Inc.

Supreme Court of North Carolina - June 11, 2021 - S.E.2d - 2021-NCSC-56 - 2021 WL 2387933

Vendor of undeveloped land brought action for tortious interference with prospective economic advantage against owners of open-quarry mine that was adjacent to a portion of the land, asserting mine owners made misrepresentations during town's rezoning hearings concerning dangers posed by mining operations, inducing purchaser to exclude from purchase the portion of property that was adjacent to the mine.

The Superior Court granted mine owners' motion to dismiss for failure to state a claim. The Court of Appeals reversed. Mine owners appealed.

The Supreme Court held that alleged misrepresentations made by mine owners during town's rezoning hearings constituted protected petitioning activity.

Alleged misrepresentations made by owners of open-quarry mine that was adjacent to a portion of undeveloped land during town's rezoning hearings concerning dangers posed by mining operations, which statements allegedly induced land purchaser to exclude from purchase agreement with vendor the portion of property that was adjacent to the mine, constituted petitioning activity protected by the First Amendment to the United States Constitution and the North Carolina Constitution.

ZONING & PLANNING - RHODE ISLAND

Middle Creek Farm, LLC v. Portsmouth Water & Fire District

Supreme Court of Rhode Island - June 16, 2021 - A.3d - 2021 WL 2447820

Subdivision developer brought action against town water and fire district for declaratory and injunctive relief, contending that district was required to provide water services to subdivision lots which were partially in town and partially in neighboring town.

District filed motion to dismiss for failure to join indispensable parties. The Superior Court denied district's motion and granted developer's motion for summary judgment. District appealed.

The Supreme Court held that:

- Term "inhabitants" in district's charter meant anyone who owned real estate and paid taxes to the

district, and
- Owners of other 53 properties partially located in town and partially located in neighboring town were not indispensable parties.

Term "inhabitants" in town water and fire district's charter, authorizing distribution of water to the inhabitants of the district, meant anyone who owned real estate and paid taxes to the district, rather than simply to parcels with residences within town boundaries; charter references not only a "house" but also a "building, tenement or estate," charter also gave district the power and authority to mandate that "any estate" connect to an abutting main, and it would be absurd to allow district to tax businesses such as golf courses or farms which lacked residential components or buildings while not providing water to such businesses.

Owners of other 53 properties partially located in town and partially located in neighboring town were not indispensable parties to subdivision developer's declaratory judgment action against town water and fire district seeking extension of water to subdivision lots partially located in town and partially located in neighboring town; none of the other owners had a direct claim upon the subject of the action such that joinder of that party would cause it to lose anything by operation of the judgment rendered, nor did they have an actual, present, adverse, and antagonistic interest in the judgment, and any risk that district would have to litigate the underlying issue every time a property straddling the borderline filed an application for water service was purely speculative.

INSURANCE - SOUTH CAROLINA

Reeves v. South Carolina Municipal Insurance and Risk Financing Fund

Supreme Court of South Carolina - June 16, 2021 - S.E.2d - 2021 WL 2448359

Personal representative of decedent's estate brought declaratory judgment action against municipal insurer seeking interpretation of extent of coverage for municipality and municipal police officers, following settlement entered for wrongful shooting death.

The Circuit Court granted personal representative's motion for summary judgment in part and denied it in part, and granted insurer's motion for summary judgment in part and denied it in part. Both parties appealed. The Court of Appeals affirmed in part and reversed in part. Insurer's petition for writ of certiorari was granted.

The Supreme Court held that:

- Municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force, were separate occurrences;
- No duplication clause did not apply to municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force;
- Undefined term "Coverage Limit" had to be construed against insurer as synonymous with "liability limit"; and
- "Limit of Liability" portion of policy did not limit claims.

Municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force, were separate occurrences under terms of law enforcement liability indemnity coverage that defined "occurrence" as wrongful act that resulted in bodily injury, resulting in separate claims for separate damages.

No duplication clause in insurance policy that limited law enforcement liability indemnity coverage for any claim applicable to more than one section of contract did not apply to municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force, since claims involved only law enforcement liability.

No duplication clause in insurance policy that limited law enforcement liability indemnity coverage for all claims or suits involving substantially same injury or damage, or progressive injury or damage, did not apply to municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force.

Undefined term "Coverage Limit" in insurance policy providing law enforcement liability indemnity coverage had to be construed against insurer as synonymous with "liability limit," which was defined as "$1,000,000" "Per Occurrence."

"Limit of Liability" portion of insurance policy providing law enforcement liability indemnity coverage stating "Only a single limit or Annual Aggregate will apply, regardless of the number of persons or organizations injured or making claims, or the number of Covered Persons who allegedly caused them, or whether the damage or injuries at issue were continuing or repeated over the course of more than one Coverage Period" did not limit claims that municipality was negligent in hiring, retaining, and supervising police officer and officer wrongfully used deadly force, since that section did not contain "Annual Aggregate" and undefined "single limit" term provided it was "Liability Limit" of "$1,000,000" "Per Occurrence."

"Limit of Liability" portion of insurance policy providing law enforcement liability indemnity coverage stating "liability for any one occurrence/wrongful act will be limited to $1,000,000 per Member regardless of the number of Covered Persons, number of claimants or claims made" did not limit claims that municipality was negligent in hiring, retaining, and supervising police officer and officer wrongfully used deadly force, since there were multiple occurrences-wrongful acts.

EMINENT DOMAIN - TEXAS

Jim Olive Photography v. University of Houston System

Supreme Court of Texas - June 18, 2021 - S.W.3d - 2021 WL 2483766 - 64 Tex. Sup. Ct. J. 1411

Professional photographer brought action against public university, alleging unlawful taking based on university's unauthorized use of copyrighted aerial photograph of city on university's webpages.

The District Court denied university's plea to the jurisdiction. University filed interlocutory appeal. The Houston Court of Appeals vacated and dismissed. Photographer petitioned for review, which was granted.

The Supreme Court held that university's alleged copyright infringement was not a per se taking.

Alleged copyright infringement by public university, via unauthorized use of copyrighted aerial photograph of city on university's webpages, was not a "per se taking," despite argument that university deprived photographer of the most important stick in his bundle of rights, that being his exclusive right to control his work; university did not take possession or control of copyright, photographer retained key legal rights that constituted property, university did not assume physical control of copyright, photographer could seek injunctive relief to prevent or restrain infringement of a copyright, and university's infringement did not deprive photographer of right to dispose of copyrighted work.

States Finalize Fiscal 2022 Budgets: NASBO

As of July 1, 44 states have enacted a full-year budget for fiscal 2022. States have been enacting fiscal 2022 budgets during a time when fiscal conditions continue to strengthen as the economy recovers from the pandemic and additional federal aid flows to state and local governments. As noted in NASBO's Spring 2021 Fiscal Survey of States, 40 out of 50 states saw revenue declines compared to pre-pandemic projections over the two-year period from fiscal 2020 to fiscal 2021. However, most states' enacted fiscal 2022 budgets include an increase in both state spending and revenue.

Forty-six states began their fiscal years on July 1. New York starts its fiscal year on April 1; Texas begins on September 1; and Alabama and Michigan start their fiscal years on October 1. Forty-eight states are enacting a new budget for fiscal 2022. Virginia and Wyoming, which both enacted two-year budgets for fiscal 2021 and fiscal 2022 in calendar year 2020, approved budget adjustments to their biennial budgets. Kentucky, which would normally have passed a two-year budget in calendar year 2020, passed a one-year budget only for fiscal 2021 due to revenue uncertainty created by COVID-19, and enacted a new budget for fiscal 2022 this year. Of the 48 states passing a new budget for fiscal 2022, 17 states are enacting a biennial budget for both fiscal 2022 and fiscal 2023.

Below is additional information on the states that have yet to enact a full-year budget for fiscal 2022:

1. **Massachusetts** – The governor signed a temporary budget for the month of July.
2. **Michigan** – The state's fiscal year does not begin until October 1. The legislature is finalizing the budget.
3. **North Carolina** – The Senate passed the budget on June 25 and the House is now considering the bill. State law allows spending to continue at current levels until a new budget is enacted.
4. **Oregon** – The governor is completing acting on agency budget bills. The state is currently operating under a continuing resolution for the unsigned bills.
5. **Rhode Island** – The House approved the budget on June 24 which is now headed to the Senate. The state will enter fiscal 2022 authorized to spend 1/12 of fiscal 2021's budget amount each month.
6. **Wisconsin** – The Senate approved the budget on June 30 and the governor is currently reviewing the budget bill. The state is operating under spending levels from the previous two-year budget cycle.

Please click here for links to proposed and enacted budgets, as well as prior budget summaries.

S&P U.S. State Ratings And Outlooks: Current List

View the S&P list.

30 Jun, 2021

S&P: U.S. State Fiscal 2022 Budget Negotiations Are More Manageable Than

Last Year Given The Stronger Economy

Key Takeaways

- The accelerating pace of the economic recovery and extraordinary federal resources has given U.S. states a reprieve from pandemic headwinds.
- Thirteen states with fiscal years that end on June 30 have yet to enact their 2022 budgets, but many are on track to cross the finish line before the start of fiscal year 2021.
- Sharper focus on structural balance will remain essential to minimize growing budgets outside of future revenue estimates.

Continue reading.

30 Jun, 2021

Fitch Ratings UCO Status Update: Rated LPCs Weathering Coronavirus Fallout Well So Far

Fitch Ratings-New York/Austin-28 June 2021: U.S. life plan communities (LPCs) are proving to be quite resilient so far against the coronavirus, though Fitch Ratings says that the sector is not out of the woods yet.

'Healthy residential real estate markets and increased market interest in life plan communities are translating into consistent demand for retirement living, ' said Fitch Director Margaret Johnson. 'Sales of independent living units have also accelerated following a slowdown in resale activity throughout 2020 due to the coronavirus and related governmental lockdown measures.'

Of the 87 LPC rating actions year-to-date (not including names placed Under Criteria Observation [UCO]), 55 (63%) were rating affirmations. Fitch has downgraded nine (10%) communities due largely to LPCs borrowing additional debt to finance expansion projects, rather than operational pressures.

In March, Fitch released revised LPC rating criteria. Following that release, Fitch placed 22 LPCs UCO. Fitch has so far resolved nine of the UCO ratings, all of which were affirmations, except for two downgrades — one driven solely by credit reasons (a large additional borrowing) and one driven by a combination of criteria and credit factors. Updated review status of UCO names is available in the special report linked above.

Rising operating costs remain the most significant pressure, especially with regulatory requirements for long-term care facilities likely to become stricter and staffing shortages being experienced across the industry. 'The debate over making the COVID-19 vaccine a condition of employment could increase staff turnover and operating expenses for life plan communities,' said Johnson. 'That said, voluntary vaccination rates among employees at Fitch-rated life plan communities are reportedly very high.'

As the sector emerges from the pandemic, Fitch expects life plan communities will continue to consolidate over the next few years. Lower-rated communities with high exposure to skilled nursing operations, undergoing expansions and that are in areas heavily affected by subsequent waves of the pandemic will be most susceptible to rating pressure.

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Fitch Ratings Updates U.S. Public Finance Prepaid Energy Transaction Rating Criteria.

Fitch Ratings-Austin/New York-29 June 2021: Fitch Ratings has published the following report: “U.S. Public Finance Prepaid Energy Transaction Rating Criteria.” This report updates and replaces the prior report published on July 14, 2020.

Primary revisions to the criteria include a slight revision of Fitch’s stressed gas price assumption to $8.60 per million British thermal units (MMBtu) from $8.70 per MMBtu and a clarification of Fitch’s use of Private Ratings and Credit Opinions in the prepay transaction counterparty credit analysis.

The key criteria elements remain consistent with those of the prior report, and there is no impact on outstanding ratings. The previous version of the criteria has been retired.

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Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction, Second Edition - ABA

Written for newcomers and veterans alike, this book examines the foundations of public utility law and applies them to future challenges. Mixing case narratives and doctrine drawn from all legal sources, its analysis of the complexities of public utility regulation covers market structure, pricing, and jurisdiction.

Click here to learn more and to purchase.

Treasury Updates FAQs for the CSLFRF/ERA.

Last Thursday, the Treasury released updated FAQs for the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF) and the Emergency Rental Assistance (ERA) program. New additions to the CSLFRF FAQs provide clarification on eligible expenditures regarding small businesses, community violence, eviction and housing stability services, government services, as well as revenue loss.

Updates to the ERA FAQs mostly consist of revisions to a handful of existing questions regarding reporting requirements, administrative expenses, and housing stability services. New additions focus on eviction prevention, promoting access to eligible households, and payments.

Click here to view the updated FAQs for the CSLFRF.

Click here to view the updated FAQs for the ERA.

GFOA will continue to monitor the programs for additional updates.

S&P: P&C Insurance Industry Reverses Trend, Increases Municipal Bond Holdings in 2020

Property and casualty insurers boosted their stakes in municipal holdings in 2020 for the first time in several years amid a positive climate for government-issued debt securities.

Insurance companies hold significant investments in municipal bonds, with the P&C space being the largest holder by sector. Since at least 2016, the P&C industry has been reducing its positions in municipal bonds, though they have remained a significant part of the industry's investable assets.

Year-end 2020, municipal bonds accounted for roughly 13.5% of the P&C industry's investable assets, with a reported carrying value of $271.47 billion, an S&P Global Market Intelligence analysis shows. The year-end 2020 values were up $11 billion compared to the previous year, but down nearly $60 billion versus 2016. Full-year statutory insurance data from late filing companies, as well as group-level calculations, are not available until at least April of each year.

Continue reading.

2 Jul, 2021

[S&P: What Is The Next Stop For U.S. Mass Transit In A Post-COVID Era?]

Key Takeaways

- Potential displacement of ridership bases, a persistent shift toward remote work, hybrid work schedules, and online shopping pose the greatest risks to traditional public transit operating models in general.
- Voters continue to support transit at the ballot box, providing vital funding for systems that rely on dedicated tax revenue for operations despite declining ridership trends pre-pandemic.
- Significant federal aid, prudent management, and tax support have provided much-needed credit stability, giving providers time to achieve sustainable and balanced operations in a post-pandemic world as ridership recovers and may stabilize at levels meaningfully lower than before the pandemic.
- Public transit figures prominently in the current debate on infrastructure investment as the industry faces evolving challenges related to cybersecurity, climate change, and increased emphasis on social equity and role of transit operators in facilitating regional economic opportunity.

Continue reading.

1 Jul, 2021

Fitch: Leisure & Hospitality Jobs Returning for U.S. Metros.

Fitch Ratings-New York-30 June 2021: Amid overall flat job growth for U.S. metropolitan cities, Fitch Ratings' latest U.S. Metros Job Tracker report shows leisure and hospitality jobs are returning in greater numbers.

Loosening pandemic restrictions and increasing vaccination rates are helping to add jobs back for leisure and hospitality with Miami and New Orleans seeing relatively strong improvement from prior months. Miami has recovered 61% of leisure and hospitality employment, while New Orleans has recovered 42%. That said, 'leisure and hospitality is still responsible for roughly 40% of all major metro jobs lost between February 2020 and April of this year,' said Senior Director Olu Sonola.

From a regional standpoint, the median recovery rate for major Midwest metros rose to 68% in April from 66% in February. Eight out of nine major metros in the Midwest had employment recovery rates above 50%, the lone outlier being Chicago. By contrast, the employment recovery rate for major southern MSAs fell to 65% in April from 68% in March, the only region to experience a decrease in its median recovery rate. 'Richmond, New Orleans and Orlando remain particularly challenged by the current economic environment with employment recovery rates below 50%,' said Sonola.

New York City remains the only northeastern metro to have recovered less than 50% of jobs lost at the start of the pandemic, and the employment recovery rate remained flat at 48% between March and April. One ray of light, however, was mobility to work. 'New York City was the only major northeastern metro where mobility to work improved between March and April, a possible harbinger for improving job growth for New York City as the economy reopens,' said Sonola.

'U.S. Metro Labor Markets Tracker' is available at 'www.fitchratings.com'.

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Munis in Focus with Joe Mysak (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the municipal bond markets. Hosted by Paul Sweeney and Matt Miller.

Play Episode

Bloomberg Radio

July 2, 2021

Biden, Senators Agree to Roughly $1 Trillion Infrastructure Plan.

Plan secures bipartisan agreement on overhauling the nation's transportation, water and broadband infrastructure

WASHINGTON—President Biden and a group of 10 centrist senators agreed to a roughly $1 trillion infrastructure plan Thursday, securing a long-sought bipartisan deal that lawmakers and the White House will now attempt to shepherd through Congress alongside a broader package sought by Democrats.

Mr. Biden and Democratic leaders said that advancing the deal on transportation, water and broadband infrastructure will hinge on the passage of more elements of Mr. Biden's $4 trillion economic agenda. The two-track process sets up weeks of delicate negotiations to gather support for both the bipartisan plan and a separate Democratic proposal, a challenging task in the 50-50 Senate and the narrowly Democratic-controlled House.

"What we agreed on today is what we could agree on. The physical infrastructure. There's no agreement on the rest," said Mr. Biden, who said he wouldn't sign the bipartisan deal into law until a bill containing the rest of his agenda also is on his desk. “If this is the only one that comes to me, I’m not signing it.”

With $579 billion of spending above expected federal levels and a total of $973 billion of investment over five years and $1.2 trillion if continued over eight, the agreement will make new investments in the electrical grid, transit, roads and bridges and other forms of infrastructure.

The cost of the spending will be covered by repurposing existing federal funds, public-private partnerships and revenue collected from enhanced enforcement at the Internal Revenue Service, according to a list distributed by the White House. The list also included sales from the strategic petroleum reserve and wireless-spectrum auction sales among the other revenue raisers.

Emerging from a noontime meeting at the White House to announce the deal, Republicans and Democrats cast the agreement as proof that bipartisan progress is still possible in a polarized Washington.

“We’ve agreed on the price tag, the scope and how to pay for it,” said Sen. Susan Collins (R., Maine) on Thursday. “It was not easy to get agreement on all three, but it was essential.”

Mr. Biden framed the infrastructure investment as critical to compete with global rivals. “We’re in a race with China and the rest of the world for the 21st century,” he said. “This agreement signals to the world that we can function, deliver and do significant things.”

In trading Thursday, shares of machinery giant Caterpillar Inc., building-materials supplier Martin Marietta Materials Inc. and construction-aggregates producer Vulcan Materials Co. moved higher on news of the agreement.

President Biden’s infrastructure plan calls for non-traditional projects like the removal of some highways. What Democrats want for cities like Baltimore says a lot about the President’s goals in the next wave of development. Photo: Carlos Waters/WSJ
While the framework between the bipartisan group of lawmakers and the White House marks an important step toward a final agreement, passing the legislation will require top Democrats to walk a tightrope between maintaining Republican support for one package and unifying Democrats around a second.

Senate Majority Leader Chuck Schumer (D., N.Y.) has said the Senate will simultaneously move forward with both a bipartisan agreement and a larger bill that includes spending on education, healthcare, and antipoverty efforts. Democrats can skirt the 60-vote threshold for advancing most Senate legislation through a budget process called reconciliation, which requires only a simple majority.

House Speaker Nancy Pelosi (D., Calif.) said that the House won’t take up the bipartisan agreement until the Senate approves a package through reconciliation.

“I said there won’t be an infrastructure bill unless we have a reconciliation bill, plain and simple,” Mrs. Pelosi said.

Senate Majority Whip Dick Durbin (D., Ill.) said passing two complex bills through different procedures at the same time would be challenging. The reconciliation process alone is time-consuming and complicated, he noted.

“I don’t know that it’s possible, but we’ll see,” he said. Mr. Durbin added that he wasn’t sure how Democratic leaders would be able to give liberal Democrats the reassurance they are seeking, given the procedural complexities. “That’s the tough part,” he said.

If some Democrats ultimately oppose the bipartisan infrastructure package, Republicans would need to sign on in larger numbers to ensure its passage. A group of 21 Senators, including 11 Republicans, have previously lent their support to the bipartisan efforts, though some of those lawmakers said Thursday they were still reviewing details of the emerging deal.

Sen. Rob Portman (R., Ohio), the lead Republican negotiator, spoke with Senate Minority Leader Mitch McConnell (R., Ky.) and other top Republicans Thursday morning to discuss the agreement. Mr. Portman said Mr. McConnell told him he was open-minded about the framework.

But late Thursday, Mr. McConnell criticized Mr. Biden’s decision to commit to passing a separate, broader package.

“Less than two hours after publicly commending our colleagues and actually endorsing the bipartisan agreement, the president took the extraordinary step of threatening to veto it,” Mr. McConnell said.

“That’s not the way to show you’re serious about getting a bipartisan outcome,” he added.

A previous effort to craft an infrastructure agreement between the White House and a separate group of Senate Republicans fell apart earlier this month, with the GOP group proposing roughly $300 billion in funding above baseline levels.

Sen. John Thune (R., S.D.), the No. 2 Senate Republican, said the plan’s funding for transit was potentially a problem for him. He said wasn’t yet sure if the plan would win 60 votes and would need to discuss it with other Republicans. “We’re going to have to socialize that,” Mr. Thune said.

Much of the negotiations between the bipartisan group and the White House, which took place in marathon sessions in rooms around the Capitol in recent weeks, focused on the question of how to finance the spending. The White House had originally proposed paying for the infrastructure spending with tax increases on corporations, part of a broader tax agenda that also included rate increases on high earners.

But Republicans rejected any tax increases that would alter elements of the 2017 tax law, passed with only GOP votes, and the bipartisan group instead included indexing the gas tax to inflation and charging fees on electric vehicles in drafts of their plan. The White House staunchly opposed those two ideas, though, with the group debating alternatives, including how much money could be raised from enhanced IRS enforcement.

Lawmakers expect to raise about $100 billion through public-private partnerships and direct-pay municipal bonds, according to someone familiar with the discussions, and generate a net of about $100 billion by investing $40 billion in the IRS to collect taxes that are owed but not paid. They also repurpose about $80 billion from prior pandemic relief bills to pay for the package, which Mr. Portman said would increase to about $125 billion in repurposed prior aid, when including previously approved broadband funding and money from states returning unused unemployment benefits.

The plan also includes $20 billion in funding for an infrastructure financing authority, which Sen. Mark Warner (D., Va.), one of the negotiators, said would yield $180 billion in infrastructure spending.

Lawmakers and aides expect bringing all 50 Democrats together on a second, reconciliation package to be a complicated, lengthy process. Sen. Bernie Sanders (I., Vt.), the chairman of the Senate Budget Committee, has floated a $6 trillion package Democrats could consider through reconciliation, proposing investments beyond what Mr. Biden has included in his agenda.

Two centrist Democrats who have emphasized bipartisanship, Sen. Joe Manchin of West Virginia and Arizona Sen. Kyrsten Sinema, indicated Thursday they would be willing to work with party colleagues on helping craft a reconciliation plan.

But Mr. Manchin signaled discomfort with its proposed multitrillion-dollar cost, of which half is expected to be paid for with new revenue. "That sounds extremely, extremely high, for us to take on that much debt," he said.

Mr. Warner said that completing the overall agreement will take some time.

"Until it's signed by the president, anything can happen," he said.

The Wall Street Journal

By Andrew Duehren, Kristina Peterson and Sabrina Siddiqui

Updated June 24, 2021 5:54 pm ET

[Financing Plan for Infrastructure Agreement Called into Question.]

Finance experts say the plan to pay for the infrastructure proposal, in part by clawing back unspent covid relief funds, is unlikely to cover the full cost.

The White House and a bipartisan group of senators heralded agreement on an infrastructure package framework as a major breakthrough. But policy and finance experts say the real breakthrough will come if lawmakers find a way to pay for the proposal.

President Biden has promised not to raise taxes on people earning less than $400,000 while senators said the infrastructure proposal would not include new taxes. Details about the financing of the $1.2 trillion proposal are limited, and experts have questioned whether the mishmash of possible funding sources outlined in a White House proposal will be enough to pay for the project.

Continue reading.

Route Fifty

By Andrea Noble

JULY 2, 2021

[FACT SHEET: President Biden Announces Support for the Bipartisan Infrastructure Framework]

Today, President Biden and Vice President Harris announced their support for the Bipartisan

Infrastructure Framework, the largest long-term investment in our infrastructure and competitiveness in nearly a century – an investment that will make our economy more sustainable, resilient, and just.

The President came into office promising to find common ground to get things done – and he's delivering on that promise.

The $1.2 trillion Bipartisan Infrastructure Framework is a critical step in implementing President Biden's Build Back Better vision. The Plan makes transformational and historic investments in clean transportation infrastructure, clean water infrastructure, universal broadband infrastructure, clean power infrastructure, remediation of legacy pollution, and resilience to the changing climate. Cumulatively across these areas, the Framework invests two-thirds of the resources that the President proposed in his American Jobs Plan.

Continue reading.

JUNE 24, 2021

Muni Bonds Gain Traction for Climate and Social Change.

KEY POINTS

- With built-in tax benefits and relatively low default risk, municipal bonds have grown more popular amid the threat of tax hikes.
- There's also a surge in interest for muni bonds among impact-driven investors seeking funds for climate and social change.
- Experts at the CNBC Financial Advisor Summit covered what to know about these muni bond trends.

Many investors already know about the tax benefits of municipal bonds — also known as muni bonds or "munis." Now these assets have also become popular among those who want to have an impact on climate and social change.

In addition to tax savings and relatively low risk, muni bonds may be attractive to those seeking funds in areas such as renewable energy, clean water, low-carbon transportation or infrastructure.

The muni bond market increased by $474 billion in 2020, with $27.6 billion issued for green, social or sustainable bonds, more than double the numbers from 2019, according to S&P Global Ratings.

"We expect growth in the green bond market to also be driven by a renewed focus on climate change and the aging state of the nation's infrastructure," said Laura Levenstein, chief risk officer at Build America Mutual, speaking at the CNBC Financial Advisor Summit on Tuesday.

As the muni bond market explodes for retail, institutional and international investors, experts at the FA Summit shared the latest updates.

Labeled vs. unlabeled muni bonds

One of the biggest challenges for investors is finding legitimate green or social muni options, as there may be labeling inconsistencies across the bond market.

Some are wary of “greenwashing,” whereby issuers misrepresent their bonds’ environmental impact for marketing purposes. However, there are also some muni bonds funding climate or social projects without the impact label.

“We see a lot of unlabeled impact [bonds] in the muni market, especially on the social side,” said Michael Kashani, global head of ESG portfolio management at Goldman Sachs Asset Management and panelist at the FA Summit.

For example, there may be muni bonds funding the construction or expansion of K-12 schools in underserved communities without the “impact” label, he said.

Build America Mutual, the largest provider for external green bond verifications, has identified about 175 green U.S. municipal bonds worth about $2.5 billion, Levenstein said.

Over time, more social, green and sustainable bonds have aligned with one of the United Nations’ 17 sustainable development goals, she said.

“I think the alignment provides further comfort to investors that they’re buying legitimate green, social and sustainable bonds,” said Levenstein. “And that’s sort of where we see the market going in the next year.”

Impact investing returns

While many impact-driven investors want to support green or social projects, portfolio returns are still the top concern, Kashani said.

But with approximately 50,000 municipal bond issuers and 1 million securities, there are endless ways to customize a client’s portfolio based on individual preferences, he said.

“There’s a lot of flexibility and variability, depending on how deep a client wants to go,” Kashani said.

For example, some clients may prefer higher percentages of impact funds for specific sectors, which may affect returns. However, there are many options to bring “economic, environmental justice, transparency and equality” across their portfolio, without sacrificing their goals, said Kashani.

With current yields above Treasurys, muni bonds — which generally bypass federal levies on interest — have been a refuge for those worried about impending tax hikes from President Joe Biden.

Muni bonds, already known for relatively low default risk, scored a credit boost in 2021 as state and local governments received billions in federal stimulus money.

cnbc.com

by Kate Dore

JUN 30 2021

The Power of the Muni-Bond Market for Impact Investing.

A Q&A with Adasina Social Capital and Activest on muni bonds as the intersection of

finance and policy.

Investors may not think of the municipal-bond market when it comes to building an impact portfolio around racial justice, but it's one area where their dollars can have a direct connection with public policy.

We spoke about this intersection of social impact investing and public finance with Rachel Robasciotti, founder of Adasina Social Capital, Ryan Bowers, co-founder of Activest, and Chelsea McDaniel, a senior fellow at Activest. Adasina and Activest work together on the Adasina Fiscal Justice Municipal Strategy.

Q: Rachel, Ryan, Chelsea, thanks for joining us. Let's start at the beginning. Why municipal bonds?

Ryan: The municipal market is supposed to be not only low risk but also public purpose. But we're seeing things in the market that are neither good for a city's fiscal health or its residents.

Continue reading.

morningstar.com

by Tom Lauricella

Jun 28, 2021

Amendments to Rule G-10 Notification Requirement for Dealers: SIFMA Comments

SUMMARY

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) on their Notice 2021-08, proposing an amendment to MSRB Rule G-10, on investor and municipal advisory client education and protection, to clarify the requirements for brokers, dealers, and municipal securities dealers to provide the annual notifications to those customers who would be best served by receipt of the annual notifications.

Read the SIFMA comments.

BDA Supports Proposed Changes to MSRB Rule G-10

Yesterday, BDA submitted a comment letter to the MSRB on Notice 2021-08, "Request for Comment on Amendments to Rule G-10 Notification Requirements for Dealers." MSRB last month issued the Notice and proposed to amend MSRB Rule G-10. Rule G-10 requires municipal dealers to send certain annual information disclosures to investor customers and issuer clients.

View the comment letter here.

In our January letter on MSRB strategic priorities, BDA pointed out that Rule G-10 requires municipal-related disclosures to customers who have never and may never own or trade municipal security. We requested that the MSRB amend Rule G-10 to target required disclosures to municipal securities customers. Notice 2021-08 represents the MSRB's action on this issue.

In our letter, **we support the MSRB's proposal**. We also request three additional changes to Rule G-10 to exempt issuers from these disclosures, permit clearing firms to transmit the relevant disclosures on behalf of their introducing firms' customers, and require disclosures for customers who own municipal securities or have traded them since the last annual disclosure rather than owned municipals at any time in the last year.

Bond Dealers of America

June 29, 2021

A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund: Squire Patton Boggs

This is the first in a series of posts about neutral principles that make for "good" tax-advantaged bond legislation.

A good muni bond tax bill deals with refundings. For new programs, it provides the terms and conditions under which the new bonds may be refunded.

Over the long life of a project and the bonds that finance it, prevailing market interest rates are almost certain to be more favorable at some point than they were when the bonds were issued.[1] Refinancing transactions thus have always been a part of life in our corner of the world. And so the clock will begin to tick as soon as the bonds under a new bond program are issued, and once the issuer can call the bonds, our phones will begin to ring with the question: Can we refund?

A good tax-advantaged bond program will tell issuers in clear language whether and how they can refund bonds under the program.

Continue Reading

By Johnny Hutchinson on July 1, 2021

The Public Finance Tax Blog

Squire Patton Boggs

CDFA Publishes New Private Activity Bond Volume Cap Data and Resource Center.

The CDFA Volume Cap Resource Center allows users to search, sort, and compare comprehensive private activity bond volume cap data from all 50 states and the District of Columbia dating back to 2005. As a leader in the development finance industry, CDFA serves as the principal source for private activity bond volume cap data, reporting, and trends.

CDFA collects and analyzes the best available national volume cap data as reported by managing state agencies by surveying and interviewing representatives from each state's volume cap allocating and issuing authorities. The data represents the best available figures as reported by each state to CDFA.

The CDFA Annual Volume Cap Report contains information critical to understanding and evaluating the efficiencies, effectiveness, costs, and benefits of private activity bonds.

Click here for Volume Cap Data.

S&P Top 10 Management Characteristics Of Highly Rated State And Local Borrowers: Through The ESG Lens

Read the S&P report.

29 Jun, 2021

S&P ESG Brief: Cyber Risk Management In U.S. Public Finance

Read the S&P Brief.

[Registration required]

28 Jun, 2021

Fitch Named Most Transparent Credit Rating Agency for ESG for Third Successive Year.

Fitch Ratings-London-28 June 2021: Fitch Ratings has been named the most transparent credit rating agency (CRA) for ESG for the third successive year by key industry publication "Environmental Finance" in its 2021 Sustainable Investment Awards. Fitch has won the award each year since it was established in 2019.

In its award citation, Environmental Finance magazine said the judges again rewarded Fitch for the breadth of its ESG Relevance Scores, which now cover all asset classes. The citation highlighted work undertaken on two degree centigrade scenario-based ESG Vulnerability Scores, which evaluate the vulnerability of sectors' and entities' creditworthiness to ESG-driven risks in a two degree warming scenario to 2050. The citation also highlighted the introduction of ESG 'heat maps' and the provision of Fitch's ESG research free-of-charge through a dedicated ESG website.

"We are very pleased to receive this continued external recognition of our work," said Andrew Steel, Head of Fitch Ratings' Sustainable Finance Group. "In 2021 we have our sights set on further increasing our presence and reach in ESG, while maintaining our reputation for quality, in-depth and independent insights and opinions."

Environmental Finance's full citation for the award can be by clicking on [this link].

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Additional information is available on www.fitchratings.com

United States Municipal Bond Pricing Service 2021 - ResearchAndMarkets.com

DUBLIN–(BUSINESS WIRE)–The "US Municipal Bond Pricing" database has been added to ResearchAndMarkets.com's offering.

The service provides daily end of day pricing for either select bonds or the entire database of 1.25 million US Municipal Bonds. Along with the daily data, the analyst supplies 8 years of historical data.

The method reduces risk by providing more market-driven evaluations than traditional methods (such as bootstrapping, interpolation, and matrix pricing).

Developed for the middle-market, regional dealer community and clients are provided with:offers transparency into the methods and data sourced to produce the valuations gives client and partners the ability to provide needed feedback during development phases is developed by experts specific to the market niche it serves is priced to fit the regional firms' budgetary framework

For more information about this database visit https://www.researchandmarkets.com/r/f8j3uf

July 02, 2021

EMMA Disclosure Calendar - Continuing Disclosure Agreement

Why does the Submission Calculator on EMMA® not use the issuer's continuing disclosure agreement due date?

Learn that and more by watching our free on-demand webinar, Using EMMA to Identify Timing of Annual Financial Disclosures: msrb.org/Regulated-Entities/Webinars.aspx …#EMMAToolsTuesday

Vanguard, BlackRock Muni ETFs Reap Bonanza in Record Cash Inflow.

- **About $5.8 billion added to muni ETFs in second quarter**
- **Two biggest funds received nearly half of this year's inflows**

Exchange-traded funds focused on municipal bonds are raking in unprecedented amounts of cash.

The funds have seen a record $5.8 billion of inflows in the second quarter, according to data compiled by Bloomberg, driving this year's haul to about $11 billion. That has been a boon to the two biggest ETFs, run by BlackRock Inc. and Vanguard Group, which received nearly half of the funds.

ETFs are a small-but-growing force in the $4 trillion state and local government debt market, with about $75 billion of assets. The funds are benefiting from a broader influx of demand for municipal securities this year as President Joe Biden pushes to raise taxes on the highest earners, driving investors to look for ways to shield income from taxes.

During the summer months, the market also typically benefits from a wave of debt payments that bondholders typically seek to reinvest. Issuers are scheduled to pay $41.5 billion of principal and interest on July 1, adding to the cash hitting the market, according to a June 28 note by CreditSights strategists Patrick Luby and John Ceffalio.

The Vanguard Tax-Exempt Bond ETF, the second-biggest muni ETF with over $13 billion of assets, has seen $2.8 billion of inflows year-to-date, more than any other state and local debt ETF tracked by Bloomberg. And BlackRock's iShares National Muni Bond ETF, the biggest muni ETF with $22.7 billion of assets, has notched inflows of $2.2 billion so far this year.

Bloomberg Markets

By Amanda Albright

June 29, 2021, 8:03 AM PDT

New California Budget Proposal Provides Massive Funding Boost to Higher Education: Nossaman

On May 14, Gov. Newsom unveiled his record-breaking $267 billion budget proposal to tackle some of the greatest challenges facing the state of California, kicking off what's been described as the most ambitious era of government spending in the state since the mid-20th century. The new proposed budget comes exactly one year to the day after the governor announced spending cuts to schools, homeless services and health care in light of the state's $54 billion budget shortfall and the worsening COVID-19 pandemic. Thanks to a booming stock market and greater than expected tax …

Continue

By Frank Liu on 05.26.2021

Nossaman LLP

[Opportunity Zone Marketplace Roundtable, an ADISA Conference Panel.]

Are Opportunity Zones being underutilized? And what's in store for the Opportunity Zone marketplace as we come out of the…

[CONTINUE READING »]

opportunitydb.com

June 23, 2021

[The Upcoming Inflection Point for Opportunity Zones, with Nick Parrish.]

With impending tax policy changes and upcoming investing deadlines, is the Opportunity Zones marketplace nearing a critical inflection point? Nick…

[CONTINUE READING »]

opportunitydb.com

June 30, 2021

[S&P Bulletin: New Jersey's Fiscal 2022 Budget Could Signal Improved Finances If Windfall Revenues Do Not Lead To Increased Deficits]

NEW YORK (S&P Global Ratings) July 1, 2021–S&P Global Ratings said today that any improvement in New Jersey's (BBB+/Stable) overall creditworthiness will depend on the state's success in establishing structural budgetary balance following this year's $46.4 billion budget.

As the 2022 fiscal year begins, S&P Global Ratings will be monitoring the following credit factors:

- Given the sizable year-over-year increase in appropriations, largely funded by reserves, the state's ability to identify future funding sources or curtail out-year spending will be a credit focus.
- With a 57% year-over-year increase in pension funding, this could mark the start of improved funding discipline; however, it will take a demonstrated commitment to paying the actuarially determined contribution (ADC) from reoccurring revenues and sustained improvement to funded ratios in the state's pension plans to materially alter our view on the budget pressure caused by past actions.
- We believe New Jersey's debt burden is high, and to the extent overall liabilities materially improve, from the inclusion of $3.7 billion dedicated to debt reduction or other funding, this could have positive implications.

The enacted budget includes $1.5 billion of additional spending on top of increases in the governor's proposed budget, raising total year-over-year spending by 2.3% from the fiscal 2021 adjusted budget. Although the state forecasts both income and sales taxes will improve, much of this spending is funded by a one-time reserve spend down of $4.3 billion in reserves or 9.2% of appropriations, which we view as an operating deficit. These reserve balances are largely the result of $4.3 billion in deficit bond proceeds, which were expected to fund revenue losses that did not materialize. Now, officials plan to spend the resulting surplus on a combination of one-time items and increased support for pensions and debt reduction, which could support an improved financial position for the state if future budgets find the means to continue funding. We believe certain items added, including more money for education, health, human services, and tax rebates, might prove difficult to reduce in future years. The increased spending appropriated in the fiscal 2022 budget is largely in addition to the $6 billion of American Rescue Plan (ARP) funding the state received and will spend over the next three years. Important in a state saddled with high costs from long-term liabilities, these funds cannot be used to shore up pension plans or to pay down debt. Given this, we will be watching what the state spends them on, as use of federal funding to offset state costs in the short term could lead to increased budget gaps when the money runs out. If the state can find the money to maintain increased recurring obligations in future budgets, without continued reliance on reserve or federal funds, its financial position could improve, bringing it more in line with that of higher-rated peers. However, should additional spending be maintained without sufficient recurring revenues to support it, the state's structural deficit would persist, limiting upward rating potential. We will continue to monitor any potential effects funding decisions could have on our rating on the state as details emerge on ARP spending plans, pension funding, and debt defeasance.

One credit-favorable item to note in the enacted budget is additional pension funding, with the state not only fully funding its ADC for the first time in 25 years, but also adding about $500 million on top of the payment. This extra funding could lead to a modest reduction in long-term pension liabilities. To the extent future actuarial studies lead us to believe New Jersey will sustain a net pension ratio of more than 40%, this could have positive implications. However, the additional funding is intended to offset the increase in liabilities following a planned reduction in the plans' discount rate. Critical to maintaining the rating is the ability to fund long-term obligations. At 38.4% as of July 1, 2020, New Jersey's combined defined-benefit pension funded level is among the lowest in the country. Sustained improvement in funding discipline, as demonstrated by continued full payment of the ADC in future years from reoccurring resources, is necessary to reduce the risk that these obligations will pressure future budgets even more, forcing the state to cut services or dramatically increase revenues.

The other major funding included in the budget that we believe could improve New Jersey's financial position is the commitment to reducing the state's debt burden. New Jersey had the fourth-highest tax-supported debt burden in the U.S. at the end of fiscal 2020, which did not include the general obligation deficit bonds. The state is dedicating $3.7 billion to help reduce the financial impact of this debt burden through a debt-defeasance fund and pay-as-you go capital spending that would otherwise be funded by debt issuance. At this point, it is not clear what effect this will have on our view of the state's debt profile because details are not yet available. However, given where debt per capita stood at the end of fiscal 2020, it is unlikely these programs alone will be enough to materially improve New Jersey's debt profile, in our view.

1 Jul, 202

S&P Charter School Brief: New Jersey

As of June 28, 2021, S&P Global Ratings maintains seven public ratings on New Jersey charter schools. The state adopted charter school legislation in 1996, with the first school opening the following year. Based on the State of New Jersey Department of Education (DOE), more than 55,000 students (approximately 3.8% of the state's kindergarten through 12th-grade population) are enrolled in more than 87 charter schools across 40 cities with an additional waitlist of 36,000 students. Charter schools are concentrated in urban districts such as Newark, Jersey City, Paterson, Camden, Trenton, and Plainfield.

Continue reading.

28 Jun, 2021

2021 P3 Airport Summit.

JULY 19TH – 20TH, 2021 – MANCHESTER GRAND HYATT | SAN DIEGO

Click here to learn more and to register.

Preston Hollow Capital Completes Financing for The Highlander in a Public Private Partnership With Radford University, Virginia.

DALLAS–(BUSINESS WIRE)–Preston Hollow Capital, an independent specialty municipal finance company that supports local communities through creative, flexible and dependable infrastructure financing, today announced the successful execution of a $34 million financing to fund construction of The Highlander, a 124-room upper-upscale hotel that helps further Radford University's academic mission with the advent of its Hospitality Program. The Highlander also provides much-needed amenity to the University and the surrounding community and features a rooftop restaurant and a 4,000-square-foot conference space, providing the University the ability to attract and host business conferences, expos, and University events.

Preston Hollow's investment consists of a $34 million Sustainability Bond – a designation which allows investors to invest directly in obligations that finance socially beneficial and sustainable projects. Sustainability Bonds were adopted based upon sustainability framework guidance from the International Capital Markets Association and the United Nations Sustainable Development Goals. Preston Hollow worked hand in hand with Radford University and the Radford University Foundation to execute the financing.

"The Highlander represents a bold step forward for this University and community," said Radford University President Brian Hemphill. "We identified a growing need for the University and began to think about solutions, which started with building a world class team to bring our vision for the hotel to reality. Preston Hollow Capital has been a true partner for the University, not only through its investment, but also through its expertise in assembling a team that ensures the long-term success of The Highlander."

Radford University Foundation CEO John Cox said, "Breaking ground for The Highlander is a thrilling day for the Radford University Foundation. The vision for the hotel has been a focus for the University and Foundation since 2019, and the support from Preston Hollow Capital has been an essential part of this project. The Foundation is excited for The Highlander and the positive impact it will bring locally, regionally and beyond."

“As financing solution provider for The Highlander, Preston Hollow Capital was committed to advance the social and community benefits of the project, and we appreciate the opportunity to work with Radford University, its foundation, and the other valued partners involved with the project,” added Preston Hollow Capital Chairman and CEO Jim Thompson. “The Preston Hollow team takes pride in its ability to execute complex transactions and close with certainty. We’re confident the addition of The Highlander will benefit not only Radford University, but also the surrounding area’s businesses and residents,” he added.

Formal groundbreaking for the project occurred on June 15th of this year, with completion expected in time for family move-in for the start of the 2022 school year.

Provident Resources Group serves as the not-for-profit owner of The Highlander. SB Ballard, Inc. is the general contractor, with Blur Group serving as the architect. The Highlander will be managed by Aimbridge Hospitality.

July 02, 2021

- SIFMA Raises Concerns On Proposed Solicitor Municipal Advisor Regulations: Cadwalader
- Using and Navigating the Amended Form G-32 in Emma Dataport.
- NAIC’s SAPWG Exposes Proposed Definition of “Bond” for Purposes of SSAPs 26R and 43R: Mayer Brown
- Infrastructure Deal Within Reach – Muni Provisions Remain a Priority
- MSRB to Hold Series of Virtual Regional Town Halls for Municipal Advisors.
- NASBO Spring 2021 Fiscal Survey of States.
- And finally, Great Moments in Self-Abnegation, is brought to us this week by *Town of Palm Beach*, in which Diogenes devotee and and midcentury modern architecture aficionado sued the City of Palm Beach after it denied his application to replace his beachfront mansion with a wooden barrel in which to reside. JK! He sued after the city denied his request to replace his 10k sq. ft. mansion with a modest 25k sq. ft. midcentury modern abode. According to the owner, “the midcentury modern design communicated that the new home was clean, fresh, independent, and modern—a reflection of his evolved philosophy of simplicity in lifestyle and living with an emphasis on fewer personal possessions.”   As the court drily noted {in a rather delightful opinion), “His emphasis on fewer personal possessions included two stories and a basement containing a five-car garage, wine storage area, and steam room. The first floor would have an open-air entry, guest rooms, dining room, kitchen, family room, powder rooms, and living room. The open-air entry would lead to the pool, spa, and cabana. The second floor would have more guest rooms, an exercise room, and the master bedroom.” Alas, the obscenely wealthy – and certainly not the meek – look to be inheriting the earth. Given the clear and present warming trend, not to mention that Palm Beach will shortly be underwater – they’re welcome to it.

ZONING & PLANNING - CONNECTICUT

Farmington-Girard, LLC v. Planning and Zoning Commission of City of Hartford

Supreme Court of Connecticut - June 7, 2021 - A.3d - 2021 WL 2324251

Special permit applicant filed appeals challenging text amendments to city zoning regulations and zoning map changes made by city planning and zoning commission precluding special permit to construct fast-food restaurant.

After consolidation of appeals, the Superior Court dismissed. Applicant appealed. The Appellate Court affirmed. Applicant petitioned for certification to appeal, which was granted.

The Supreme Court held that:

- Zoning regulations did not confer authority on city zoning administrator to void application on ground that it was incomplete;
- Zoning administrator's letter purportedly voiding application was not appealable to zoning board of appeals or superior court; and
- Applicant's failure to pursue administrative remedy as to letter did not moot appeals of regulatory amendments and map changes.

ZONING & PLANNING - FLORIDA

Burns v. Town of Palm Beach

United States Court of Appeals, Eleventh Circuit - June 8, 2021 - F.3d - 2021 WL 2325300

Property owner brought § 1983 action against town, alleging that denial of approval, by town's architectural review commission, of building permit for replacement of traditional beachfront mansion with larger mansion using midcentury modern design violated his rights to due process, equal protection, and freedom of expression.

The United States District Court for the Southern District of Florida adopted the report and recommendation of a magistrate judge and granted summary judgment to town. Owner appealed.

The Court of Appeals held that:

- Owner failed to specifically demonstrate why he needed additional discovery before a ruling on town's summary judgment motion;
- A reasonable viewer would not infer some sort of message from the new mansion, as would be required for First Amendment protection of expressive conduct, because landscaping features would prevent viewers from seeing the mansion;
- Town's criteria for demolition and construction were not unconstitutionally vague under due process principles; and
- Owner offered no evidence for similarly-situated requirement for class-of-one equal protection claim.

CONTRACTS - GEORGIA

Renee Group, Inc. v. City of Atlanta

Court of Appeals of Georgia - June 11, 2021 - S.E.2d - 2021 WL 2389138

Sewer cleaning corporation, who was invited by city to submitted bid for Department of Watershed Management sewer cleaning and pipeline assessment annual contract, brought action against city alleging breach of contract and promissory estoppel.

The trial court granted city's motion to dismiss breach-of-contract claim and granted city's motion for summary judgment, asserting that corporation could not meet its burden in showing promissory estoppel. Sewer cleaning corporation appealed.

The Court of Appeals held that corporation was precluded from bringing promissory estoppel claim against city.

Sewer cleaning corporation, who was invited by city to submitted bid for Department of Watershed Management sewer cleaning and pipeline assessment annual contract, was precluded from bringing promissory estoppel claim against city, although city council approved resolution authorizing mayor to enter into proposed agreement with corporation; there also needed to be approval by city attorney, execution by mayor, and attestation to by municipal clerk, and none of those requirements were met.

LIABILITY - MICHIGAN

[Buhl v. City of Oak Park]

Supreme Court of Michigan - June 9, 2021 - N.W.2d - 2021 WL 2350031

Pedestrian, who fractured her ankle when she fell attempting to avoid a crack in sidewalk, brought action against city under the sidewalk exception to governmental immunity.

The Circuit Court granted summary disposition in favor of city, based on statutory amendment that allowed municipality to assert open and obvious danger doctrine as a defense. Pedestrian appealed, and the Court of Appeals affirmed. Pedestrian appealed.

The Supreme Court held that amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, could not be applied retroactively to pedestrian’s claim.

Nothing in the plain language of amended statute granting municipalities the right to raise the open and obvious danger doctrine as a defense in premises-liability cases suggested that it was intended to apply retroactively, and thus, factor asking whether there is specific language in the statute that indicates whether it should be applied retroactively did not support retroactive application of amended statute to pedestrian’s claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment; amendment was given immediate effect without further elaboration, and amendment made no mention of whether it applied to a cause of action that had already accrued before its effective date.

Factor asking whether retroactive application of statute or amendment would create new obligations, impose new duties, or attach new disabilities with respect to transactions already past, did not favor retroactive application of amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, to pedestrian’s claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment; although application of amended statute would not automatically extinguish pedestrian’s claim, subsequent application of open and obvious danger doctrine would result in dismissal of her lawsuit because retroactive application would relieve city of legal duty it owed to her when injury occurred.

Factor favoring retroactive application of statutes that are merely remedial or procedural did not favor retroactive application of amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, to pedestrian’s claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment; retroactive application of amendment would relieve city of duty it owed to maintain its sidewalk in reasonable repair.

Amended statute granting municipalities right to raise open and obvious danger doctrine as defense in premises-liability cases, could not be applied retroactively to pedestrian's claim seeking to recover from city for injuries sustained when she fell trying to avoid a crack in sidewalk prior to amendment, and thus, city could not avail itself of the open and obvious danger doctrine as a defense to pedestrian's negligence claim; nothing in the plain language of amended statute suggested that it was intended to apply retroactively, and retroactive application would relieve city of a legal duty it owed to pedestrian when injury happened.

BONDS - NEW YORK

Monterey Bay Military Housing, LLC v. Ambac Assurance Corporation

United States District Court, S.D. New York - March 31, 2021 - F.Supp.3d - 2021 WL 1226984

Military base housing projects brought action in Northern District of California against loan originator, bond insurer, their managing directors, and others for conspiracy and substantive violations of Racketeer Influenced and Corrupt Organizations Act (RICO), as well as state-law claims including breach of fiduciary duty and aiding and abetting breach of fiduciary duty.

After originally denying insurer's motion to transfer venue, the United States District Court for the Northern District of California denied defendants' motions to dismiss second amended complaint for failure to state a claim, but sua sponte reconsidered its prior denial of transfer motion and transferred action to Southern District of New York for lack of personal jurisdiction over all but one defendant. Defendants moved for reconsideration.

The District Court held that:

- Transferor court's determination that it lacked personal jurisdiction over most defendants precluded it from denying those defendants' motions to dismiss for failure to state a claim;
- Projects adequately alleged special circumstances giving rise to fiduciary relationship between them and loan originator under New York law;
- Projects did not have inquiry notice triggering application of four-year statute of limitations under RICO;
- Allegations of scheme to defraud projects through issuance of bonds would not support securities fraud enforcement action;
- Projects' allegations satisfied horizontal and vertical relatedness requirements for RICO enterprise claims;
- Projects adequately alleged bond insurer knowingly and intentionally participated in mail and wire fraud; and
- Projects adequately alleged that purchaser of loan originator and purchaser's affiliated entities entered into RICO conspiracy.

District court's determination that it lacked personal jurisdiction over all but one defendant in developers' action under Racketeer Influenced and Corrupt Organizations Act (RICO) precluded district court from denying defendants' motions to dismiss for failure to state a claim; personal jurisdiction over defendants was necessary before district court could adjudicate arguments presented by those defendants in motions to dismiss for failure to state a claim, at least to extent that district court ruled against such defendants.

Military housing projects' allegations that bond insurer, loan originator, their managing directors, and others engaged in mail and wire fraud as predicates for Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise and conspiracy claims were premised on each defendant's knowing or intentional participation in scheme to defraud, and, thus, projects were not required to plead defendants had fiduciary duty giving rise to obligation to disclose any omitted facts, where projects alleged that originator, insurer, and their directors made affirmative representations to private developers and to consultant regarding financing of housing projects, including that insurer would act in projects' best interests to obtain highest possible rating from rating agencies.

Housing projects adequately alleged special circumstances giving rise to fiduciary relationship between loan originator and its managing director on the one hand and projects on the other, as necessary to support projects' claims against originator and director for breach of fiduciary duty under New York law, even though loan agreements did not purport to create fiduciary relationship, where projects alleged that originator and its director promised to provide fiduciary services beyond typical lender role in connection with financing projects, including by serving as financial advisor and as projects' agent in negotiating term loans and surety bonds, and that projects relied on representations in agreeing to work with originator rather than other lenders.

Allegations that bond insurer, through its managing director, told private developers and consultant for housing projects on military bases that insurer would act in projects' best interest to obtain highest possible rating from ratings agencies and would operate as projects' "fiduciary and agent" were insufficient, under New York law, to plausibly allege fiduciary relationship between insurer or its managing director and projects, as necessary to support projects' claims against insurer and managing director for breach of fiduciary duty, in the absence of specific allegations regarding nature of relationship between insurer and projects.

Clause in agreements that mortgage company entered into in connection with financing for housing projects on military bases, in which mortgage company disclaimed "financial advisor or fiduciary relationship role" in relation to developers, applied solely to mortgage company, not to entities affiliated with mortgage company, and, thus, under New York law, disclaimer clause did not preclude developers' action for breach of fiduciary duty against affiliated entities, where clause only specified that mortgage company would not be agent or fiduciary of developers or assume advisory or fiduciary responsibility in favor of developers.

Clause in agreements that mortgage company entered into in connection with financing for housing projects on military bases, in which mortgage company disclaimed "financial advisor or fiduciary relationship role" in relation to developers, did not preclude developers' claims against company under New York law for breach of fiduciary duty, where developers alleged that financial advisor who engaged in tortious conduct in breach of his fiduciary obligations was acting as agent of company and within scope of his employment with entity affiliated with company, such that company and entity were allegedly vicariously liable for financial advisor's conduct, as well as that company and financial advisor procured developers' agreement to disclaimer clause by fraud.

In considering whether, based on allegations of second amended complaint, military base housing projects had inquiry notice of allegedly fraudulent conduct on the part of loan originator, insurer, and others that would trigger four-year statute of limitations on projects' claims under Racketeer Influenced and Corrupt Organizations Act (RICO), trial court was not required to consider allegation contained only in first amended complaint that development consultant had noticed originator's preference for using insurer on projects; statement in first amended complaint did not directly contradict allegations of second amended complaint.

Allegations in housing projects' complaint against loan originator, insurer, and others for mail and wire fraud under Racketeer Influenced and Corrupt Organizations Act (RICO) were sufficient to establish that projects engaged in reasonably diligent inquiry, such that four-year limitations period on RICO claims did not begin to run based on inquiry notice, even if consultant's observation that originator seemed partial to using insurer for credit enhancement triggered projects' duty to inquire, where consultant allegedly insisted that originator competitively bid out credit enhancement, indicating some inquiry had occurred, and insurer and originator responded by concealing insurer's role in development project financing, such that further inquiry would not have discovered alleged fraud.

Consultant's observation that loan originator was partial to using insurer for credit enhancement in connection with military base housing project financing was insufficient to show that a reasonable plaintiff with such knowledge would have been aware of existence of fraud, and, thus, did not put projects, which brought civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) against originator and insurer based on mail and wire fraud, on inquiry notice that would trigger four-year limitations period for civil RICO claims; originator's pattern of business dealings with same insurer, in and of itself, did not indicate alleged schemes to inflate credit spread and manipulate insurer ratings.

Military base housing projects' questioning of managing director of loan originator about funding structure did not establish that projects were on notice of director's alleged fraud in obtaining financing, and, thus, did not preclude doctrine of fraudulent concealment from delaying application of four-year statute of limitations on projects' civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims against director, originator, and others, in the absence of allegations about circumstances that prompted projects to ask such questions.

Consultations between housing project developers and managing director of loan originator about effect on projects of downgrade in insurer's rating did not suggest that developers were aware of alleged fraudulent scheme for insurer to secretly participate in certain projects, and, thus, did not preclude doctrine of fraudulent concealment from delaying limitations period on developers' claims against director, originator, insurer, and others under Racketeer Influenced and Corrupt Organizations Act (RICO); it would have been reasonable for developers to have concerns about insurer's downgrade in connection with projects for which insurer openly provided credit enhancement, as opposed to projects for which developers were allegedly unaware of insurer's involvement.

Military housing projects' allegations that loan originator, bond insurer, and others engaged in scheme to defraud projects, as bond issuers, by falsely representing bonds' interest rates would be set at market, allowing originator to keep undisclosed profits from sales at above-market rates, would not have supported a securities fraud enforcement action brought by Securities and Exchange Commission (SEC), and, thus, securities-fraud bar to actions under Racketeer Influenced and Corrupt Organizations Act (RICO) did not preclude projects from basing RICO claims on alleged scheme; projects alleged that participants made misrepresentations and caused harm to them as bond issuers, which did not implicate SEC's authority to protect securities market or securities investors such as bond holders.

Military housing projects' allegations that loan originator, bond insurer, and originator's managing director, among others, engaged in scheme of mail and wire fraud in connection with project financing satisfied horizontal relatedness requirement for Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise claim, where various alleged acts of fraud had same or similar purposes and results, namely, obtaining undisclosed and unlawful profits in connection with providing financing through projects, alleged scheme shared same participants as well as many same victims, including Army and its consultant, and predicate acts shared methods of commission, including director's role as financial advisor and misrepresentations regarding nature and structure of financial transactions.

Alleged misrepresentations that loan originator, its managing director, bond insurer, and others made to military housing projects, Army, and its consultant regarding nature of transactions undertaken to finance projects related to activities of alleged Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise, as necessary to satisfy requirement of vertical relatedness for RICO enterprise claim, where misrepresentations allegedly benefited originator, director, and other participants in alleged scheme of mail and wire fraud by allowing them to reap undisclosed profits at projects' expense, such as through issuance of high-interest bonds, or to prevent projects from uncovering enterprise's scheme, such as through concealing insurer's involvement.

Military base housing projects adequately alleged that bond insurer knowingly and intentionally participated in mail and wire fraud scheme to obtain credit enhancement fees from projects without projects' knowledge that insurer was participating in financing, as necessary to plead insurer's mail and wire fraud as predicate acts under Racketeer Influenced and Corrupt Organizations Act (RICO), even though insurer did not make any misrepresentations or omissions to projects, where projects alleged that originator, director, and insurer intentionally concealed that insurer was providing credit enhancement in exchange for high fees, despite representations that project loans would not have credit enhancement and despite providing project with certain documents omitting insurer's role.

Military housing projects adequately alleged that purchaser of loan originator and purchaser's affiliated entities entered into conspiracy with originator, originator's managing director, and bond insurer to defraud projects in securing financing, as necessary to support Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim, where projects alleged that during due diligence process preceding acquisition of originator's business, purchaser and affiliates learned that originator and others engaged in enterprise to reap profits through making misrepresentations to projects regarding bond insurance rates and credit enhancement services, and purchaser proceeded with acquisition and hired managing director, then made their own financing-related misrepresentations to projects.

Military housing projects' complaint against loan originator, purchaser of originator, purchaser's affiliated entities, and others for Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise and conspiracy adequately explained specific role of purchaser and each of its affiliates in alleged scheme to defraud projects in connection with financing, as necessary to satisfy requirement of pleading fraud with particularity as to each defendant, where complaint alleged each entity's role in financing of projects, alerted each entity to theory of liability against it, including theory of purchaser's successor liability, and alleged that entities had intertwined operations making it difficult to tell which entity took which actions.

ZONING & PLANNING - OHIO

Benalcazar v. Genoa Township, Ohio

United States Court of Appeals, Sixth Circuit - June 10, 2021 - F.3d - 2021 WL 2374260

Property owners filed § 1983 action alleging that township violated their rights under Due Process and Equal Protection Clauses when it denied their rezoning request. After township signed consent decree permitting owners to develop their property, township residents intervened and moved to dismiss.

The United States District Court for the Southern District of Ohio approved consent decree, and intervenors appealed.

The Court of Appeals held that district court had authority to enter consent decree without first ruling on intervenors' motion to dismiss.

District court had subject matter jurisdiction over property owners' non-frivolous claim that township violated their rights under Due Process and Equal Protection Clauses when it denied their rezoning request, and thus had authority to enter consent decree without first ruling on intervening township residents' motion to dismiss based on zoning referendum reversing township's approval of rezoning application.

OPEN MEETINGS - WASHINGTON

Zink v. City of Mesa

Court of Appeals of Washington, Division 3 - June 1, 2021 - P.3d - 2021 WL 2197995

City council meeting attendee brought action against city, mayor, city council members, county, sheriff's offices, sheriff, and deputies, alleging violations of the Open Public Meetings Act (OPMA) in connection with arrest for video recording city council meeting, among other claims.

Following a jury verdict in favor of defendants, the Superior Court set aside jury's verdict and found city violated OPMA by prohibiting attendee from video recording meeting, and awarded $5,000 in attorney fees. Attendee appealed.

Upon transfer from the Supreme Court, the Court of Appeals held that:

- City council proceedings constituted a "meeting" within meaning of OPMA;
- City's decision to eject attendee who was video recording meeting was not reasonable;
- Attendee stated a claim that city's governing body established an invalid condition precedent on attendance at a public meeting in violation of OPMA;
- Individual elected officials were not subject to personal individual liability; and
- Trial court's brief analysis with respect to $5,000 attorney fee award was an abuse of discretion.

ANNEXATION - WISCONSIN

City of Mayville v. Department of Administration

Supreme Court of Wisconsin - June 11, 2021 - N.W.2d - 2021 WL 2385542 - 2021 WI 57

First village filed petition for judicial review of decision of Department of Administration, which approved cooperative plan between second village and town whereby second village and town would be consolidated. Department and second village moved to dismiss for lack of standing.

The Circuit Court denied motion. The Circuit Court thereafter determined that first village was required to be party to plan and reversed Department's decision. Department and second village appealed. The Court of Appeals affirmed as modified. The Supreme Court granted review.

The Supreme Court held that:

- Department's decision affected substantial interests of first village, and thus first village had standing to seek judicial review of decision, and
- Cooperative plan physically altered or made difference in first village's boundary line, and thus before such change could be effective, first village was required to be party to plan.

Department of Administration's decision approving cooperative plan to consolidate first village and town adversely affected substantial interests of second village, and thus second village had standing to seek judicial review of decision, where both villages were completely surrounded by town, which was unincorporated, upon approval of plan land surrounding second village would become incorporated village, prior to plan second village had statutory extraterritorial zoning rights and extraterritorial plat approval rights within town and was statutorily permitted to annex areas of town contiguous to it, and plan extinguished those statutorily granted rights.

Cooperative plan to consolidate first village and town physically altered or made difference in second village's boundary line, and thus before such change could be effective, second village was required to be party to plan, although plan did not, in and of itself, effect change in second village's boundary line, where plan set conditions that had to be met if second village's boundary lines were to change, and, further, territory surrounding second village would become incorporated territory and, due to that change, second village would no longer will possess statutory right to annex that territory.

NASBO Spring 2021 Fiscal Survey of States.

With data gathered from all 50 state budget offices, this semi-annual report provides a narrative analysis of the fiscal condition of the states and data summaries of state general fund revenues, expenditures, and balances. The spring edition details governors' proposed budgets; the fall edition details enacted budgets.

Overview – Spring 2021

State general fund spending is projected to grow **5.0 percent** in fiscal 2022 compared to fiscal 2021 levels, with 39 states proposing spending increases according to governors' budgets. While the effects of COVID-19 on state budgets were not as severe as anticipated earlier in the crisis, both general fund spending and revenue levels remain below pre-pandemic projections, based on estimates at the time of data collection.

Other key highlights from the report:

- Estimated general fund spending is on track to grow **3.0 percent** in fiscal 2021 but is 2 percent below pre-pandemic spending projections.
- **38 states** reported fiscal 2021 general fund revenue collections are exceeding original budgeted revenue projections.
- Fiscal 2021 general fund revenue is estimated to grow **3.7 percent**, or **1.4 percent** after accounting for the tax deadline shift that occurred in calendar year 2020.
- Governors' budgets are based on forecasted general fund revenue growth of **2.3 percent** in fiscal 2022, or **3.4 percent** after adjusting for the impact of the tax deadline shift that occurred in calendar year 2020.
- States are on track to collect **2.8 percent** less over fiscal 2020 and fiscal 2021 compared to what

they were expecting before the COVID-19 crisis, with **40 out of 50 states** seeing declines compared to pre-pandemic projections over the two-year period.
- Rainy day fund use has been uneven across states, with the median balance holding fairly steady at **8.4 percent** in fiscal 2020, **7.6 percent** in fiscal 2021, and **8.3 percent** in fiscal 2022.
- Medicaid spending is forecasted to continue growing in fiscal 2022 but at a slower rate of 5.2 percent, after growing an estimated 12.5 percent in fiscal 2021.

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GFOA: Prioritizing Community Values in Capital Budgeting

Over the past year, many communities have started to understand the ways in which local policies have the potential to affect communities. Whether it be policies on imposed fees and fines, zoning or land use regulations, economic development incentives, or policing strategies, there is potential for disadvantaged neighborhoods and select demographics to face challenges not found in the larger population.

READ CITY OF OAKLAND CASE STUDY

The Market's Not Paying Enough Attention to the Infrastructure Deal.

Democrats and Republicans finally agreed on an infrastructure deal, something the market desperately wanted.

Or did it? The remarkable aspect of the announcement of a bipartisan infrastructure bill agreement is that there wasn't much market reaction at all.

Yes, the Dow Jones Industrial Average got a bit of a bump, and the S&P 500 ended at a high, but it's done that 30 times this year. But there were no fireworks in the bond market, and the currency markets were quiet, too.

True, the agreement still has to go through the process of becoming law, and that's easier said than done. But given the monthslong behind-the-scenes maneuvering, there's a decent chance the legislation will make it to the finish line.

One could argue that infrastructure was already priced in, but the announcement wasn't greeted with sell-the-news behavior, either. So you're left with two conclusions.

One is that the markets are so perfectly in tune with Washington that major spending initiatives are precisely baked in.

The other is that financial markets are so obsessed with the Federal Reserve and monetary policy that they're willing to shrug off the equally potent economic force of fiscal policy.

Don't be surprised if that starts to change.

Barron's

by Al Root

June 25, 2021

[S&P: U.S. Not-For-Profit Health Care Sector View Revised To Stable From Negative]

Key Takeaways

- The revision reflects a trend of revenue recovery, ongoing balance sheet strength, and proactive management teams' focus on maintaining financial stability.
- While there are still meaningful headwinds in the sector, we believe the risk level has declined and is consistent with prior years when the outlook was stable.
- Federal funds through the CARES Act have provided significant support over the last 15 months to providers and helped limit the negative financial and downside risk from the pandemic.
- Currently around 85% of our rated health care organizations carry stable or positive outlooks, which further supports our decision.

[Continue reading.]

23 Jun, 2021

[S&P U.S. Not-For-Profit Private College And University Fiscal 2020 Median Ratios: Metrics Start To Demonstrate Effects Of The Pandemic]

Key Takeaways

- Enrollment pressures persist for many institutions in the private higher education sector with the exception of a small pool of higher-rated colleges and universities, indicating widening divergence within the industry.
- On average, private colleges and universities were able to limit the negative effects of the COVID-19 pandemic on operating performance in fiscal 2020 through expense management and the use of emergency federal relief funds.
- Median debt levels increased across the rating spectrum, spurred by low borrowing costs and efforts to boost liquidity cushions during the pandemic, especially among higher-rated issuers.
- As of June 15, 2021, 30% of S&P Global Ratings' outlooks on private colleges and universities ratings are negative, and only 1% of outlooks are positive.

Continue reading.

23 Jun, 2021

S&P U.S. Not-For-Profit Public College And University Fiscal 2020 Median Ratios: The Pandemic Presents New Challenges In An Increasingly Competitive Landscape

Key Takeaways

- Full-time equivalent (FTE) enrollment declines persist, particularly in areas facing demographic challenges.
- Public colleges and universities were, on average, able to maintain similar operations in fiscal 2020 despite the COVID-19 pandemic.
- Lower-rated public colleges and universities continue to face more pressure than higher-rated institutions, which have generally been able to continue increasing enrollment, maintain positive operations, and sustain solid available resource ratios.
- As of June 15, 2021, 32% of rating outlooks on public colleges and universities remain negative.

Continue reading.

23 Jun, 2021

Fitch: Pandemic Exacerbating U.S. Affordable Housing Stresses

Fitch Ratings-New York/San Francisco/Chicago-24 June 2021: The coronavirus pandemic is creating new cracks in the already fragile foundation of affordable housing, according to Fitch Ratings in a new report.

Low-income households have been facing daunting affordability with over 10 million low-income renter households facing economic stress and substandard housing for several years. After the onset of the pandemic, "COVID-19 caused an economic contraction felt among millions of American of many economic strata, and those at the most vulnerable level of the economic scale saw their tenuous grip loosen on housing security," said Senior Director Mikiyon Alexander.

The pandemic has intensified rising input costs, generational shifts in demand, changes in regulations and slower wage growth already in place that have all led to supply deficits and rising home prices that affect U.S. housing affordability. Affordable housing stock has decreased, causing demand to outstrip supply, and leaving a gap that particularly pressures the affordable housing segment.

The root of the affordable housing issues rests with a deficiency in the general housing supply. Only seven homes were built for every 10 households formed from 2010 to 2016. This creates a strong competition for the existing affordable housing supply for both homeownership and rental housing. This intensifying competition, according to Alexander, "makes the housing shortage more acute for those in the market for affordable housing."

Renters are facing similar struggles. Among the 10.8 million renter households with incomes at or below the poverty line, these extremely-low income households faced a shortage of nearly seven million rental homes. Just 37 affordable homes are available for every 100 extremely low-income rental households.

“COVID-19 Complicates Housing Affordability: Defining the Gaps for 2021” is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Fitch: Covid-19 Complicates Housing Affordability (Defining the Gaps for 2021)

Read the Fitch Special Report.

Thu 24 Jun, 2021

Fitch: Higher US Military Housing Maintenance Costs Pressure Ratings

Fitch Ratings-New York-24 June 2021: Continued elevated expenses due to moisture remediation could lead to further negative ratings pressure for US military housing bonds with exposure to environmental issues, Fitch Ratings says. Some military housing operators have been accused of neglecting routine maintenance, allowing unsafe housing conditions to develop. Over the past year, Outlooks for 11 of 13 rated military housing transactions have been revised to Negative from Stable due to liquidity erosion and increased expenses.

In 2020 and 2021, Fitch downgraded and placed on Negative Outlook four transactions with Negative Outlooks because of large increases in operating expenses that negatively affected debt service coverage ratios (DSCR). Fiscal 2019 operating expenses increased substantially from 2018, in many cases by double digits, as a result of maintenance and repairs tied to environmental remediation. DSCRs continue to decline from historically high levels in 2018.

The operator’s ability to maintain housing quality, sustain strong occupancy levels and control project operating expenses is important to project cash flow stability. Military housing transactions also benefit from cash reserves, usually sized at maximum annual debt service, to guard against cash flow volatility. Some transactions have reinvestment funds to offset some of the increased expenses that are only to be spent with the approval of the appropriate service branch. Reinvestment funds are quickly being depleted, and should they be exhausted, the DSCR could plummet.

Military housing operators have been hit with a number of lawsuits in Texas and Washington alleging unsafe housing conditions. Operator revenue is often based in part on meeting performance objectives set forth in contracts with the applicable service branch. Two former employees of Balfour Beatty pleaded guilty to fraud for covering up military housing issues between 2013 and 2016 at Lackland, Travis, Vandenberg, Tinker and Fairchild Air Force Bases (AFBs). Maintenance documents were falsified to allow the company qualify for incentive payments received upon meeting certain maintenance targets. Capmark Military Housing Trust XXXIX AMC West (which covers Travis, Tinker and Fairchild AFBs) was downgraded last July to ‘A+’/Outlook Negative from ‘AA’/Outlook Stable.

Military bases saw a rise in insurance premium expenses. Some incident claims are coded as uninsured losses until it is determined whether the claim will be covered. Once bases receive reimbursement, Fitch may attribute insurance payments to cash flows when invested back into the project.

Higher expenses and marginal basic allowance for housing (BAH) increases can result in some deals having less than break-even coverage, per Fitch’s Military Housing Criteria break-even thresholds for investment-grade ratings. Most military housing project revenue is derived from the BAH, which is informed in part by the rental rates in the community. Given the reliance on federal appropriations, BAH may be impacted in the longer-term by the uncertainty of future federal programmatic spending on housing programs. The median BAH rate for all military service members across all installations increased 3% from 2020 to 2021, similar to the 2.7% increase from 2019 to 2020. For Fitch-rated military housing projects, median rates increased 1.1% from 2020 to 2021.

Sustained declines in occupancy could also pressure ratings. Project vacancy rates have increased, primarily driven by increased remediation and the Department of Defence’s freeze of Permanent Change of Station during the pandemic. This resulted in a subsequent decline in rental revenues for the duration of the freeze, which was lifted in June 2020.

Military housing projects with a Negative Outlook or Watch have been assigned elevated environmental, social and governance (ESG) relevance scores of ‘5’, reflecting the concerns regarding exposure to environmental site risk and associated remediation costs.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

[Top 10 Airports to Receive $2.4 Billion in U.S. Virus Relief.]

- **FAA announces grants from airport rescue plan enacted in March**
- **Aid is part of $8 billion approved for airports, businesses**

The top 10 U.S. commercial airports will receive almost $2.4 billion in pandemic relief funds based on a formula set by Congress earlier this year.

The Federal Aviation Administration on Tuesday announced it is providing $7.4 billion to scores of airports as well as the restaurants, shops and other businesses that have suffered as the coronavirus severely cut air travel, starting in early 2020. Another roughly $600 million will be disbursed to airports through existing grant programs, the agency said.

“The Airport Rescue Grants keep workers employed and help the aviation sector recover as more Americans get vaccinated and begin traveling again,” Transportation Secretary Pete Buttigieg said in a release.

The funds are part of President Joe Biden’s $1.9 trillion Covid-19 relief package. Passage of the legislation in March helped prompt a rally in airport municipal bonds.

The largest grants were based on passengers, and Atlanta’s Hartsfield-Jackson International, the busiest U.S. hub, will get the most of any airport, about $370 million, according to FAA data.

After falling 96% of pre-pandemic levels in April 2020, air travel has gradually ramped up. In recent days, airline passenger numbers are about 27% below the equivalent period before the virus hit, according to Transportation Security Administration data.

Bloomberg Politics

By Alan Levin

June 22, 2021, 5:00 AM PDT Updated on June 22, 2021, 6:20 AM PDT

— With assistance by Nic Querolo

[America Needs an Infrastructure Bank.]

As Republicans and Democrats argue over the size and funding of an infrastructure bill, the idea of a national infrastructure bank is back on the table—and not a moment too soon. It is the right way to fund our infrastructure by bringing private investment to bear, and to break the partisan standoff that threatens our ability to solve our infrastructure crisis. The dire condition of our roads, bridges, public transport, water supply, and power grid threatens our economic growth.

What is the infrastructure bank? It has taken different forms in proposals since 2007. But simply put, the proposal is to create a government-sponsored institution, such as Fannie Mae, alongside private money that consolidates funds and distributes them to public projects in the form of loans or direct equity investments.

The bank needs to be of a size and scope to provide for long-term strategic infrastructure investment on a national scale and with a long-term time horizon. It should have $100 billion in equity capital and a $1 trillion balance sheet, sufficient to galvanize the capital markets and generate funding on a sustainable long-term basis. It can also play additional critical roles: Removing structural barriers to infrastructure funding—there are a surprising number—and providing expertise in planning and project management that exceeds what existing state and municipal resources can accomplish.

There are several compelling reasons for committing to the infrastructure bank. The first has simply to do with the scale of the infrastructure emergency. The $2.3 trillion proposed for infrastructure investment under President Biden's first American Jobs Plan sounds enormous, as does the $1.7 trillion in the administration's later proposal and the $1.2 trillion in the bipartisan deal under discussion today. Unfortunately, these figures are not as big as they seem. While the initial plan is bold, necessary and ambitious—it aims for nothing less than to transform infrastructure for the 21st century and revitalize American productivity for decades to come—the proposed expenditure is not nearly adequate. The latest bipartisan deal would add only $600 billion in new spending over five years. The American Society of Civil Engineers has called for $2.59 trillion in infrastructure spending just to bring our existing infrastructure into a state of adequate repair—that is, without starting any new projects. A true modernization and revitalization would cost dramatically more.

Public funding options are limited by political reality. The current stalemate over the Biden infrastructure plan is driven partly by how infrastructure should be defined, but primarily by how it should be paid for. The proposed mechanisms—higher taxes or a bigger deficit—are politically unpopular. One can argue that taxation is an appropriate way to pay for public projects, but it is a hard sell for politicians. There are other disadvantages to public funding. Government budgets are short-term and subject to political whims. Infrastructure needs a long-term planning horizon.

The alternative is to turn to private investment. The good news is that ample private funding is available. U.S. pension funds had over $18 trillion in assets under management at the end of 2019. Add in overseas pension funds and that total climbs to over $40 trillion. Private equity funds and overseas sovereign wealth funds bring the total still higher. There might even at some future point be a dedicated Infrastructure IRA as I have proposed. All of these investors would benefit greatly from exposure to infrastructure, which is highly predictable and generates stable, predictable cash flows that are maintained over the decades-long life of the investment.

Still, raising dedicated private funds and channeling them to infrastructure projects is no easy matter. That's where the infrastructure bank comes in.

The hard but surprising truth is that there is currently no direct path for private investment in infrastructure. Many pension funds and other private investors want to invest in infrastructure. But they have a hard time finding projects in the labyrinth of federal, state, and local entities that control the nation's infrastructure. Even when projects can be found, they are often not designed for private investment. They are largely funded by federal grants and state and municipal bond issues. There is limited equity opportunity through public-private partnerships, but not nearly enough.

The bank's first task is simply to take in both federal and private funds—at massive scale—and direct them to state and local infrastructure projects. And, working in the other direction, it brings the most promising projects to the attention of investors. Like Fannie Mae, it brings liquidity and transparency to an illiquid, opaque market.

An infrastructure bank can do more. It can provide project management and oversight. Developing projects via public-private partnerships is complex and time-consuming—beyond the capacity of many state and local agencies. The bank can recruit and deploy experts and staff. It can help local agencies with the strategic and day-to-day demands of project management: permitting and contracting, helping define and then oversee major technical elements, determining concession timeframes that structure public-private partnerships, and monitoring contractor performance.

The bank can support the underserved, by investing in regions such as inner cities or low population density towns that because of acute needs and weak revenues are unable to fund infrastructure on their own. As a government-sponsored bank, it can plow back profits to subsidize projects in less wealthy areas at lower returns. Think of this U.S. infrastructure bank as the equivalent of the World Bank but for the 50 states and thousands of municipalities that need the help to devise and execute on long-term infrastructure plans.

In the face of the infrastructure crisis—and of our political paralysis—innovative and bipartisan solutions are needed. The bank is one such innovation. The idea has been in circulation long enough. It is time to act to make it a reality.

Barron's

By Sadek Wahba

June 24, 2021

Sadek Wahba is a senior fellow at the Development Research Institute of New York University. He is also chairman and managing partner of I Squared Capital, an infrastructure investment company. The views expressed in this commentary do not necessarily reflect those of either organization.

What Does President Biden's Infrastructure Push Mean for Local and State Governments?

Earlier this year, President Biden introduced one of the largest-ever U.S infrastructure plans, roughly $2 trillion investment over a decade, to address the aging and underfunded infrastructure, which has often been neglected through the years.

This infrastructure push entails efforts to revamp the transportation sector, roads and highways, shift to green energy, and more importantly the aging sewage systems throughout the U.S. It's also important to note the timing of this expenditure plan, which comes after the United States government has already distributed over $6 trillion in COVID-19 economic relief funds in the form of direct impact payments, state and local government aid and extended unemployment benefits.

The funding for the infrastructure plan is expected and proposed to come from a potential increase in the corporate tax rate that'll take the tax rate back up from 21% to 28%. Although the plan focuses on many different areas of American infrastructure – including manufacturing, commercial and residential construction, veterans' hospitals, schools, digital infrastructure, airports and creating well-paying American jobs – in this article, we will take a closer look at how the proposed transportation revamp and fixing the water infrastructure fits into the overall strategy of President Biden's overall vision.

Push for Transportation Revamp

One of the central pieces of President Biden's plan is to bring the American transportation infrastructure into the 21st century, to not only compete with other international powers but also meet the growing demand of the American travel industry – mainly airports and modernizing the rail infrastructure.

In addition, the plan also entails a strong push for the allocation of a significant amount of funds to fix economically significant bridges, highways, roads and main streets. The plan also allocates over $85 billion dollars to modernize transit agencies throughout the United States; this push will bring much-needed funding for repair backlogs and modernizing existing infrastructure, especially coming out of the COVID-19 downturn and low ridership.

We can decipher two main areas of the transit infrastructure push that will require joint efforts from multiple local governments and jurisdictions: public-private partnerships and public debt financings in the sector to fund certain projects and then potentially seek reimbursements from the federal programs.

Let's take a look at some prominent issues in the public infrastructure spaces that are currently issuing private activity bonds (PABs). Public-private partnerships have been in place for quite some time and are increasingly utilized for transit projects to access the tax-free capital markets. The issuance of PAB bonds in southern California by the city of Long Beach for major improvements at the Long Beach airport is a prime example of this type of venture, which was taken in conjunction with the local government and resulted in two debt financings (private and governmental) totaling over $61 million. In another example, Denver, Colorado Transit District issued $396 million in debt for its rail line expansion project and it was made successful through the public-private partnership between a local transit agency and a private firm.

President Biden's plan also highlights the proposition to accelerate the shift to electric vehicles by building more charging stations and providing certain incentives to purchase American-made electric vehicles – this push will not only go in-line with the green infrastructure push, but also reduce oil dependency.

America's Aging Water and Wastewater Infrastructure

Another big push in President Biden's plan is to ensure clean, safe drinking water and the treatment of wastewater that's safe for the environment. The recent White House publication regarding the water infrastructure push states, "An estimated six to ten million homes still receive drinking water through lead pipes and service lines. The President's investments in improving water infrastructure and replacing lead service lines will create good jobs, including union and prevailing wage jobs. President Biden's plan invests $111 billion to address these issues".

From the public debt financing view, the water utilities and various local governments have often used public debt for traditional infrastructure financings like centralized water and wastewater plants, pipes, pumps and other treatment plants. With the renewed focus on these areas, we are likely to see more of these financings, which may be funded collectively by both the public debt and by the federal grant monies.

We are also seeing local and state governments starting their own programs that are more environmentally friendly and curb excess water usage.

The Bottom Line

President Biden's ambitious view on revamping America's infrastructure will inevitably face its own political roadblocks in different levels of governments, but it will likely be a give-and-take proposition for both political parties for a larger good. In recent years, we have already seen local governments and transit agencies pushing their respective governing bodies for considerations that are in line with the American infrastructure plan; furthermore, investors will likely see an increase in municipal capital market activity related to the infrastructure push and issuance of debt.

dividend.com

by Jayden Sangha

Jun 23, 2021

Rethinking Climate Finance to Improve Infrastructure Resilience.

The impacts of a changing climate are no longer a hypothetical. Each year, extreme events such as hurricanes, droughts, fires, and freezes grow more frequent and more intense—destroying homes, disrupting businesses, and damaging the natural world along the way. Chronic challenges—including gradually rising temperatures, precipitation, and flooding—are adding even more stress. Minimizing and adapting to these impacts must be a priority for every unit of government and every sector of the economy.

Financial markets represent one of the most powerful ways to drive public and private action on climate resilience, as reflected in a May executive order from the Biden administration. The order calls for the Office of Management and Budget, the Department of the Treasury, and other federal agencies to better measure and address financial risks resulting from climate change.

The order's core intent is for federal agencies and businesses—including financial service firms and insurance companies—to proactively account for and respond to climate risks, including the physical destruction of buildings and the disruption of business operations. Doing so can "promote the flow of capital toward climate-aligned investments and away from high-carbon investments," as the White House said this April.

Continue reading.

The Brookings Institute

Joseph W. Kane, Adie Tomer, and Caroline George

June 22, 2021

Infrastructure Financing Authority Opposed by Municipal Securities Groups.

Municipal securities dealer groups said Friday they are opposed to the creation of a $20 billion Infrastructure Financing Authority as part of a $1.2 trillion bipartisan infrastructure framework announced Thursday.

Other public finance groups have varying positions.

National Association of Counties spokesman Paul Guequierre said in an email, "Counties support federal investments in infrastructure using a variety of financing tools, including but not limited to, a national infrastructure bank."

The National Association of Health & Educational Facilities Finance Authorities has not taken a position, said Charles Samuels of Mintz Levin of Mintz Levin, who serves as the group's legal counsel.

"In my personal opinion it's of marginal uncertain value," said Samuels. "I don't know what the gap is in current state and local financing that this is supposed to fill."

Samuels said he agrees with state and local government groups that the focus should be on reinstating tax-exempt advance refunding bonds and expanding the current financing tools.

Other state and local government groups did not immediately announce their positions.

Emily Brock, director of the federal liaison center for the Government Finance Officers Association, said she was trying to determine whether there will be room for inclusion of the other municipal financing priorities in the package.

Some of the measures are not big-ticket items and the framework announced Thursday does not yet have legislative language.

An increase for small issuers to $30 million from $10 million of the amount of tax-exempt bonds they can sell to banks can buy under favorable terms as bank-qualified would cost only $118 million over 10 years, according to an estimate last year by the nonpartisan congressional Joint Tax Committee. Bank qualified debt, also known as BQ debt and bank eligible, allows the bank to deduct the carrying cost of that debt as a business cost.

The framework announced by President Biden and a bipartisan group of senators has $312 billion for transportation. It includes $109 billion for roads and bridges, $11 billion for safety, $49 billion for public transit, and $66 billion for passenger and rail freight.

That's $16 billion more for road, rail and transit spending than the transportation bill passed by the House Transportation and Infrastructure Committee, according to an analysis by the independent Eno Center for Transportation.

There's also $25 billion for airport infrastructure, $16 billion for ports and waterways, $7.5 billion for electric vehicle charging stations, and $7.5 billion for electric buses and other transit.

Other areas of infrastructure spending include $73 billion for electric grid, $65 billion for broadband, $55 billion for water projects, $47 billion for resilience, $21 billion for environmental remediation, and $5 billion for Western water storage.

It was not immediately clear how the categories listed by the White House compare to legislation the House and Senate are working on. For instance, the bipartisan agreement lists $55 billion for water projects. The Senate recently voted overwhelmingly to approve the $35 billion Drinking Water and Wastewater Infrastructure Act of 2021. And the House version of the water bill is for $50 billion.

The House Democratic leadership, meanwhile, is sticking with its plan to move its own surface transportation bill. House Majority Leader Steny Hoyer, D-Md., said Thursday the Democrats' INVEST in America Act will be brought to a floor vote the week of June 28.

The House bill includes $343 billion for roads, bridges and safety, another $109 billion for transit and $95 billion for freight and passenger rail.

Despite the apparently higher spending in Biden's deal with the bipartisan Senate group, the proposal for a new federal financing bureaucracy met with immediate and strong opposition from Municipal Bonds for America, the Bond Dealers of America and the American Securities Association.

"By nationalizing federal investment in local infrastructure via an infrastructure bank, the provision would minimize a centuries-long partnership among federal, state and local governments in infrastructure investment," said BDA and Municipal Bonds for America in a joint statement.

The two groups said that Congress and the administration instead should empower state and local governments to make additional investments by "reinstating tax-exempt advance refundings, expanding private activity bonds, raising the limit of bank qualified debt and creating a new direct pay bond, the American Infrastructure Bond exempt from sequestration."

ASA CEO Chris Iacovella said the proposed federal financing authority is based on a misguided bill called the Repair Act (S. 1499) authored by Sen. Mark Warner, D-Va.

Warner's bipartisan bill would create a new federal entity to finance projects of regional or national significance, including the construction, consolidation, alteration, or repair of airports and air traffic control systems, highway facilities, and transmission or distribution pipelines.

Cosponsors include three Republicans led by Sen. Roy Blunt of Missouri.

"Rather than creating a centralized bureaucracy to dictate funding from Washington, the federal government should instead promote and encourage the use of taxable municipal bonds for infrastructure projects," Iacovella said in a press statement. "ASA's regional financial services members have a long history of successfully financing "hard" infrastructure investments and are more than ready to do so again."

The bond financing provisions of the Moving Forward Act that was advanced by House Democrats last year totaled $83.9 billion over 10 years, so the deal announced by Biden for a $20 billion financing authority is less than one-quarter of that.

Biden said Thursday he is committed to a two-track process in which his American Families Plan moves simultaneously through the budget reconciliation process with Democrats-only support.

"The bipartisan bill from the very beginning was understood there's going to have to be the second part of it," Biden said. "Not just signing the bipartisan bill and forgetting about the rest I have I proposed."

That other legislation is expected to include a number of tax provisions, including an increase in the corporate tax rate and an increase in the top personal income tax to 39.6%.

Muni provisions could conceivably be included in that Democrats-only bill. The Moving Forward Act passed by the House last year had provisions for school bond financing and multifamily housing private activity bonds that would be more suited to that legislation.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 06/25/21 01:49 PM EDT

[What's in the Bipartisan Infrastructure Plan?]

Package includes funding for roads, bridges, transit, airports and broadband

A core bipartisan group of 10 senators reached a deal with the White House on Thursday to spend $973 billion over five years, and $1.2 trillion if continued over eight years, on a package that would fund improvements to roads, bridges, transit, airports and enhanced infrastructure for broadband, water and electric vehicles. It leaves out many of President Biden's top priorities for "human infrastructure" such as child care, elder care, and education provisions.

The bipartisan plan's authors describe it as a framework, and note that some of the details remain to be ironed out, though they agreed on the major pieces and how to pay for them. Here's what's in the agreement, and what comes next.

Continue reading.

The Wall Street Journal

By Gabriel T. Rubin

June 24, 2021

Infrastructure Deal Within Reach – Muni Provisions Remain a Priority

A bipartisan group of 21 Senators has come to a soft agreement with the Biden Administration on a $1 trillion infrastructure package. While the deal has yet to receive support from Congressional Leadership, this is a promising step. The group plans to meet with the President this afternoon.

The framework includes nearly $600 billion in new spending and relies heavily on muni provisions such as the expansion of Private Activity Bonds and creates a new direct pay bond, the American Infrastructure Bond. The AIB legislation introduced by Senators Wicker (R-MS) and Bennet (D-CO) would create a new direct-pay bond with a flat 28% reimbursement rate. In the original legislation, the AIB would be exempt from sequestration, however, no details on the sequestration treatment were included in the original document.

While there was no direct mention of the reinstatement of tax-exempt advance refundings or raising the BQ debt limit, the MBFA and BDA remain committed to ensuring all priorities be included in the final package once Congress and the Administration begin to write legislative text.

Bond Dealers of America

June 24, 2021

Munis In Focus: Impact Of Infrastructure (Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

[Listen to audio.]

Bloomberg Markets

June 25, 2021

[Lawmakers Tap Budget Maneuvers to Make Infrastructure Plan Work.]

- **$125 billion comes from re-purposing money from other bills**
- **Bill could take weeks to finalize as details are hashed out**

A bipartisan Senate group succeeded in finding $579 billion to pay for their infrastructure framework by relying on tried-and-true budget maneuvers that have yet to be scrutinized by Congress's official scorekeepers.

The spending on roads, bridges, public transit and other items in the deal is offset by a hodgepodge of revenue-raising measures, economic-impact assumptions and projected savings from eliminating waste.

It's the result of weeks haggling over where to find hundreds of billions of dollars without reversing the 2017 tax cuts — a red line for Republicans — or increasing levies on households making less than $400,000, a Democratic priority.

The bipartisan deal uses budgetary maneuvers to close the gap by finding the most money from politically palatable sources that both parties can agree to, including special municipal bonds, selling spectrum, and imposing a fee on chemical polluters.

"This deal is the usual host of not-wildly-innovative, plain-vanilla pay-fors that have been used in the past," Gordon Gray, a former Senate Budget Committee aide, said. "There's not a conspicuous tax increase or a conspicuous spending cut."

Reused Funding

The plan relies on repurposing some funding allocated in already passed legislation, as well as factoring in economic growth and associated revenue that would come about as a result of the infrastructure investment. The recycled funds include unspent money for broadband and federal unemployment benefits leftover from states that ended early some $300 a week in supplemental jobless payments.

"It all adds up to $125 billion that comes out of Covid funding repurposed," Senator Rob Portman, an Ohio Republican who was one of the leaders of the negotiations, said.

However, that money isn't "free," said Gray, now with the right-leaning think tank American Action Forum. "They want to have benefits without costs, but those costs happened at some point."

The plan also is offset by $58 billion generated by extra economic growth, something known in budget circles as dynamic scoring. Portman called that estimate "conservative," though he acknowledged the Congressional Budget Office had not completed its modeling of the dynamic impact of the spending on the economy.

‘Feedback Loop’

“Every economist has looked at this and said, this is not spending on social programs. This is spending on long-term capital assets that make the economy more efficient, and therefore add to the productivity of the country,” he said. “It also obviously adds jobs. And there’s a feedback loop there for revenue.”

But not all economists are as optimistic as the lawmakers, saying some figures could be overly rosy. That could mean that members of Congress may have to find more revenue or agree to deficit-finance a portion of the plan if the CBO doesn’t agree with their estimates.

“There are some good policies in here. I’m concerned that they only cover a fraction of the cost,” Marc Goldwein, senior vice president for the think tank, Committee for Responsible Federal Budget, said. “A lot of the numbers seem inflated from what I would expect.”

For example, the lawmakers are projecting that strengthening federal programs against fraud and waste will raise $72 billion, according to a draft of the deal obtained by PBS. That’s a lot higher than previous estimates, Goldwein said, noting that Biden’s budget proposal in May projected that so-called integrity initiatives would raise $12 billion over five years, or $45 billion over 10.

Tougher IRS

One of the thorniest issues for lawmakers was how much money could be raised from giving the Internal Revenue Service $40 billion to ramp up audits and enforcement on wealthy taxpayers. Republicans had pointed to a CBO report from last year that said a $40 billion proposal would generate an additional $103 billion, for a net $63 billion. Democrats had pushed for more. The group compromised on a net $100 billion raised, which was done in consultation with the CBO, Portman said.

The additional money could also help improve customer service at the IRS and help the IRS deal with Bitcoin and digital currencies, he said.

The deal also calls for $100 billion to come from private investment, including public-private partnerships. That money could be used to build private highways or bridges that would also likely mean user fees or tolls for drivers using the new roadways.

More than half of the bill has already been written but will likely take weeks to finalize, Portman said.

Bloomberg Politics

By Laura Davison and Steven T. Dennis

June 24, 2021, 2:48 PM PDT

— With assistance by Erik Wasson

Small Cities Can't Manage the High Cost of Old Infrastructure.

Without federal help, cities in the Northeast and Midwest face heavy cost burdens to upgrade aging roads, bridges and water systems. Younger municipalities in the South and West are beginning to have similar problems.

Woodward Avenue is the most storied roadway in Michigan, and arguably in America. This 27-mile stretch of asphalt runs from central Detroit through its northwestern suburbs and up to the city of Pontiac. In 1909, a single mile of it in the city, between Six Mile Road and Seven Mile Road, became the first stretch of paved street in the U.S.

For Ferndale Mayor Melanie Piana, however, her two miles of Woodward Avenue are a constant source of concern. The eight-lane roadway slices through her downtown, and she constantly hears from residents who feel endangered when they cross this thoroughfare in her otherwise pedestrian-friendly town.

"The No. 1 reason people move to Ferndale is because of our walkability," says Piana, "and the No. 1 complaint I get from residents is they feel uncomfortable and unsafe getting across this eight-lane corridor."

Continue reading.

governing.com

June 24, 2021 • Jake Blumgart

What Does President Biden's Infrastructure Push Mean for Local and State Governments?

Earlier this year, President Biden introduced one of the largest-ever U.S infrastructure plans, roughly $2 trillion investment over a decade, to address the aging and underfunded infrastructure, which has often been neglected through the years.

This infrastructure push entails efforts to revamp the transportation sector, roads and highways, shift to green energy, and more importantly the aging sewage systems throughout the U.S. It's also important to note the timing of this expenditure plan, which comes after the United States government has already distributed over $6 trillion in COVID-19 economic relief funds in the form of direct impact payments, state and local government aid and extended unemployment benefits.

The funding for the infrastructure plan is expected and proposed to come from a potential increase in the corporate tax rate that'll take the tax rate back up from 21% to 28%. Although the plan focuses on many different areas of American infrastructure – including manufacturing, commercial and residential construction, veterans' hospitals, schools, digital infrastructure, airports and creating well-paying American jobs – in this article, we will take a closer look at how the proposed transportation revamp and fixing the water infrastructure fits into the overall strategy of President Biden's overall vision.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jun 23, 2021

TAX - COLORADO

[In Re Interrogatory on House Bill 21-1164 Submitted by Colorado General Assembly]

Supreme Court of Colorado - May 24, 2021 - P.3d - 2021 WL 2069700 - 2021 CO 34

General Assembly submitted interrogatory asking whether it could require school districts to gradually eliminate temporary property tax credits without obtaining voter approval.

The Supreme Court held that:

- Supreme Court would exercise original jurisdiction;
- Legislation did not need statewide voter approval; and
- As a matter of first impression, General Assembly was not required to obtain further voter approval before passing the legislation.

Supreme Court would exercise original jurisdiction to consider the General Assembly's petition asking whether it could require school districts to gradually eliminate temporary property tax credits without obtaining voter approval, as interrogatory at issue was connected with pending legislation and directly related to the constitutionality of that legislation, and the legislation presented important questions upon a solemn occasion; absent guidance, state and local school districts will lack certainty as to the appropriate level of school districts' total program mill levies, school districts would risk the costs and delays of legal action and potentially substantial refund obligations under Taxpayer's Bill of Rights (TABOR) if the increases in total program mill levies were ultimately found to be unconstitutional, and individual lawsuits would create substantial unnecessary costs and confusion.

General Assembly's incremental elimination of temporary property tax credits, which were granted to mitigate the effect of the correction of Department of Education's improper advisement that school districts calculate the mill levied in accordance with the Taxpayer's Bill of Rights (TABOR) notwithstanding voter waiver of TABOR requirements, did not need statewide voter approval; districts were responsible for tax rates and increases and were the only entities with the authority to change tax policy within the meaning of TABOR.

General Assembly, consistent with Taxpayer's Bill of Rights (TABOR) requirements, was not required to obtain further voter approval before passing legislation which gradually eliminated temporary property tax credits adopted in prior legislation to mitigate impact of reversal of Colorado Department of Education guidance which advised local school districts to calculate mill levies in accordance with TABOR's growth-plus-inflation limits despite voter waivers of those limits; district voters had validly waived TABOR's revenue limits and necessarily approved the mill levies in effect at the time they voted, and legislation simply effectuated what the voters had already approved and did not permit mill levies above that level.

TAX - TEXAS

[Odyssey 2020 Academy, Inc. v. Galveston Central Appraisal District]

Supreme Court of Texas - June 11, 2021 - S.W.3d - 2021 WL 2386137 - 64 Tex. Sup. Ct. J. 1304

Taxpayer, a public open-enrollment charter school, sought review of county appraisal district's denial of ad valorem exemption from county taxes for private property that taxpayer leased with contractual agreement for taxpayer to pay property owners' ad valorem taxes.

The District Court granted summary judgment for appraisal district. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for review, which was granted.

The Supreme Court held that:

- Taxpayer was not entitled to ad valorem exemption for public property, and
- Taxpayer was not entitled to exemption for school property.

Taxpayer, a public open-enrollment charter school, was not entitled to ad valorem tax exemption from county taxes under public property clause of State Constitution or under state constitutional section providing exemption for property of counties, cities, and towns owned and held for public purposes, for private property that taxpayer leased with contractual agreement for taxpayer to pay property owners' ad valorem taxes, even if property was characterized as public property under statute governing a charter school's lease of property with state funds, where there was no actual public ownership of property.

Issue of whether taxpayer, a public open-enrollment charter school, was entitled to ad valorem tax exemption from county taxes for leased private property under constitutional section providing exemption for property of counties, cities, and towns owned and held for public purposes was not properly before Supreme Court, where taxpayer did not ask county appraisal district for exemption, taxpayer did not raise exemption in trial court, taxpayer did not assign the failure to grant exemption as error in Court of Appeals, taxpayer did not mention exemption in its petition seeking Supreme Court's review, and taxpayer raised exemption for first time in its merits brief after it was addressed in an amicus brief.

Taxpayer, a public open-enrollment charter school, was not entitled to ad valorem tax exemption from county taxes under school property clause of State Constitution authorizing exemptions for school buildings and furniture used for school purposes, for private property that taxpayer leased with contractual agreement for taxpayer to pay property owners' ad valorem taxes, where property owners and taxpayer, as school operator, where not same people or entities.

[NAIC's SAPWG Exposes Proposed Definition of "Bond" for Purposes of SSAPs 26R and 43R: Mayer Brown]

On May 20, 2021, the Statutory Accounting Principles (E) Working Group (SAPWG) of the Financial Condition (E) Committee of the US National Association of Insurance Commissioners (NAIC) [exposed] for public comment a proposed definition of "bond" for purposes of *Statement of Statutory Accounting Principles (SSAP) No. 26R* and *SSAP No. 43R*.

Background

The proposal sets out principles for determining whether a particular investment is a "bond" that is eligible to be reported by insurance companies on Schedule D, Part 1, of their statutory financial statements. Being able to treat an investment as a "bond" has notable advantages for insurance companies, including, in most cases, significantly lower risk-based capital charges than equity investments receive and the ability for life insurers to carry the investment at amortized cost, rather than marking it to market.

The proposal is the product of many months of meetings among the SAPWG staff and representatives of the Iowa Insurance Division (IID) and certain trade associations to expand upon the earlier conceptual proposal that the IID presented to the SAPWG last October.1 The new proposal supersedes an earlier draft issue paper developed by the SAPWG staff in March 2020, which would have administered shock therapy to the investment portfolios of life insurers, and which drew heavy criticism from the trade associations.

Perhaps significantly, the proposal foreshadows **possible** additional changes to required Schedule D reporting and states:

A separate reporting section on Schedule D, Bonds is being contemplated, for the purpose of capturing additional disclosures for regulators, for the following:

Any asset backed securities where:

1) the underlying collateral comprises cash generating non-financial assets and does not meet the practical expedient for evaluating the meaningful criteria defined in paragraph 3a and the glossary, or

2) the underlying collateral comprises financial assets that are not self-liquidating.

What Qualifies as a Bond?

The proposal defines a "bond" as any security representing a creditor relationship, whereby there is a fixed schedule for one or more future payments, and which qualifies as either an issuer credit obligation or an asset backed security (ABS). The proposal then proceeds to explain what it means by each of those two categories.

Issuer Credit Obligations

For "issuer credit obligations" the proposal states (bold italic formatting here and in the subsequent sections of this Legal Update is ours for emphasis):

An issuer credit obligation is a bond, the repayment of which is supported primarily by the general creditworthiness of an operating entity or entities. Support consists of direct or indirect recourse to an operating entity or entities, ***which includes holding companies with operating entity subsidiaries where the holding company has the ability to access the operating subsidiaries' cash flows through its ownership rights***. An operating entity may be any sort of business entity, not-for-profit organization, governmental unit, or other provider of goods or services, but not a natural person or ABS Issuer (defined below).

The proposal then provides examples of issuer credit obligations, which include, but are not limited to:

a. U.S. Treasury securities;

b. U.S. government agency securities;

c. Municipal securities issued by the municipality or supported by cash flows generated by a municipally owned asset or entity that provides goods or services (e.g., airport, toll roads etc.);

d. Corporate bonds issued by operating entities, including Yankee bonds and zero-coupon bonds;

e. Corporate bonds issued by holding companies that own operating entities;

f. Project finance bonds issued by operating entities;

g. ETCs, EETCs, and CTLs for which repayment is ***fully supported by a lease*** to an operating entity;

h. Bonds issued by REITS or similar property trusts;

i. Bonds issued by business development corporations (BDCs), closed-end funds, or similar operating entities, ***in each case registered under the 1940 Act***;

j. Convertible bonds issued by operating entities, including mandatory convertible bonds;

k. Fixed-income instruments specifically identified:

i. Certifications of deposit that have a fixed schedule of payments and a maturity date in excess of one year from the date of acquisition;

ii. Bank loans that are obligations of operating entities, issued directly by a reporting entity or acquired through a participation, syndication or assignment;

iii. Hybrid securities issued by operating entities, excluding surplus notes, subordinated debt issues which have no coupon deferral features, and traditional preferred stocks;

iv. Debt instruments in a certified capital company (CAPCO).

It is unclear how lease extension/renewal options are to be treated for purposes of the "fully supported" requirement.

Bonds issued by 1940 Act-registered BDCs and closed-end funds are included on the above list of issuer credit obligations, but not unregistered funds. We think this is due to the fact that debt securities and preferred stock issued by registered funds have long been a major investment class for life insurers, and ever since the now-superseded draft issue paper was exposed for comment in March 2020, industry representatives have strongly advocated that the treatment of this investment class as bonds be preserved. It does raise the question, however, of why 1940 Act registration is required for a fund to be considered an "operating entity." Why shouldn't an unregistered fund engaged in the same activity be treated similarly?

Asset Backed Securities (ABS)

An ABS is defined as "a bond issued by an entity (an "ABS Issuer") created for the primary purpose of raising debt capital backed by financial assets or cash generating non-financial assets owned by the ABS Issuer, whereby repayment is primarily derived from the cash flows associated with the underlying defined collateral rather than the cash flows of an operating entity." The proposal states that ABS will be a "bond" if all three of the following conditions are satisfied:

1. The investor must have a "creditor relationship" ***in substance and not just legal form. This means that if the investment relies on "equity return cash flows," it must overcome the***

rebuttable presumption that it is not a bond by documented analysis supporting the recharacterization of such equity risk into bond risk by structuring and diversification of collateral.

2. The assets owned by the ABS Issuer must be ***either financial assets or cash-generating non-financial assets***—defined as assets that are expected to generate a ***"meaningful"*** level of cash flows toward repayment of the bond through use, licensing, leasing, servicing or management fees, or other similar cash flow generation (and not just through the sale or refinancing of the assets).

3. The holder of a debt instrument issued by an ABS Issuer must be ***in a different economic position*** than if the holder owned the ABS Issuer's assets directly—as a result of ***"sufficient" credit enhancement through guarantees (or other similar forms of recourse), subordination and/or overcollateralization***.

Regarding the "creditor relationship" requirement, the proposal states:

The analysis of whether a debt instrument that relies on cash flows from underlying equity interests for repayment represents a creditor relationship in substance should be conducted and documented by a reporting entity at the time such an investment is acquired. The level of documentation and analysis required to demonstrate that the rebuttable presumption has been overcome may vary based on the characteristics of the individual debt instrument, as well as the level of third-party and/or non-insurer market validation to which the issuance has been subjected. For example, a debt instrument backed by fewer, less diversified funds would require more extensive and persuasive documented analysis than one backed with a larger number of diversified funds. ***Likewise, a debt instrument that has been successfully marketed to unrelated and/or non-insurer investors, may provide enhanced market validation of the structure compared to one held only by related party and/or insurer investors where capital relief may be the primary motivation for the securitization.***

Significantly, the proposal provides a path for collateralized fund obligations (CFOs)—which were targeted to lose bond treatment under the now-superseded March 2020 draft issue paper—to continue to be treated as bonds if they satisfy the above three criteria. Among other things, the proposal notes that in instances where the assets owned by the ABS Issuer are equity interests, the debt instrument must have pre-determined principal and interest payments (whether fixed interest or variable interest) with contractual amounts that do not vary based on the appreciation or depreciation of the equity interests.

Additional Guidance in the Proposal

The proposal includes a Glossary, explaining two of the key concepts in the ABS part of the definition: what constitutes a "meaningful" level of cash flows and what constitutes "sufficient" credit enhancement. The proposal also includes two appendices with illustrative examples.

Examples 1, 2 and 3 in Appendix I to the proposal indicate how the drafters think that the "creditor relationship" is to be analyzed. Of particular interest, example 1 describes a typical rated private equity feeder structure in which each investor (i) owns a pro rata share of the unsecured debt investments and equity interests outstanding, and (ii) is restricted from selling, assigning or transferring the unsecured debt investment without also selling, assigning, or transferring the equity interest to the same party. The drafters conclude that the debt investment does not have the required creditor relationship. It is unclear if this same result applies when the underlying fund is not "equity-like" and instead something else (e.g., private credit, real estate or infrastructure debt, etc.). Also, it would appear from the example that in a case where the debt and equity investments are not so restricted (i.e., one can be sold without the other) a different conclusion may apply.

The examples in Appendix II to the proposal provide similar indications for the contemplated determinations of "meaningful" cash flows and "sufficient" credit enhancement. Usefully, in discussing the "meaningful" cash flow requirement, the proposed definition offers a bright-line test that "a reporting entity may consider an asset for which less than 50% of the original principal relies on sale or refinancing to meet the meaningful criteria."

Issues Remaining to Be Resolved

Some issues not addressed in the proposal include:

- Treatment of synthetics (e.g., credit-linked notes)—are these permissible "issuer credit obligations"? What if they reference asset-backed-like pools?
- Transactions like "future flow" securitizations (i.e., not primarily derived from existing financial assets but from obligations to originate additional financial assets)—e.g., stranded cost tariff bonds.
- Certain "equity" arrangements like collateral trust certificates and whole pool pass-through interests.

Conclusion

The comment period for the proposal runs until July 15, 2021. Reaction to the proposal has been generally positive but with a recognition that more work needs to be done to refine it. Eventually, the proposal will need to be developed into an issue paper, which is a prerequisite for the SAPWG to adopt substantive changes to *SSAPs No. 26R* and *43R*. Accordingly, it will be some time before the changes to the SSAPs are finalized and even longer before they go into effect. That said, the general view of the proposal is that, thanks to the collaborative efforts by NAIC staff, IID staff and industry representatives that went into drafting it, the proposal provides a framework that all parties can live with. It addresses the concerns of NAIC staff and the SAPWG that determining whether an investment is a bond should look beyond the legal form of the investment to whether, in substance, it represents a creditor relationship. Yet it does so not by "throwing the baby out with the bath water" but in a principled and careful way that is informed by the insights of investment specialists from both the insurance industry and the regulatory community.

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1 Discussed in our related December 20, 2020 REVERSEInquiries Workshop "NAIC-related Developments for the Structured Investments Industry" webinar (video and presentation slides available here).

Mayer Brown

by J. Paul Forrester and Lawrence R. Hamilton

June 21 2021

Debate Reignites Over San Francisco's First Public Bank.

Prior to the COVID-19 pandemic, momentum was building for San Francisco to create its own public bank where The City could be in charge of its own finances and free from Wall Street influence.

Advocates argued that The City would be able to invest in key local areas like affordable housing and small businesses while being accountable to taxpayers as a public entity — something that became more desirable after the Great Recession banking scandals.

The push to create a public bank, of course, became another point of competition with Los Angeles, with city officials jockeying for San Francisco to be the first to apply for a banking license under a 2019 state law.

Continue reading.

THE SAN FRANCISCO EXAMINER

IDA MOJADAD

Jun. 21, 202

White Plains Warned about Looming $1.7M Default on City Center Garage Bonds.

The city of White Plains has been warned of a projected $1.7 million shortfall in revenues from the City Center garage and a looming payment default on the municipal bonds that financed the garage.

If the bonds default when the next payment is due in October, the city's financial reputation would be damaged, according to a letter sent to Mayor Thomas Roach and obtained by the Westchester County Business Journal.

Ratings agencies and capital markets "will penalize the city if it is seen as not taking seriously the looming payment default on the City Center bonds," Steven J. Berkowitz, president and CEO of ACA Financial Guaranty Corp., states in the May 21 letter.

"The least onerous effect would be higher interest rates on future bond offerings. More severe consequences would be a … rating downgrade, to say nothing of a lack of buyers for the city's bonds and notes."

ACA Financial Guaranty, based in Rye, insured the bonds and is obligated to pay the bondholders if the bonds default.

A default could easily be averted, according to ACA spokeswoman Maria Cheng.

But White Plains does not accept responsibility.

It does not own the garage and is "not obligated on the bonds in any way," Karen M. Pasquale, senior adviser to Mayor Roach, said in an email. "The city cannot allow its taxpayers to take on a burden that does not belong to them."

ACA Financial Guaranty acknowledges that the bonds are not a general obligation of the city, but ultimately, according to the letter, the city must "pursue any and all revenue sources" to secure the bonds.

The garage is a part of the vast City Center urban renewal project, across the street from City Hall, at Main Street and Mamaroneck Avenue. In 2001, Cappelli Enterprises Inc. proposed a $42.37 million, 9-story 2,370-space garage as part of a $300 million retail and residential center.

In 2003, the Westchester County Industrial Development Agency issued nearly $27.25 million in bonds to finance the garage. White Plains issued a separate, $24 million bond to finance construction.

The city's bond issue is almost paid off, Pasquale said, and "the city of White Plains has met all of its obligations" to support the larger bond issue.

Bond documents paint a more complicated picture of a public-private partnership between the developer and city agencies:

• the city acting through the nonprofit White Plains Center Local Development Corp.;
• the city's Urban Renewal Agency, the White Plains Parking Authority;
• the Common Council; and
• LC White Plains, formerly controlled by Cappelli Enterprises and now owned primarily by Kite Realty Group of Indianapolis.

The city owned the site and deeded it to the urban renewal agency. The urban renewal agency leases 200 parking spaces to the city and the rest to LC White Plains.

The parking authority operates the garage, collects the parking fees and pays the operating expenses.

The city's commissioner of finance is the fiscal agent. The city's commissioner of public works is responsible for repairs. Common Council has sole authority to set parking rates.

LC White Plains is responsible for paying the bonds, but it is dependent on parking revenues collected by the city.

It all depends on parking revenues, Cheng said. But revenues have been declining as operational costs have increased.

In the past 5½ years, for instance, net income for the City Center garage has narrowed by 51%, according to documents filed with the Municipal Securities Rulemaking Board.

Several warnings also have been posted on the board's public database. In September 2018, Wilmington Trust, the bond trustee, warned that a reserve fund that is supposed to have enough money to cover the annual bond payments was short by $1.6 million.

Wilmington Trust posted another notice this past February, citing ACA's concerns about the depleted reserve fund.

Cheng said ACA has been trying to get the city's attention for years.

"We've been unable to even engage in a conversation with them," she said. "We've sent letter after letter since 2018. … Then the pandemic hit, and now it's worse. It's like hammering on a festering wound."

One way to fix the problem, according to Berkowitz's letter, is to raise parking rates, an action, according to the bond documents, that only the Common Council can take.

Pasquale said ACA had proposed a 75% parking fee hike, “which is unacceptable.”

Another solution is refinancing. The original bonds were issued at 6% to 6.25%. Now municipal bond interest rates are much lower, and the City of White Plains has a strong credit rating.

Cheng said the city could borrow money at 1.5% to 2%, saving more than enough to cover the shortfall and not have to raise parking rates.

The City Center garage bonds are already in default, Cheng said, for breaking covenants in the bond agreements. But failure to make the next semiannual payment in October would be more serious.

“A payment default,” she said, “is the Big D.”

She said ACA ultimately will not lose in a default. It would have to pay the bondholders, but then it could demand that LC White Plains cover the shortfall.

But a payment default would have serious implications for White Plains’ overall bond rating, the Berkowitz letter states, and “will ultimately hurt White Plains residents through increased borrowing costs that will have to be financed by taxpayers.”

“This is a moral obligation on the city,” Cheng said, and other municipalities that have walked away from moral obligations have seen their credit ratings worsen.

“The capital markets will say, ‘How come? … You could have addressed the problem.’”

If the problem is not addressed, Cheng said, “the city will hit a wall in October.”

westfaironline.com

By Bill Heltzel – June 24, 2021

Using and Navigating the Amended Form G-32 in Emma Dataport.

Underwriters: The form for submitting primary market information to the MSRB is changing on August 2, 2021.

Join the MSRB’s free educational webinar on July 15 for details on how to use amended Form G-32.

Click here to learn more and to register.

SIFMA Raises Concerns On Proposed Solicitor Municipal Advisor Regulations: Cadwalader

SIFMA raised concerns on MSRB’s proposed Rule G-46 (“Duties of Solicitor Municipal Advisors”). The proposed rule would codify previously issued interpretive guidance on the requirements applicable to solicitor municipal advisors under MSRB Rule G-17 (“Conduct of Municipal Securities and Municipal Advisory Activities”).

In a comment letter, SIFMA took issue with the following aspects of the proposal, among others:

- the lack of clarity with respect to the standard of conduct applicable to solicitor municipal advisors (i.e., a fair dealing standard and not a fiduciary standard);
- the lack of precision in codifying guidance under MSRB Rule G-17;
- inconsistencies with MSRB Rule G-42, governing the duties of non-solicitor municipal advisors, as pertaining to (i) the documentation of the solicitor relationship, (ii) representations made to solicited entities, (iii) the lack of a list of prohibited conduct, (iv) the timing and method of disclosures, and (v) recordkeeping requirements;
- inaccuracies in the disclosure statement that solicitor municipal advisors are required to provide to solicited entities; and
- the lack of further clarification as to (i) what activities constitute an undertaking to solicit a solicited entity, (ii) inadvertent solicitation and (iii) the applicability of other MSRB rules.

SIFMA recommended that the MSRB continue to engage with market participants to better understand the types of activities that constitute a solicitation, different compensation structures and suitable disclosures for this line of business.

Cadwalader, Wickersham & Taft LLP

25 June 2021

Bonding Time Podcast – Credit Analysis with Tom Kozlik

This installment of Bonding Time featuring Tom Kozlik of HilltopSecurities discusses the continued debate over a potential federal infrastructure spending package, and the possibilities of achieving bipartisanship. The podcast also debates potential pay-for and the increased push to repurpose COVID state and local funds to pay for the package as outlined in a recent BondBuyer op-ed.

Bonding Time will continue to feature a selection of market experts to discuss the current state of the municipal market combined with Federal legislative and regulatory policies impacting muni market structure.

Topics will include:

- Continued Infrastructure Debate
- How to Pay for New Spending
- Fight to Keep State and Local COVID Funds
- Federal Policy Outlook, with Brett Bolton of the BDA

Click here for podcast.

Bond Dealers of America

June 24, 2021

What Makes a “Good” Muni Bond Tax Bill? - Squire Patton Boggs

Do you feel it? Good vibes for tax-advantaged bond legislation permeate the air around us. White smoke emerged from the White House on June 24, signifying that the President and key Senate leaders had reached a deal on an infrastructure bill. The deal includes "public private partnerships, private activity bonds, direct pay bonds and asset recycling for infrastructure investment." Hey, that's us![1]

It feels downright 2009ish. The prospect of new bond legislation has us thinking: Is there a right or wrong way to write a tax-advantaged bond bill?

Continue Reading

By Johnny Hutchinson on June 24, 2021

The Public Finance Tax Blog

Squire Patton Boggs

Agencies Release List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies.

The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation today announced the availability of the 2021 list of distressed or underserved nonmetropolitan middle-income geographies. These are geographic areas where revitalization or stabilization activities are eligible to receive Community Reinvestment Act (CRA) consideration under the community development definition.

Distressed nonmetropolitan middle-income geographies and underserved nonmetropolitan middle-income geographies are designated by the agencies in accordance with their CRA regulations. The criteria for designating these areas are available on the Federal Financial Institutions Examination Council (FFIEC) website (http://www.ffiec.gov/cra). The designations continue to reflect local economic conditions, including unemployment, poverty, and population changes.

As with past releases, the agencies apply a one-year lag period for geographies that were listed in 2020 but are no longer designated as distressed or underserved in the current release. Revitalization or stabilization activities in these geographies are eligible to receive CRA consideration under the community development definition for 12 months after publication of the current list.

The current and previous years' lists can be found on the FFIEC website, along with information about the data sources used to generate those lists.

2021 List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies (PDF)

Source Information and Methodology (PDF)

June 25, 2021

The American Jobs Plan's Effect on the Municipal Bond Market – Taxable Direct Pay Bond

Although there are several versions of the American Jobs Plan at this point, nearly all include a provision to refurbish the nation's crumbling infrastructure, including roads, bridges, public transit, airports, clean water, rail, and ports. Most of the components of these bills contain an element that may affect the municipal market. The three most talked about ideas include tax-exempt bonds, private activity bonds and taxable direct pay bonds. The focus of this article will be to explore the taxable direct pay bonds.

The government's last involvement in taxable direct pay bond issues date back to 2009 and 2010, when the Build America Bond program was introduced. Build America Bonds (BABs) were issued as part of the American Recovery and Reinvestment Act (ARRA). Some $180 Billion of debt was issued using two types of BABs, Tax Credit and Direct Payment.

Tax Credit bonds gave bondholders a 35% federal subsidy on the interest paid through refundable tax credits which could be carried forward. Direct Payment offered a rebate that was paid to the bond issuer. This feature allowed municipalities to issue fully taxable municipal bonds with the Federal Government reimbursing the issuer with a tax subsidy of 35% of the issuers interest expense owed to investors.

Many issuers realized that short-term tax-exempt rates had lower interest costs than the 35% subsidy. Consequently, a hybrid approach was utilized. Shorter maturities were issued as tax-exempt, and as the rebate made it more advantageous, longer maturities were structured using the BABs program. Payments ran smoothly until 2013 when budget spending cuts forced the IRS to reduce the allowable 35% interest subsidy. In 2013 it declined to 26.3% and is currently at 29.3% which is anticipated to remain in effect until 2030 without further congressional actions.

Municipal issuers now realize that without appropriations by Congress the rebate can be affected, and they may be hesitant to utilize the program without those agreements. The taxable direct pay bond programs currently under discussion are trying to overcome obstacles such as sequestration and debit limit ceilings. We believe, depending on market conditions, any future taxable direct pay programs will likely include both tax-exempt and taxable bonds.

The effect on the municipal bond market could be increased issuance which could satisfy the demand from both individual and corporate investors. Depending on the plan adopted by Congress and the President, other changes could be in store for the municipal market.

by Aquila Distributors LLC of Aquila Group of Funds

6/24/21

Risky Muni Yields Hit Decade Low.

The typically sleepy market for municipal bonds is on a hot streak.

Investors have piled into muni bonds, sending yields to historically low levels. The yield on the Bloomberg Barclays Municipal Bond High Yield Index, which tracks riskier muni borrowers, fell to 3.11% last week as bond prices rallied, the lowest level of the past decade, FactSet data show. They've hovered in that range since, settling at 3.14% on Tuesday.

Borrowers like state and local governments as well as universities and local school districts tap the muni market to fund projects.

The high-yield corner of the market is typically reserved for lower-rated borrowers like retirement communities and charter schools, which don't have the backing of a state or local government. It has boomed in recent years as investors have searched for higher returns, with Treasurys and other safer debt offering meager yields. The run in high-yield munis comes as Treasury yields have tumbled, falling for five consecutive weeks.

Investors have piled into riskier munis and extended a lifeline to some troubled corners of the market, helping the sector, according to research firm Municipal Market Analytics. That's kept some projects from running into trouble and kept default rates surprisingly low.

As a result, the high yield muni market has swelled to 13% of the muni market, up from 10% last year, the firm said.

The Wall Street Journal

By Gunjan Banerji

Jun 23, 2021

How to Craft an Inflation Strategy Using Muni Bonds.

KEY POINTS

- As inflation ticks higher, retirees may worry about the rising cost of living.
- To fight inflation, investors may consider muni bonds, an option with built-in tax benefits and relatively low default risk.
- Still, buyers may need guidance to manage interest rates and credit risks, financial experts say.

Continue reading.

cnbc.com

by Kate Dore

JUN 24 2021

Q&A: Municipal Bonds in the Wake of COVID-19

Municipal governments have proven more resilient than anticipated.

When the COVID-19 pandemic hit in 2020, municipal bond investors braced for a slew of defaults by overburdened state and local governments. But more than a year later, these municipalities are holding up better than expected.

With the help of stimulus payments, tax revenues from workers who were able to continue working remotely, and quick rallies in the stock and real estate markets, some states (California, for one) are even showing budget surpluses for the fiscal year starting in 2020. The result was far fewer state and local municipal bond defaults than anticipated.

To get a clearer picture of the municipal bond market and where financial advisors and investors can look for investment opportunities in the sector today, we spoke with Catherine Stienstra, senior portfolio manager and head of municipal bond investments at Columbia Threadneedle Investments.

Continue reading.

usnews.com

By Coryanne Hicks

June 23, 2021, at 3:43 p.m.

Municipal Bonds Still Key in the Retirement Income Puzzle.

In spite of this year's challenging fixed income environment, bonds remain vital portfolio components for retirement investors. How the bonds are deployed in retirees' portfolios is meaningful as well.

For investors with tax-advantaged accounts, embracing a taxable bond fund makes sense, but for those with the bulk of their assets in a taxable account, municipal bonds and funds are practical ideas due to the tax benefits associated with the asset class.

"Municipal bonds, which are issued by state and local governments, offer tax advantages to investors in higher tax brackets," writes Morningstar's Susan Dziubinski. "So even though a muni-bond fund's yield may look shrimpy when you compare it against the yield on a similar quality and similar term taxable-bond fund, that muni fund's yield doesn't reflect the tax advantages that may apply to you."

The tax benefits offered by municipal bonds could take on added importance if Congress is successful in passing the White House's proposed capital gains tax hike.

While it remains to be seen what happens on that front, it's clear the outlook for municipal bonds is solid. State and local finances were pinched at the height of the coronavirus pandemic, but the punishment was never as severe as originally feared. Plus, the federal government stepped up to support state finances, effectively reducing muni default risk.

With credit risk of minimal concern over the near- to medium-term, investors considering municipal bond funds still need to make rate risk part of the evaluation equation. Muni funds with longer durations could be susceptible to spikes in long-term interest rates.

"If there is in fact a tax advantage for you, you can begin the search for a muni-bond fund with the term and interest-rate sensitivity that meets your time horizon and appetite for risk," adds Dziubinski.

Morningstar has "gold" ratings on nine municipal bond funds, one of which is an ETF – the Vanguard Tax-Exempt Bond ETF (VTEB).

VTEB, which follows the Standard & Poor's National AMT-Free Municipal Bond Index, holds nearly 5,800 bonds with an average duration of 5.2 years. It's also cost-effective. With an annual fee of just 0.06%, or $6 on a $10,000 investment, VTEB is one of the least expensive funds in its category.

ETF TRENDS

TOM LYDON

JUNE 24, 2021

Rotation Choices For Expensive Muni CEFs.

Summary

- The muni CEF sector has continued to rally this year due to the resilience of municipal bond yields and tight CEF discounts.
- A number of funds, however, have grown to premium valuations that are unlikely to prove sustainable.
- In this article, we take a look at a number of these funds such as BKN, NUV and PML, and highlight potential alternatives.

Continue reading.

Seeking Alpha

Jun. 22, 2021

MSRB to Hold Series of Virtual Regional Town Halls for Municipal Advisors.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced that it will host a series of virtual regional town halls for municipal advisor firms, where MSRB Board members and staff will provide an update on MSRB initiatives and an open forum for participants to ask questions and raise topics for discussion.

"We appreciate the opportunity to engage directly with the municipal advisor community to understand their challenges and facilitate regulatory compliance," said Seema Mohanty, MSRB Board member and Chair of the MSRB's Stakeholder Engagement Committee. "Over the past year, we have embraced virtual formats of engagement and look forward to this opportunity to hear from the diverse community of municipal advisors across the country."

To supplement the open town hall format, the MSRB will hold office hours in connection with each regional event. Municipal advisor firms can sign up to have one-on-one meetings with MSRB Board members and staff during office hours.

The MSRB's Chief Regulatory Officer Gail Marshall said, "The MSRB is committed to responsive regulation that reflects current market practices. These virtual town halls and optional office hours will be important forums for the MSRB to receive feedback from municipal advisors that helps us develop tools and resources to facilitate compliance with MSRB rules."

Municipal advisor firms are encouraged to register for one of five regional town halls. The town halls are open to MSRB registrants only.

MIDWEST: Monday, July 19, 2021, 1:00-2:30 p.m. CT (2:00-3:30 p.m. ET) – Register here.

WEST: Thursday, August 5, 2021, 12:00-1:30 p.m. PT (3:00-4:30 p.m. ET) – Register here.

SOUTHWEST: Tuesday, August 24, 2021, 12:00-1:30 p.m. MT (2:00-3:30 p.m. ET) – Register here.

SOUTHEAST: Tuesday, September 14, 2021, 2:00-3:30 p.m. ET – Register here.

NORTHEAST: Tuesday, September 21, 2021, 2:00-3:30 p.m. ET – Register here.

Office hours will be available immediately following each town hall.

Participants are encouraged to submit questions in advance of the events by emailing MSRBEvents@msrb.org.

Date: June 22, 2021

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

NFMA Newsletter.

The June 2021 Municipal Analysts Bulletin is available.

Click here to view.

State Pass-Through Entity Taxes Let Some Residents Avoid the SALT Cap at No Cost to The States.

This week, Colorado became the 14th state to either require or allow some pass-through businesses such as partnerships to pay state income taxes at the entity level rather than on their personal income tax returns.

Why does this matter? It’s an increasingly popular way for states to give some residents relief from the 2017 Tax Cuts and Jobs Act’s (TCJA) $10,000 cap on the state and local tax (SALT) deduction without lowering state tax revenue by a dime.

Continue reading.

Tax Policy Center

by Kim S. Rueben

June 24, 2021

BDA Washington Weekly – Deal Reached but Questions Remain

Read the BDA Washington Weekly.

Bond Dealers of America

June 25, 2021

How It Works: When Mayors Use TIFs To Steer Investment Dollars

Millennium Park, Lincoln Yards and INVEST South/West are three signature projects from Daley, Emanuel and Lightfoot. But what's really going on?

This story is part of the Re-Imagine Chicago project, a collaboration between the University of Chicago's Center for Effective Government and WBEZ's Reset, investigating how city government, community investment, public safety and schools could work better.

In March 2018, former Mayor Rahm Emanuel tweeted a 90-second video. It begins with the melancholy call of a single horn against an otherwise dark screen. As swirls of white form ribbons of light, the words "Amazon Makes Its Second City The Second City" come into focus.

A few seconds later, William Shatner, known for his role as Captain Kirk on Star Trek, tells the viewer that Chicago is a modest but resilient place, one with a story that parallels Amazon's own humble origins. "Really the press release writes itself," Shatner intones.

The video was released on the heels of Emanuel's bid for the corporate behemoth's second headquarters, a move that secured Chicago a spot on Jeff Bezos's shortlist. During his tenure, Emanuel spent much of his time wooing large companies to the city. He was successful, too.

Continue reading.

wbez.org

By Elly Fishman

June 28, 2021

- MSRB Notice 2021-07 – Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46: SIFMA Comment Letter
- Firm Settles FINRA Charges for MSRB Reporting Violations Involving SHORT System: Cadwalader
- BDA's Public Finance Leadership Roundtable: Event Recap
- Muni Market Worries Build America Bonds Redux Could Prove Costly.
- *Katzen & Boyer v. Clearfield County Industrial Development Authority, et. al.* – In claim that issuers of industrial development bonds structured scheme to deprive bondholders of contingent appreciation interest and contingent rental interest, District Court holds that M&T Bank, as paying agent, could be held liable for breach of fiduciary duty, whether that relationship was classified as

trustee/beneficiary or principal/agent.

- And finally, Elementary, My Dear Jackbooted Government Thug is brought to us this week by *Sales v. City of Tustin*, in which the Court of Appeal opined on whether "officers had a reasonable suspicion that criminal activity was afoot." Afoot? Seriously? However, given the current reputational issues faced by heavily-militarized police forces, perhaps a new look is in order. May we suggest tweeds, monocles, and jaunty deerstalker caps? We look forward to the sight of basset hound heads sticking out the back windows of canine units everywhere, giant ears flapping in the wind. Auf wiedersehen, shepherds.

IMMUNITY - CALIFORNIA

Sales v. City of Tustin

Court of Appeal, Fourth District, Division 3, California - June 8, 2021 - Cal.Rptr.3d - 2021 WL 2327869 - 21 Cal. Daily Op. Serv. 5489

Mother brought action in federal court against city asserting federal civil rights claims and state wrongful death and civil rights claims arising from death of her son who was struck by vehicle while being pursued by police officers on foot.

The United States District Court for the Central District of California entered judgment against her on her federal claims and withdrew supplemental jurisdiction over her state-law claims. After the United States Court of Appeals for the Ninth Circuit affirmed, mother brought action asserting her state-law claims in state court. The Superior Court granted summary judgment in favor of city based on statute of limitations, and denied mother's motion for reconsideration. Mother appealed.

The Court of Appeal held that six-month limitations period under California's Tort Claims Act was tolled for 30 days from date United States Court of Appeals issued its mandate, not from date United States District Court dismissed mother's pendent state-law claims.

Six-month limitations period under California's Tort Claims Act for mother's wrongful death and civil rights claims against city in connection with death of her son, who was struck by vehicle while being pursued by police officers on foot, was tolled for 30 days pursuant to federal supplemental jurisdiction statute from date United States Court of Appeals issued its mandate on mother's appeal as of right in her previous federal action, rather than from date United States District Court dismissed mother's pendent state-law claims or from date United States Court of Appeals filed its panel decision.

PUBLIC UTILITIES - COLORADO

San Isabel Electric Association, Inc. v. Public Utilities Commission

Supreme Court of Colorado - June 1, 2021 - P.3d - 2021 WL 2197981 - 2021 CO 36

Rural cooperative electric association sought review of Public Utilities Commission's (PUC) order, determining that association's certificates of public convenience and necessity (CPCN) did not give association the right to provide station power to another electric utility's wind farms that were located in association's certificated service territory.

The District Court affirmed. Association appealed.

The Supreme Court, en banc, held that:

- Association's CPCNs did not preclude utility from self-supplying station power to wind farm, and
- Association did not have a due process right to provide station power thus precluding any right to hearing on purported deletion of service area.

Rural cooperative electric association did not have a right under its certificates of public convenience and necessity (CPCN) to provide station power to another electric utility's wind farms that were located in association's certificated service territory, and other utility, as a vertically integrated utility, could continue to self-supply such power using its own interconnected transmission network and electric generation resources; self-supply of station power did not involve a sale, prohibiting self-supply of power would have resulted in inefficient duplication, and allowing self-supply of power promoted state's renewable energy policy.

Rural cooperative electric association did not have a due process property right under its certificates of public convenience and necessity (CPCN) to provide station power to winds farms of a vertically-integrated electric utility that were located in association's certificated service territory, and therefore lack of a PUC hearing on whether association was unwilling or unable to serve its certificated territory, relating to the purported deletion of portion of territory, did not violate due process.

STATUTE OF LIMITATIONS - INDIANA

[City of Marion v. London Witte Group, LLC]

Supreme Court of Indiana - June 17, 2021 - N.E.3d - 2021 WL 2466180

City brought action against company that provided financial advice to city regarding financing for a construction project and alleged claims for negligence, breach of fiduciary duty, and constructive fraud and unjust enrichment.

The Superior Court granted in part and denied in part financial advisor's motion for summary judgment. City appealed and financial advisor cross-appealed. The Court of Appeals affirmed in part, reversed in part, and remanded with instructions. City sought transfer, and transfer was granted.

The Supreme Court held that:

- As a matter of first impression, the Supreme Court would adopt the equitable tolling doctrine of adverse domination;
- The adverse domination doctrine applied to both private and municipal corporations; and
- Genuine issues of material fact existed as to whether mayor adversely dominated the city, and whether company that provided financial advice to city contributed to it, precluding summary judgment.

The Supreme Court would adopt the equitable tolling doctrine of adverse domination, which was an equitable doctrine that tolled statutes of limitations for claims by corporations against its officers, directors, lawyers and accountants for so long as corporation was controlled by those acting against its interests, as a logical corollary of its discovery rule.

The adverse domination doctrine, which tolled the statute of limitations as long as the corporate plaintiff was controlled by alleged wrongdoers, applied to both private and municipal corporations.

Genuine issues of material fact existed as to whether mayor adversely dominated the city, and whether company that provided financial advice to city contributed to it, precluding summary judgment based on the adverse domination doctrine on company's statute of limitations defense in negligence, breach of fiduciary duty, and constructive fraud action.

ZONING & PLANNING - MASSACHUSETTS

Styller v. Zoning Board of Appeals of Lynnfield

Supreme Judicial Court of Massachusetts, Suffolk - June 7, 2021 - N.E.3d - 487 Mass. 588 - 2021 WL 2308296

Property owner brought action challenging town zoning board's decision that short-term rentals of owner's single-family residence constituted an unauthorized additional use of the property as a "tourist home" or "lodging house" that was prohibited before town adopted new zoning bylaw that expressly barred such short-term rentals in single-residence zoning districts.

After owner sold the residence affirmed the board's decision. Owner appealed, and case was transferred from the Appeals Court.

The Supreme Judicial Court held that:

- Property owner had standing to continue action, even after sale of residence;
- Action was not rendered moot by sale of residence; and
- Short-term rentals did not qualify as prior nonconforming use that was exempt from new bylaw barring such rentals.

ANNEXATION - NEBRASKA

County of Sarpy v. City of Gretna

Supreme Court of Nebraska - May 28, 2021 - N.W.2d - 309 Neb. 320 - 2021 WL 2171772

County brought action for declaratory and injunctive relief against city, challenging validity of city's annexation ordinances and a zoning extension ordinance for annexation of area that was in close proximity to rapidly developing areas and that was planned for development, but that was presently undeveloped and being used for agricultural purposes.

The District Court granted county's motion for summary judgment. City appealed.

The Supreme Court held that annexed area was urban thus precluding statutory ban on annexation of agricultural lands that were rural in character by a city of the second class.

Annexed area that was in close proximity to rapidly developing areas and that was planned for development, but that was presently undeveloped and used for agricultural purposes, was "urban" and not "rural" in character, and thus city's annexation ordinances and zoning extension ordinance for annexation of area did not violate statute prohibiting a city of the second class from annexing of agricultural lands that were rural in character; city's comprehensive plan designated area to include planned interstate interchange which was designated as community entrance and special character area, city expected to develop area into city's future growth area, and city, county, state, and other governmental agencies all had plans to develop area, which was fastest growing area in the state.

INDUSTRIAL DEVELOPMENT BONDS - PENNSYLVANIA

Katzen & Boyer v. Clearfield County Industrial Development Authority, et. al.

United States District Court, W.D. Pennsylvania - June 11, 2021 - Slip Copy2021 WL 2402005

Holder of industrial development bonds (Bonds) brought action alleging that Developers engaged in a scheme to deprive the Bondholders of additional contingent rental interest by fraudulently concealing and diverting rental revenue to a straw party, and by failing to accurately report the revenue generated by the Project Facility. Bondholders also alleged that Developer was suppressing the amount of additional contingent appreciation interest due to the Bondholders by refusing to provide information by which Paying Agent's appraiser could make an accurate appraisal of the Project Facility.

Bondholders alleged claims for: breach of contract; tortious interference with contract; unjust enrichment; and, conspiracy.

Developers and related parties moved for summary judgment.

The District Court held that:

- Bondholders stated a plausible claim for the tort of intentional interference with a contract against Developers;
- Bondholders stated a plausible claim of unjust enrichment against Developers;
- Bondholders stated a plausible claim of civil conspiracy against Developers;
- Developers were not entitled to dismissal of the claim for punitive damages at this stage of the proceedings;
- Bondholders stated plausible claims for tortious interference, unjust enrichment against the parties alleged to have engaged in the scheme to deprive Bondholders of additional contingent rental interest by fraudulently concealing and diverting rental revenue;
- Bondholders allegations are sufficient to plausibly state the fiduciary relationship element of a breach of fiduciary duty claim under Pennsylvania law, whether that relationship is classified as trustee/beneficiary or principal/agent;

The gist of the action doctrine did not apply because the gravamen of the tort claim was not the alleged violation of Developers' contractual obligations to the Bondholders as third-party beneficiaries under the Mortgage Loan Agreement, but instead was his intentional interference with the contractual obligations of the Industrial Development Authority and M&T Bank as Paying Agent under the Debt Resolution and the Bonds. Developers were not a party to either the Debt Resolution or the Bonds, and neither the Debt Resolution nor the Bonds created any direct contractual relationship between the Bondholders and Developers. Rather, it was the contractual obligations of the IDA and M&T Bank under the Debt Resolution and the Bonds with which Bondholders alleged Developers tortiously interfered.

The relationship between Developers and the Bondholders at the heart of the unjust enrichment claim was not founded on a direct contract between those two parties. Rather, the contract at issue is the Mortgage Loan Agreement between Developers and M&T Bank, as the agent of the IDA, to which the Bondholders are third party beneficiaries. And a third-party beneficiary to a contract, like the Bondholders, may bring an unjust enrichment claim when the defendant has "received and retained a benefit" from the plaintiff "which would be unjust to retain" without some payment to the plaintiff.

Because the question of whether punitive damages are proper often turns on the defendant's state of mind, this question frequently cannot be resolved on the pleadings alone, but must await the development of a full factual record at trial.

Bondholders' allegations that they are in a fiduciary relationship with M&T Bank which imposes common law duties to "protect, manage and preserve" the rights of the Bondholders related to the revenue generated by the Project Facility beyond the duties owed under the terms of the transaction documents, if believed, are sufficient to plausibly meet the first element of a breach of fiduciary duty claim under Pennsylvania law.

"Here, Plaintiffs allege that their breach of fiduciary duty claim is predicated on M&T Bank's violation of a broader duty imposed by common law that arises from the fiduciary relationship existing between the Bondholders and the Bank, and that this duty exists regardless of any other obligations of the Bank imposed under the Mortgage Loan Agreement and Bonds. While there may be some overlap between the Bondholders' breach of contract and breach of fiduciary duty claims against M&T Bank, the Court is satisfied that the Bondholders' breach of fiduciary duty claim states enough distinct facts to give it a legal basis separate and apart from the contractual relationship between the parties. Accordingly, the Court concludes that Plaintiffs' breach of fiduciary claim as pled against M&T Bank is not precluded as a legal matter by the gist of the action doctrine."

BANKRUPTCY - PUERTO RICO

[In re Financial Oversight and Management Board for Puerto Rico]

United States District Court, D. Puerto Rico - May 21, 2021 - F.Supp.3d - 2021 WL 2071094

In matter arising within Commonwealth of Puerto Rico's debt adjustment proceeding under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), union and individuals who were employees of Puerto Rico Electric Power Authority (PREPA) filed motion for preliminary injunction, seeking to enjoin implementation of operation and management agreement between PREPA and power company, whereby company was scheduled to take over operation of PREPA's transmission and distribution system.

The District Court held that:

- Plaintiffs had standing to assert claims based on union's loss of membership or employees' alleged loss of vested rights;
- Plaintiffs lacked standing to assert claim that agreement was null and void based on policy disagreements and broad allegations of societal harm;
- Plaintiffs failed to demonstrate that they were likely to succeed on the merits of their claims for ERISA violations;
- Plaintiffs failed to demonstrate that they were likely to succeed on the merits of their claims for PROMESA violations;
- Plaintiffs failed to demonstrate that they were likely to succeed on the merits of their claims based on Contracts Clause of federal constitution;
- Plaintiffs failed to demonstrate that they were likely to succeed on the merits of their claims for tortious interference with contractual relations; and

- Plaintiffs failed to demonstrate that they were likely to succeed on the merits of their claims for contract in prejudice of third parties.

In matter arising within Commonwealth of Puerto Rico's debt adjustment proceeding under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), union and individuals who were employees of Puerto Rico Electric Power Authority (PREPA) had Article III standing to assert claims seeking to enjoin implementation of operation and management agreement between PREPA and power company, whereby company was scheduled to take over operation of PREPA's transmission and distribution system, including violations of ERISA, PROMESA, Contracts Clause of federal constitution, tortious interference with contract, and contract in prejudice of third party, to the extent claims were based on union's loss of membership or employees' alleged loss of vested rights that were required to be protected, as those alleged injuries were concrete and particularized.

PUBLIC UTILITIES - RHODE ISLAND

Laprocina v. Lourie

Supreme Court of Rhode Island - May 26, 2021 - A.3d - 2021 WL 2131725

Pedestrian, who had incurred permanent brain damage after he was hit by car while crossing intersection, for whom administratrix of estate was substituted following death, brought negligence action against electric company, alleging that area where collision occurred was not properly illuminated because electric company allowed rolling blackout to occur or failed to repair, replace, and maintain streetlights in area.

Following denial of electric company's first summary judgment motion, the Superior Court entered summary judgment in favor of electric company. Administratrix appealed.

The Supreme Court held that:

- Law of the case doctrine did not preclude trial court judge from considering summary judgment motion;
- Streetlight tariff and city ordinances did not establish duty of company to individual members of public to repair and maintain streetlights;
- Company owed no common law duty to pedestrian; and
- As issue of first impression, public utility generally owes no common-law duty to individual third parties who are allegedly injured, at least in part, as result of inoperable streetlights.

ZONING & PLANNING - TEXAS

Powell v. City of Houston

Supreme Court of Texas - June 4, 2021 - S.W.3d - 2021 WL 2273976 - 64 Tex. Sup. Ct. J. 1209

Homeowners brought action against City of Houston, a home rule city, seeking a declaratory judgment that City's historic preservation ordinance (HPO) violated zoning statute and city charter's general prohibition against zoning.

Following bench trial, the County Civil Court at Law entered take-nothing judgment for city.

Homeowners appealed. The Houston Court of Appeals affirmed. Homeowners petitioned for review, which was granted.

The Supreme Court held that:

- HPO did not zone property in violation of city charter’s general prohibition against zoning;
- City complied with zoning statute’s requirement that HPO be enacted in accordance with a comprehensive plan; and
- City complied with zoning statute’s requirement that home-rule municipality appoint zoning commission to implement regulations authorized by statute.

Historic preservation ordinance (HPO) enacted by home rule city did not zone property in violation of city charter’s general prohibition against zoning; ordinance did not regulate purposes for which land could be used and, in fact, provided that it could not be construed to authorize city to regulate use of any structure or property, ordinance focused on protecting and preserving the exterior architectural characteristics of buildings based on historical significance, distinctiveness and connection to a neighborhood, instead of restricting the purposes for which land could be used, ordinance was targeted to fewer than one percent of city’s total lots, thereby lacking geographical comprehensiveness associated with zoning regulations, and Local Government Code provided different remedies for violations of zoning ordinances and for damage to designated historic structures.

City of Houston, a home rule city, complied with zoning statute’s requirement that historic preservation ordinance (HPO) be enacted in accordance with a comprehensive plan; ordinance was comprehensive with respect to changes to structures in historic areas, as it laid out in detail which changes were prohibited, which were allowed, and procedures for carrying out allowed changes, it required owners not to allow their landmarks and contributing structures to fall into state of disrepair resulting in deterioration of exterior features, and exemptions were similarly thorough.

City of Houston complied with zoning statute’s requirement, when enacting historic preservation ordinance (HPO), that home-rule municipality appoint zoning commission to implement regulations authorized by statute; Houston Archaeological and Historical Commission served as requisite commission, which made recommendations to City Council by identifying areas with potential for historic-district designations and initiating designation process, reviewed applications for designation of landmarks and historic districts and made recommendations before Council decided whether to make designation.

ZONING & PLANNING - VIRGINIA

Norton v. Board of Supervisors of Fairfax County

Supreme Court of Virginia - May 27, 2021 - S.E.2d - 2021 WL 2149384

Short-term lodging providers brought action against county board challenging amendments to the county zoning ordinance and imposition of transient occupancy tax.

The Fairfax Circuit Court ruled in favor of the board and dismissed. Providers appealed.

The Supreme Court held that:

- County board correctly interpreted the zoning ordinance’s original definition of a dwelling as permitting only non-transient residential occupancy;

- County zoning ordinance amendment to definition of dwelling was not internally contradictory; and
- Short-term lodging providers used their properties in the same manner as commercial facilities offering short-term guest rooms.

County board correctly interpreted the zoning ordinance's original definition of a dwelling as permitting only non-transient residential occupancy, and thus short-term lodging providers failed to meet burden of establishing that the board's actions in amending the ordinance to impose requirements on short-term lodging providers were unreasonable, arbitrary, or capricious; even though first sentence of original definition broadly defined a dwelling, the second sentence modified the residential occupancy requirement, such that only non-transient residential occupancy was permitted in a dwelling, and a necessary corollary to modification was that transient residential occupancy was prohibited in a dwelling.

County zoning ordinance amendment to definition of dwelling was not internally contradictory, and thus amendment was not unconstitutionally vague in violation of due process; original definition of a dwelling did not permit by-right short-term lodging, and amendment did not permit anything more than short-term lodging subject to permitting and other restrictions.

Short-term lodging providers used their properties in the same manner as commercial facilities offering short-term guest rooms, and thus distinction between providers' properties and commercial facilities were irrelevant in determining whether county code allowed a locality to levy a transient occupancy tax on those properties, where, while the level of ancillary services provided, such as maid service, food service, and other amenities varied greatly for commercial facilities, they all provided a place for people to stay where they could live and sleep, and providers' residences were likewise offered as an accommodation to people requiring a place to conduct those same activities of daily living.

Municipal CUSIP Request Volumes Climb for Fourth Straight Month.

NEW YORK, June 16, 2021 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for May 2021. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant monthly increase in request volume for new municipal identifiers and a significant decline in request volume for new corporate identifiers.

CUSIP identifier requests for the broad category of U.S. and Canadian corporate equity and debt declined 24.8% in May from last month. The monthly decrease was driven largely by U.S. corporate debt and equity identifier requests, which declined by 18.5% and 7.8%, respectively. On a year-ove--year basis, corporate CUSIP requests were down 16.9%, reflecting a significant year-over-year decline in January of 2021.

Monthly municipal volume increased in May. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – rose 5.0% versus April totals. On an annualized basis, municipal CUSIP identifier request volumes were up 7.9% through May. Texas led state-level municipal request volume with a total of 180 new CUSIP requests in May, followed by California with 96 and New York and Oklahoma, which each had 90.

"Though we're starting to see some volatility in corporate request volume as the prospect of a Fed taper looms, there is still a great deal of debt and capital markets activity taking place – particularly in the municipal sector," said Gerard Faulkner, Director of Operations for CGS. "The next several months will be an important indicator of the continued liquidity of the markets in a possible rising rate environment."

Requests for international equity and debt CUSIPs were mixed in May. International equity CUSIP requests were up 2.1% versus April. International debt CUSIPs decreased by 13.0% on a monthly basis.

To view the full CUSIP Issuance Trends report for May, click here.

Muni Market Worries Build America Bonds Redux Could Prove Costly.

- **Direct-pay bonds are part of bipartisan infrastructure plan**
- **States, cities want to know size of U.S. subsidy of the debt**

A reprisal of Build America Bonds, the popular Obama-era infrastructure financing tool, is part of a bipartisan plan gaining traction in Congress, but states and cities are reluctant to show support without knowing their share of the cost.

A group of 21 Senators propose including so-called direct-pay municipal bonds in a $579 billion package designed to spur construction on roads, bridges and other projects, and its bipartisan sponsorship is raising hopes of passage. The direct-pay provision is being closely watched by municipal borrowers, investors and bankers because of its similarities to the Build America Bonds program, which spawned $180 billion of debt sales in 2009 and 2010.

But municipal finance has changed in the last decade. Then, the fact that Build America Bonds were taxable, unlike traditional muni bonds that pay tax-free interest, opened the market to a broader group of investors and promised reduced borrowing costs. Now, tax-free bond yields are near historic lows compared to taxable securities, meaning states and municipalities want the federal government to provide a generous subsidy as an incentive to use the borrowing program.

For a taxable bond program to compete with the cost of capital in the tax-free muni market, an average subsidy covering around 50% of interest costs for AA-rated borrowers is needed, said Peter DeGroot, head of municipal strategy for JPMorgan Chase & Co. For BBB rated issuers, the subsidy would need to be around 35%, he estimates.

"The higher the subsidy rate, the lower the cost of capital to the bond issuer," DeGroot said. "Yields in the tax-exempt market are so low relative to taxable rates that issuers would need a very high cost of capital subsidy to compete with the tax-exempt bond market."

He said that those subsidy rates are higher than what was offered in a Senate bill earlier this year. The legislation introduced in April by Senator Roger Wicker, a Republican from Mississippi, and Michael Bennet, a Democrat from Colorado, offered a subsidy of 28% of the bond's interest. In April, JPMorgan released an analysis estimating "modest utilization" of the proposal at current market levels.

Ben Watkins, director of the Florida Division of Bond Finance, said the subsidy rate will help determine the attractiveness of the program.

"They have to sweeten the pot and make it cheaper for me," Watkins said. "It better be deep in the money or otherwise I'm not playing."

The bipartisan Senate plan was scant on details about the direct-pay bonds. The financing mechanisms listed also included the use of private activity bonds, something that businesses can use to raise money in the $3.9 trillion muni bond market.

Getting state and local support for the plan, which would affect its chance of becoming law, is made more difficult by the latter history of the Build America Bonds program. Borrowers shied away from using them after the federal government adopted sequestration that forced budget cuts, including reduction in the subsidy payments that Build America Bond issuers received starting in 2013.

"I think it's a hard sell," Watkins said of the current push to revive the bonds. "I think people have been made aware of the risks associated with relying on D.C. to come through on their promises."

While state and local lobbying groups generally support the revival of a Build America Bonds-type tool, they've stressed that they'd like the process to be exempt from sequestration. David Moore, director of municipal research at American Century Investments, said usage of the bonds could depend on it.

"Issuers are still going to have a hard time taking that seriously" if the program doesn't include an exemption from sequestration, he said.

Moore said that a federally-subsidized bonding plan would provide issuers with more flexibility, which would be helpful to them if the tax-exempt market became weaker, he added. "It really is another tool in the toolbox for them," he said.

Bloomberg Markets

By Amanda Albright

June 17, 2021, 11:20 AM PDT

— With assistance by Erik Wasson

Fitch: US Supreme Court ACA Decision Neutral to NFP Hospital Ratings

Fitch Ratings-San Francisco/New York-17 June 2021: The outcome of the US Supreme Court ruling in the case of California v. Texas is neutral to not-for-profit hospitals and healthcare system ratings, Fitch Ratings says. The Court rejected the challenge to the Affordable Care Act (ACA) on the basis that the plaintiff states do not have legal standing to bring the suit. The Court did not rule on the validity of the ACA without the individual mandate requiring Americans to obtain insurance. The ruling maintains the status quo that has existed since the tax penalty for not obtaining health insurance was set at zero in 2017.

Today's ruling maintains healthcare coverage for tens of millions of Americans under the ACA, and we expect this to prevent a decline in operating margins associated with a shift in payor mix that would have reversed the positive margin trend evidenced at hospitals in the years following the ACA rollout. Fitch's not-for-profit (NFP) hospital operating margin median rose during those years the ACA was fully implemented, increasing from 2.2% in 2013 to 3.0% in 2014 and again in 2015 to 3.5%. Operating margins have continued to benefit since then, due to the incremental revenue from patients enrolled in the healthcare exchanges or under expanded Medicaid programs.

Rated hospitals saw a significant decrease in self-pay during 2014-2016, particularly at hospitals in Medicaid expansion states, which now number 38 plus Washington, DC. The Kaiser Family Foundation reports that the US saw a significant drop in the number of non-elderly uninsured to 26.7 million in 2016 from 44.4 million in 2013 following the enactment of the ACA in 2010 and implementation of key provisions in 2014, before increasing to 28.9 million in 2019 after the individual mandate was eliminated.

Premium subsidies and tax credits provided under the American Rescue Plan Act of 2021 that intend to make marketplace coverage plans more affordable are expected to modestly increase the number of insured. Insurance coverage affordability is the major concern for those who remain uninsured in the US.

Today's decision to uphold the ACA resolves another significant Supreme Court challenge to the law. It may also signal growing reluctance to invalidate a law that has become an important aspect of the US healthcare system by providing coverage to millions of Americans under Medicaid or private insurance. With the Supreme Court's ruling, we continue to believe that the ACA is likely to remain the law, even if portions of it are enhanced or diminished in future legislation.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

[These States Lead the Way on Pension Reform.](#)

Arizona, Michigan and Texas are showing how to create resilient systems for government retirees.

State and municipal debt has tripled since 2000, with unfunded public pension liabilities mostly to blame. After 20 years of inadequate funding policies, failure to meet overly optimistic investment return targets, and other factors, state and local government pension systems are now $1.5 trillion in debt.

That debt is ultimately borne by taxpayers, and like any debt, when unfunded pension liabilities rise, so do the costs of servicing it. As pension debt payments start to siphon money away from other government priorities, such as education and infrastructure, some lawmakers are now pushing for much-needed reforms.

In Texas, the state Legislature passed a major pension reform that tackles the Employees Retirement System of Texas' nearly $15 billion in pension debt. The ERS serves more than 300,000 current and retired Texas government workers. But driven largely by rosy investment-return assumptions and a history of underfunding by the state, the system's unfunded liabilities have skyrocketed. The ERS's consulting actuary says the plan will be insolvent by 2061 even if it meets its lofty long-term investment return goals, and as early as 2047 if it doesn't.

The reform legislation commits Texas to paying the bill for retirement benefits promised to workers by shifting the ERS to actuarially based funding and a fixed payoff schedule. The new law also enters all future employees into a new low-risk "cash balance" retirement plan that provides a guaranteed minimum 4% return on investment along with the portability of a 401(k). In short, the reforms would enable Texas to keep the promises made to current and retired workers but would stop making unsustainable pension promises to workers in the future.

The pension reform bill will become law this weekend if Gov. Greg Abbott doesn't veto it, which he hasn't indicated he will do. Texas will then join a growing list of states—including Michigan, Arizona, Pennsylvania and Colorado—that have created or expanded retirement plans that reduce financial risks for governments and can help avoid burdening future taxpayers with more unfunded liabilities.

Arizona and Michigan have enacted more than a dozen substantive pension reform bills over the past five years. Credit-rating agencies and national retirement experts have cited Arizona's public-safety pension reforms. Moody's Investors Service gave Michigan's teacher retirement reform a "credit positive" review because the state and participating local governments "will no longer carry the entire burden of investment performance risk for new employee pensions."

Pension reform need not be partisan. After gaining input and buy-in from unions for police officers, firefighters and other public employees, New Mexico Gov. Michelle Lujan Grisham, a Democrat, overhauled her state's public-employee pension plan for workers who aren't teachers. "We must make changes now—the alternative is to saddle New Mexicans with unacceptable risk," Ms. Grisham said, urging fellow Democrats to pass reforms. In 2018, Colorado legislators bridged their differences in a divided government to pass comprehensive reforms that increased employee and employer contributions, reduced cost-of-living adjustments, raised the retirement age, and expanded the use of defined-contribution plans for future employees to address the chronic structural underfunding of the state's main public pension system.

Public pension reforms aren't politically easy. With Republicans in control of Florida's state government and the Florida Retirement System $36 billion in debt, the state Senate passed a bill that would have closed the state pension plan to new hires. But the bill died in the House because lawmakers couldn't agree on how to pay down the state's pension debt.

Meaningful pension reforms are difficult to accomplish but will be increasingly necessary as state and municipal pension debt service eats up larger chunks of government budgets. State and local leaders seeking to make lasting improvements to government finances should look to Texas, Arizona and Michigan. These states are showing that it's possible to create resilient retirement systems that can promote long-term financial security for taxpayers and public employees alike.

The Wall Street Journal

By Leonard Gilroy and Steven Gassenberger

June 18, 2021 1:55 pm ET

Mr. Gilroy is vice president of Reason Foundation and senior managing director of its Pension Integrity Project. Mr. Gassenberger is a policy analyst at Reason Foundation.

Fitch: U.S. Public Power Peer Review Highlights Resilient Credit Quality

Fitch Ratings-New York-21 June 2021: U.S. public power utilities are generally seeing a continuation of strong financial trends and improving credit quality, according to Fitch Ratings' 2021 U.S. Public Power Peer Review.

"The latest peer review shows that modest ratios of capital investment to depreciation and improving coverage medians again contributed to low leverage and improving credit quality throughout the public power sector in 2020," said Dennis Pidherny, Managing Director, U.S. Public Finance. "These results are particularly surprising given the impact of the coronavirus outbreak and the related economic contraction. They further illustrate the sector's operating and financial resilience, and its ability to record strong performance even through a very challenging period."

Trends highlighted in the 2021 peer review include:

- Median ratios for coverage of full obligations improved for both wholesale and retail systems, sustaining an upward trend.
- The median capex-to-depreciation ratio for wholesale systems continued its downward trend, falling to 71%. The median ratio has been below at or below 100% for five of the last seven years. The median ratio for retail systems improved to 149%, a level last observed in 2010.
- Cash on hand medians for retail and wholesale systems improved yet again, rising to the highest levels observed in a decade. This build-up of excess cash likely remains attributable to modest levels of capital investment, stronger than anticipated demand through the coronavirus pandemic, and disciplined rate setting initiatives.
- Leverage metrics across the entire portfolio were largely unchanged. A modest increase in leverage metrics for retail systems was offset by a modest decline in metrics for wholesale systems. The 2020 figures continue a trend of deleveraging that began over a decade ago.

Fitch's U.S. Public Power Peer Review is a point-in-time assessment of Fitch-rated public power utilities. It assists market participants in making their own comparisons among the recent financial performance of wholesale and retail public power systems, and rural electric cooperatives. It is accompanied by the 2021 Fitch Analytical Comparative Tool (FACT) for Public Power, an interactive tool that provides enhanced trend analysis and peer comparison tables.

The full report, "2021 U.S. Public Power Peer Review," is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Fitch U.S. Public Power -- Peer Review

Fitch Ratings presents the 2021 edition of its annual U.S. Public Power — Peer Review. This report compares the recent financial performance of wholesale and retail public power systems, as well as rural electric cooperatives. The ratios highlighted in this report are some of the financial calculations used in comparing utility systems in Fitch's committee process, and can assist market participants in making their own comparisons. Financial metrics represent only one key component among others in Fitch's utility credit analysis. To review Fitch's full public power criteria, please see U.S. Public Power Rating Criteria. The U.S. Public Power — Peer Review is a point-in-time assessment of Fitch-rated public power utilities. The ratios for each issuer are calculated using audited information. While more than half the audits used in this study are dated Dec. 31, 2020, different audit dates may skew the ratio distribution. Financial ratios and metrics detailed in the report may occasionally differ from those reported in new issue and rating reports. This can be a result of adjustments made by Fitch during the rating review process to reflect additional information received from the issuer and circumstances unique to the credit. In each case, Fitch seeks to highlight these adjustments for the benefit of the reader in the reports and press releases it publishes during the rating process.

ACCESS REPORT

Everything You Need to Know About the Infrastructure Bills Traveling Through Congress.

There are eight of them.

As a new infrastructure week begins, we've reached the peak confusion stage in Washington. It is genuinely difficult to keep straight all the gangs, working groups, and bipartisan agreements on bills that fall under the rubric of infrastructure. So let this be a public service straightening all that out. There are actually eight infrastructure bills floating out there right now, though none of them appears at this moment to have the votes needed to pass into law. Walking through them can illuminate what the Biden administration's strategy should be going forward.

First, you have the surface transportation bills, one each in the House and Senate. The House bill, called the INVEST in America Act, is a five-year, $547 billion package that passed the House Transportation and Infrastructure Committee last Thursday along mostly party lines; just one Republican, Brian Fitzpatrick (R-PA), voted for it in committee. (The House passed largely the same bill last year; it didn't go anywhere.) The Senate has its own surface transportation bill, which was introduced on a bipartisan basis in May by two Democratic and two Republican members of the Environment and Public Works Committee. That bill has $303.5 billion for highways, roads, and bridges; the House bill reserves $334.2 billion for that purpose.

It's important to understand that these surface transportation bills represent no new federal spending on infrastructure; they are reauthorizations of the money Congress sends out to the states for infrastructure projects routinely. And it has to be reauthorized by September 30, or all federal spending on infrastructure would expire.

Continue reading.

THE AMERICAN PROSPECT

BY DAVID DAYEN

JUNE 14, 2021

Munis In Focus: Infrastructure and Lagging Treasuries (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses municipal market news. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

June 18, 2021

Violent Crime Poses Credit Risk to U.S. Cities, Hilltop Says.

- **Uptick in homicide rate pre-dates Covid-19 pandemic by years**
- **In NYC, murders are up about 14% year to date, city data show**

A rise in violent crime is a concern for some municipal-bond investors watching the economic recovery of U.S. cities, according to Hilltop Securities Inc.

The uptick, which pre-dates the pandemic, marks a reversal from decades of improvement. From the early 1990s to 2014, the rate of murders fell by more than half, but since 2014, the rate has slowly begun to climb, according to data compiled by the Federal Bureau of Investigation.

The resurgence represents another potential credit risk for urban hubs already grappling with Covid-19 recovery efforts and outmigration. Taken together with the prospect of higher taxes and more flexible work-from-home policies, cities run the risk of losing residents, handicapping their revenue. About 40% of urban officials have seen an increase in crime over the past year, a higher rate than non-urban communities, according to a survey by the National League of Cities.

“What I’m most concerned about is all of these variables building on top of each other in the near to medium term.” said Tom Kozlik, head of municipal strategy and credit at Hilltop Securities Inc. “This is something that investors are looking at and reacting to.”

The recovery and attractiveness of cities has been a cultural flashpoint throughout the pandemic, spurring impassioned opinion pieces from critics and defenders, and a migration of some Wall Street jobs to the warmer weather of Florida.

Crime has the potential to play a role in residents’ decisions to leave, or return to, their urban office setups. In New York City, the year-to-date murder rate in 2021 increased 13.5% compared to the prior year, the highest in about a decade, according to data from the New York City Police Department. Chicago has seen murders and shootings climb in 2021, though total crime is down since 2017.

Even though the statistics aren’t uniform across cities, Gallup surveys show perceptions of crime in the U.S. are at their highest since 1993, largely driven by Republicans, the polling company found.

”It has the potential to have some, at the very least, indirect impact on municipal finance if there is even just the perception of a permanent increase in crime in a city,” said Patrick Luby, senior municipal strategist at CreditSights.

Luby said there is broad variation in the data, which still generally shows rates lower than 15 years ago, and that is probably not as big of a factor on municipal bonds as the working-from-home trend.“All of those things have the potential to impact prices, tax revenues, and therefore the resources available to a city,” Luby said.

There is greater awareness of crime as more people are home and cities are emptier, according to Luby.

“We believe that rising violent crime has the potential to negatively impact municipal credit quality, and this is especially true for the medium and larger cities,” Kozlik wrote in a note this month. “Even if all types of crime rates are not rising, the perception of a rise in crime matters. This perception is enough to have political and fiscal consequences.”

Bloomberg Markets

By Nic Querolo

June 16, 2021, 12:00 PM PDT

— With assistance by Peyton Forte

The Upheaval in Municipal Bonds Shows No Signs of Slowing.

As the municipal bond market absorbs more inflows. assets like the IQ MacKay Municipal Intermediate ETF (MMIT) are worth considering.

Per a Financial Times article, more investors are “pouring into the $4tn US municipal bond market, pushing yields on debt issued by state and local governments across the country to the lowest level on record. The voracious investor appetite has helped state agencies and governments lock in low borrowing costs and at times raise more money than bankers working on the projects initially anticipated."

Per the fund description, MMIT seeks current income exempt from federal income tax. The fund is an actively managed ETF and thus does not seek to replicate the performance of a specific index.

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

JUNE 21, 2021

Municipal-Bond ETF Inflows Post Another Record.

Mutual-fund inflows are hot too

Municipal-bond exchange-traded funds took in the most money on record in the week ending June 16, as investors continue to snatch up debt issued by U.S. local governments.

Muni ETF inflows totaled $704 million, according to Refinitiv Lipper, the biggest weekly haul since September 2007, when those records begin. It was their sixteenth straight week of inflows.

One fund, the iShares National Municipal Bond ETF MUB, -0.01%, took in nearly half of the weekly total at $316 million. The fund has posted a total return of 1.17% in the year to date, according to FactSet data.

Investors have flocked to municipal bonds this year as the prospect of tax increases gathers pace. Unlike sovereigns and corporate bonds, munis offer tax advantages. What's more, the local governments that issue the bonds aren't just good credit risks: in some cases, they have more money than they know what to do with.

Demand for munis has been so strong that one mutual fund recently closed to new investors. Refinitiv Lipper data show that such funds had their eleventh consecutive week of inflows, picking up $1.1 billion in the most recent week.

MarketWatch

By Andrea Riquier

June 18, 2021

MSRB Notice 2021-07 – Fair Dealing Solicitor Municipal Advisor Obligations and New Draft Rule G-46: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on MSRB Notice 2021-07 requesting comment on fair dealing solicitor municipal advisor obligations and new draft Rule G-46. According to the Notice, new draft Rule G-46 would (i) codify interpretive guidance previously issued in 2017 that relates to the obligations of "solicitor municipal advisors" under MSRB Rule G-17 (the "G-17 Excerpt for Solicitor Municipal Advisors") and (ii) add additional requirements that would align some of the obligations imposed on solicitor municipal advisors with those applicable to non-solicitor municipal advisors.

We applaud the MSRB's effort to seek information and insight from commenters to further inform codifying existing interpretive guidance and developing new MSRB rules, including new draft Rule G-46. We do, however, have concerns with (1) the codification of the G-17 Excerpt for Solicitor Municipal Advisors, (2) lack of consistency with non-solicitor municipal advisor rules, (3) the rule text of new draft Rule G-46, and (4) certain other matters.

Read the SIFMA comment letter.

Firm Settles FINRA Charges for MSRB Reporting Violations Involving SHORT System: Cadwalader

A firm settled FINRA charges for reporting violations involving the MSRB's Short-Term Obligation Rate Transparency ("SHORT") System.

In a Letter of Acceptance, Waiver and Consent, FINRA found that the firm failed to report to the SHORT System a minimum denomination for approximately 1,660 submissions, and inaccurately reported the maximum interest rate for approximately 1,300 submissions. With regard to the minimum denomination reporting failures, FINRA stated that the firm's reporting system "did not require the entry of the minimum denomination field." When transmitting data to the MSRB's Electronic Municipal Market Access (or "EMMA") System, FINRA found that the firm's reporting system would (i) populate the minimum denomination field with a zero instead of rejecting the report as incomplete and (ii) use the auction's interest rate instead of the security's maximum interest rate. As a result, FINRA found that the firm violated MSRB Rule G-34 ("CUSIP Numbers, New Issue, and Market Information Requirements").

FINRA also found that the firm failed to:

- keep accurate internal records of the maximum interest rate field in 64 instances, in violation of MSRB Rule G-8 ("Books and Records to Be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors"); and
- include in its supervisory system a review of the accuracy of the information it submitted to the SHORT System, in violation of MSRB Rule G-27 ("Supervision").

To settle the charges, the firm agreed to (i) a censure, (ii) a $35,000 fine ($20,000 for the reporting and books and records violations, and $15,000 for the supervisory violations) and (iii) an undertaking to revise its written supervisory procedures to address the described deficiencies.

Cadwalader Wickersham & Taft LLP

June 15 2021

TAX - GEORGIA

[Love v. Fulton County Board of Tax Assessors]

Supreme Court of Georgia - June 1, 2021 - S.E.2d - 2021 WL 2194523

Citizens, who own real property and pay ad valorem taxes in county, filed petition for writ of mandamus and other relief against county board of tax assessors, individual tax board members, and board's chief appraiser, alleging that board failed to exercise its duty to diligently investigate and determine whether stadium lessee was subject to ad valorem property taxation, and seeking temporary and permanent injunctive relief, to enjoin defendants from recognizing stadium property as tax exempt, and declaration that taxable leasehold interest, rather than non-taxable usufruct, had been transferred to lessee.

The Superior Court granted defendants' motion to dismiss for failure to state a claim. Citizens appealed. The Court of Appeals affirmed in part and reversed in part. On remand, the Superior Court dismissed citizens' claims for mandamus, declaratory and injunctive relief, and refund of taxes paid. Citizens appealed.

The Supreme Court held that:

- Citizens failed to state claim for mandamus;
- Permanent injunction prohibiting board members from continuing to implement board's exemption decision was not warranted; and
- Citizens failed to show they were in position of uncertainty as to an alleged right, as required to obtain declaratory judgment.

Citizens failed to state claim for mandamus, in action against county board of tax appraisers, individual tax board members, and board's chief appraiser, alleging that board failed to exercise its duty to diligently investigate and determine whether stadium lessee was subject to ad valorem property taxation, where their petition and attached exhibits disclosed with certainty that board investigated taxability of lessee's interest and reached decision on that question.

Permanent injunction prohibiting members of county board of tax assessors, in their individual capacities, from continuing to implement board's decision that lessee's interest in football stadium was exempt from ad valorem property taxation was not warranted, in citizen's action to enjoin board members from recognizing stadium property as tax exempt, where petition and attached exhibits showed that board members' exemption decision was founded on evidence that lessee's interest was non-taxable usufruct, that board members did not exercise their discretion in unreasonable, arbitrary, or capricious manner that would constitute gross abuse of duty, and that stadium license and management agreement did not materially change nature of lessee's interest in stadium.

Citizens, who owned real property and paid ad valorem taxes in county, failed to show they were in position of uncertainty as to an alleged right, as required to obtain judgment declaring that taxable leasehold interest, rather than non-taxable usufruct, had been transferred to lessee of football stadium.

['We've Seen a Really Good Rally in Municipal Bonds': BlackRock Municipal Bond Group Head]

Peter Hayes, Head of BlackRock's Municipal Bonds Group joined Yahoo Finance Live to break down his thoughts on the municipal bond market.

Video Transcript

SEANA SMITH: Peter, it's great to see you again. And we know the muni bond market has been attracting pretty significant inflows so far this year, right around $49 billion so far. So now that it seems like we have some progress at least on infrastructure talks, is that going to be enough do you think to keep this rally going in the muni market?

PETER HAYES: Yeah, I think, I mean, look, there's a lot of positive things and from a fundamental credit standpoint, it's about as constructive as I've seen in the market perhaps ever. You think about the stimulus, the accommodative Fed policy, all that has really been a boon to state and local revenues. Even many of the revenue sectors, like transportation are coming back as the economy reopens. So all that's positive. And I think even talk of infrastructure, some kind of package will ultimately lead to some degree of increased issuance in the market.

But the demand is just insatiable. It's on track to be more than we saw in 2019, which is probably the largest we've ever seen in terms of those flows that you spoke about. So I don't think an infrastructure package necessarily derails the market rally that we've seen. I think it's more what we see it going on in the bond market, and that's interest rates being a bit volatile here.

ADAM SHAPIRO: In regards to the volatile interest rates, Peter, and it's good to see you, a lot of us are approaching that age where we need to start looking at ways to protect future retirement income with less risky assets. Muni bonds would be one of the ways to do that. But you wrote here in your most recent note that long duration, lower credit quality bonds outperform as coupon return drove performance.

A lot of us get that. But then you added, as a result, the yield toward the S&P municipal bond high yield index pushed to a new all time low. Give us a 101 from the investor standpoint. What are you talking about here? Because a lot of us really do want to protect future income.

PETER HAYES: As most people know, that interest rates and prices have an inverse relationship. So as yields go down, prices go up. So we've seen, as Seana mentioned, we've seen a really good rally in municipal bonds really that began in April of last year, and it's continued again through this year, which means the higher prices go, the lower yields go. So you're taking more risk obviously the further out the curve you go to get some of that incremental income.

And it's interesting, when you break down the flows this year, a lot of those flows have gone to the long-term category and the high yield category, which means people are taking more duration risk, they're taking more credit risk. And what happens when interest rates go up, is the value of their investments actually go down. So it's a precarious situation, because yields are so low and as people stretch for that income. So I think you've got to be careful about where we are in the cycle, what are interest rates likely to do. It may not be a bad time to just sit in cash, sit in very low duration, protect some of that principal, wait for a better opportunity ahead.

SEANA SMITH: Peter, how about state finances? Because going back what, 16 months ago, 15 months ago to the start of the pandemic, there was lots of questions, lots of uncertainty about how state finances were going to be impacted. And I know the last time we spoke with you, they were actually faring much better than we had initially anticipated. Is that still the case right now?

PETER HAYES: It is. The bounce-back has been incredible. I think about a year ago came on the show, we were talking about California projecting the potential for a $56 billion deficit given the impact of the shutdown of the US economy and what that means for state and local government. And here, we're actually talking about a $75 billion surplus. That's an enormous swing.

And we've seen that in other states as well, not just California. Some states that are a little bit more reliant on tourism haven't fared quite as well. But in general, when you think about what the stock market had done and you think about the housing market, incomes have done well. People have spent. They've spent differently, but that means sales taxes are up as well. So I would say yes, fundamental credit picture in the muni market is as good as we've seen it in some time.

ADAM SHAPIRO: And Peter, we've talked about the tax implications with muni bonds. With the current discussion about changing the tax code in the United States, are you hearing anything pro or con coming out of Washington which will impact again, those people I talk about who may be looking at protecting capital going forward?

PETER HAYES: We have. And I think that the marginal rate going from its current 37% to 39.6% is certainly a possibility as they figure out ways to pay for this infrastructure package, but at the margin. Does 2 and 1/2 percentage points make a big difference in the after tax value of municipals? Probably not. I think people are already anticipating that, and that's why we've seen this tremendous demand materialize.

The other aspect is the corporate rate. After the 2017 tax change, we went from a 35% corporate rate to 21%. And we did see corporations, who are often big buyers of municipals, pare back their holdings. So we saw some selling. If that rate were to go back up to 25% however, you wouldn't see all that demand materialize.

You wouldn't see all that selling that took place in 2018 all of a sudden turn into buying. One of the reasons is that our valuations are very, very stretched, and they could probably do better by buying corporates or other fixed income asset classes. So I don't think the change in the tax code is necessarily going to be a big benefit or a game changer for munis any time this year.

Yahoo Finance

June 17, 2021

[S&P ESG U.S. Public Finance Report Card: California Governments And Not-For-Profit Enterprises]

Key Takeaways

E (elevated): The state is broadly exposed to a wide range of environmental risks. Acute physical risks stemming from wildfires and droughts, as well as chronic issues resulting from hydrological volatility and sea level rise; energy transition risk; other hazards such as seismic events and mudslides; and natural capital stress related to water scarcity are heightened risks for some entities absent adaptation measures.

S (elevated): Housing affordability has resulted in demographic shifts and elevated social risks. In addition, the future cost of municipal services is expected to rise significantly given required infrastructure investment to meet demand and asset deficiencies including grid reliability associated with ambitious energy transition requirements.

G (neutral): The state has a long history of policy making aimed at preserving natural capital that mitigates or reduces climate risks, and improves socioeconomic inequities. While these policies advance ESG principles, there are also limitations on key revenue streams that have hindered infrastructure investment, creating meaningful challenges to adaptation efforts. Furthermore, the state provides limited oversight for distressed municipalities as represented in our local government institutional framework, while providing school districts with a high degree of state oversight and significant equalization funding, which we believe benefits the portfolio.

Continue reading.

16 Jun, 2021

Ohio Supreme Court Denies Village of Obetz Attempt to Reinstate Expired TIF Exemption.

A recent decision by the Ohio Supreme Court addressed whether a municipality can retroactively reinstate an expired TIF exemption by amending the legislation that authorized the original exemption. The case arose from a TIF ordinance passed by the Village of Obetz in April 1997, which enacted a TIF arrangement related to the development of a warehouse located in the Village. The TIF ordinance provided for a 25 percent exemption of the increase in true value from the improvements for a period of 16 years. However, when the tax commissioner granted the exemption in October 1999, the commissioner inexplicably ordered a 100 percent exemption to last for the shorter of *30 years* or the end of the obligation to make service payments. In 2017, after being notified that the 16-year exemption had expired in 2015, the Village attempted to pass another ordinance, this time seeking to amend the original 1997 legislation. The Village's latest ordinance sought to extend the exemption from 16 to 30 years and increase the exemption from 25 percent to 100 percent, effectively trying to effectuate the tax commissioner's erroneous determination through 2017. The tax commissioner denied the Village's application, reasoning that retroactively approving this exemption would violate Ohio's TIF laws.

The Supreme Court agreed with the tax commissioner's denial, finding that retroactively applying the exemption would have violated Section 5709.40(G) of the Ohio Revised Code, which states that "[a]n exemption from taxation […] commences with the tax year specified in the ordinance so long as the year specified in the ordinance commences *after* the effective date of the ordinance." The Court reasoned that despite the tax commissioner's error in 1999, the plain language of the 1997 ordinance specified that the exemption would expire after 16 years, period. Accordingly, the Village's 2017 ordinance would have effectively created a new exemption. And under R.C. 5709.40(G), this new exemption could not commence until the year after the ordinance's effective date. In other words, because the ordinance was passed in 2017, the earliest the TIF exemption could commence was 2018. Thus, the Court denied the Village's attempt to extend its earlier TIF and rejected any application of the exemption retroactively to 2015, 2016 and 2017.

Bricker & Eckler LLP

June 8, 2021

CDFA Intro Infrastructure Finance Course.

August 9-10, 2021 | Daily: 12:00 – 5:00 PM Eastern

Financing infrastructure has become one of the nation's most pressing concerns. Communities throughout the country are aggressively searching for innovative strategies and solutions for building and operating transportation, energy, water, broadband, resiliency, and other infrastructure. The development finance toolbox provides a vast array of capital solutions – including federal and state grants and loans, bonds, tax increment financing, tax credits, revolving loan funds, opportunity zones, and public-private partnerships – all of which can be packaged in a myriad of ways.

The Intro Infrastructure Finance WebCourse will bring together development finance experts from different infrastructure disciplines to analyze the financing tools being used nationwide. This interactive web course will help communities understand the fundamental concepts behind infrastructure projects with a focus on raising capital to achieve local and regional needs. In addition, this webcourse will explore the cutting-edge structures and approaches being deployed to accelerate new investment in America's 21st-century infrastructure.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program . Start down the road to personal and professional advancement today.

Click here to learn more and to register.

CDFA Intro Bond Finance Course.

August 4-5, 2021 | Daily: 12:00 – 5:00 PM Eastern

Bonds are the bedrock of development finance and are used to help build roads, bridges, sewers, city halls, hospitals, and thousands of public and private projects. For over a century, bonds have been spurring development and redevelopment and are a major driver for job creation and economic growth.

CDFA's highly acclaimed Intro Bond Finance WebCourse provides an in-depth look at governmental and qualified private activity bonds, with a focus on industrial development bonds (IDBs), 501(c)(3) non-profit bonds, exempt facility bonds, and other special bond programs authorized by the federal government.

The Intro Bond Finance WebCourse addresses the basic requirements for issuing a bond, the rules and regulations that govern tax-exempt and taxable bonds, the major players involved in a bond transaction, and the roles and responsibilities of both public and private sector participants. Plus attendees will learn about the tax-exempt bond market, the ratings process, how to buy and sell bonds, and ongoing continuing disclosure.

This course is essential for public leaders, economic development professionals, financial experts, and anyone working to address local economic challenges. Learn how to bring economic growth to your community by utilizing the vast resources of the development bond finance industry.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Start down the road to personal and professional advancement today.

Click here to learn more and to register.

CDFA Intro Housing Finance Course.

August 4-5, 2021 | Daily: 12:00 – 5:00 PM Eastern

The impact of housing on economic development efforts is a critical issue in many communities. By addressing complex housing challenges and opportunities, a community creates valuable assets while also encouraging economic development and social equity. From urban centers, suburban enclaves, and rural cities, communities across the country have numerous tools available to support the development of affordable, market rate, mixed-income, and mixed-use housing. The Intro Housing Finance Course will explore how the development finance toolbox can be utilized to support a myriad of housing challenges and opportunities as well as how development finance agencies can become key partners to housing developments in their community.

The Intro Housing Finance WebCourse will begin with an introduction to the complex world of housing including introducing terminology and landscape of the housing space in community development. During this course, speakers will walk through the multitude of diverse capital sources layered into housing deals based on the type of housing being developed. Attendees will delve into innovative case studies from across U.S. of how investment in an effective housing financing strategy can help drive the success of local economic development.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Start down the road to personal and professional advancement today.

Click here to learn more and to register.

BDA's Public Finance Leadership Roundtable: Event Recap

Yesterday, the BDA held its Public Finance Leadership Roundtable. The webinar was attended by dozens of representatives from BDA member firms and was sponsored by Quarles & Brady, DPC Data, and Lumesis. The panel discussion focused on the most recent market, legislative and regulatory topics facing middle-market banks and dealers in 2021.

A recording of the event can be viewed here.

Roundtable Recap

The panel was moderated by Jeff Peelen, Partner, Quarles and Brady and featured:

- Frank Fairman, Managing Director and Head of Public Finance Services, Piper Sandler
- Mark Borrelli General Counsel, Huntington Securities,
- Anne Noble, Managing Director, and Chair of the Public Finance Executive Committee, Stifel; and
- Brian Battle, Director and Principal, Performance Trust.

Roundtable Agenda

- Workforce Challenges/Strategies/Silver Linings

- Post-COVID office/virtual challenges generally
- Challenges getting out to see clients especially w/ “next generation”
- Recruiting issues
- What is the “typical” path to bankers these days?

Legislative Update

- Federal legislative update from the BDA

Business Trends

- Will (lower rates and) higher volume continue?
- Last year: flight to quality
- This year: the emergence of high yield
- “Green” and ESG deals
- Impact of federal dollars — e.g., schools
- Increased project costs (labor & supplies in general)
- Slow-down of taxable refundings
- Pensions borrowings bolstering taxable volume

Regulatory Environment

- Expectations from new SEC leadership
- Fundamentally different views (MAs, underwriters)
- Implications of coming back to the office
- Remote inspections
- G-17
- Politicization (e.g., gun manufacturers)

Bond Dealers of America

June 17, 2021

Direct Pay Bonds and PABs Remain in Spotlight – Other Muni Provisions Expected to Receive Continued Support

As noted yesterday, a bipartisan group of 21 senators released the latest infrastructure compromise, a $1 trillion package with nearly $600 billion of new spending. While light on pay-for details, the package did include some details on how the group plans to finance the plan, which includes a new direct-pay bond and references to increased private investment and P3 financing.

Muni Financing and Infrastructure

The most recent package includes a new direct-pay bond the American Infrastructure Bond (AIB). The legislation introduced by Senators Wicker (R-MS) and Bennet (D-CO) would create a new direct-pay bond with a flat 28% reimbursement rate. **In the original legislation, the AIB would be exempt from sequestration, however, no details on the sequestration treatment were included in the document released yesterday.**

While there was no direct mention of the reinstatement of tax-exempt advance refundings, or other muni priorities such as raising the BQ debt limit, the document did allude to the expansion of Private Activity Bonds to further finance the package. The MBFA and BDA remain committed to ensuring all priorities are included in the final package and continue to work to ensure more muni priorities are outlined once Congress and the Administration begin to write legislative text.

Bond Dealers of America

June 18, 2021

Waking from Bankruptcy Shock, Stockton Comes Back to Life.

Stockton emerged from bankruptcy years ago, but a culture of caution lingered that wasn't conducive to growth. Harry Black, its new city manager, aims to speed resurgence and innovation through data-based plans and programs.

When Stockton filed for bankruptcy in 2012, it was the largest municipality in the U.S. to be forced into this corner. A judge approved the city's plan to exit bankruptcy in February 2015, and by 2016, Truth in Accounting had ranked Stockton second in its annual survey of fiscal solvency of the nation's most heavily populated cities.

The city is still in the top five in the 2021 survey, with a surplus equivalent to $3,000 per citizen after all its bills are paid. In 2013, Detroit replaced Stockton as the largest city to seek bankruptcy protection, emerging in 2014. But it has not managed a similar resurgence.

Motor City currently has a "taxpayer burden" of $6,100 — the sum each citizen would have to pay to bring its bills current. It is ranked among "Sinkhole Cities" by Truth in Accounting.

Continue reading.

governing.com

by Carl Smith

June 16, 2021

Texas Targets Wall Street in Fight Over ESG Investing.

- **New law bans investments in businesses shunning fossil fuels**
- **Major corporations growing more committed to cleaner investing**

Texas is drawing battle lines in a fight against investors and companies turning their backs on fossil fuels.

Governor Greg Abbott signed a bill into law on Monday banning state investments in businesses that cut ties with the oil and gas industry. The underlying message, according to one of the most powerful energy regulators in the state, is simple: Boycott Texas, and we'll boycott you.

The new measure is Texas' Republicans latest rebuke of ESG investing as the state clings to its status as America's crude capital. Oil and gas companies, already under pressure to funnel more cash into dividends to please shareholders, are now having to reckon with major corporations from Wall Street banks to Silicon Valley tech giants deeming climate change as a top priority when determining investments.

Continue reading.

Bloomberg Finance

By Rachel Adams-Heard

June 14, 2021, 7:11 PM PDT Updated on June 15, 2021, 7:14 AM PDT

Michigan to Sell $604 Million of Debt for Flint Water Settlement.

Michigan is slated to sell $604 million of taxable bonds to help finance the state's settlement payments to victims of the lead-contaminated water supply in the majority-Black city of Flint.

Why It's Noteworthy

Flint's water crisis began in 2014, when in an effort to cut costs, officials began sourcing the city's drinking water from the Flint River. The river contained contaminants that leached lead from pipes, polluting the water for thousands of residents, including infants and children. Studies found the contamination may have been the cause of a Legionnaire's disease outbreak and several deaths in the area. As a result, former Governor Rick Snyder was charged with two misdemeanor counts for his role in the crisis and eight others face criminal charges. The charges are "wholly without merit," his lawyer has said.

The state has agreed to pay $600 million into a compensation fund, which will finance recovery awards for children and adults exposed to contaminated drinking water. The state made an initial payment of $5 million into the FWC Qualified Settlement Fund in February and will transfer the remaining $595 million of the bond proceeds. Michigan's state legislature will then appropriate approximately $35 million of annual payments to pay debt service on the bonds.

Payments made from the settlement fund to the plaintiffs will "essentially extinguish" the state's legal liability, according to a Fitch Ratings report. The bonds are being sold though the Michigan Strategic Fund, a state entity.

The deal is being underwritten by Citigroup and Siebert Williams Shank & Co. and is expected to price on June 22, according to investor roadshow documents.

'Highly Essential'

The bonds are rated Aa2 by Moody's Investors Service and AA- by Fitch, the third and fourth highest grades respectively. The debt service is payable from the state's legislative appropriation and is rated one notch below Michigan's general obligation rating by both companies.

"Although the transaction does not grant bondholders an interest in a physical asset, fulfillment of the state's obligation to make these payments constitutes a highly essential purpose for Michigan's government, given the pivotal role of various state agencies and officials in the catastrophic contamination of Flint's water supply starting in April 2014," wrote Moody's analyst Edward Hampton in a report.

"Completion of the settlement payment is crucial not only to containing future financial claims against the state, but also to restoring and maintaining the government's credibility with a large portion of its citizens," he said.

The fact that the proceeds will ultimately go to residents who were harmed by the water crisis is a "distinct positive," according to a report published in May by Activest, a racial justice investment research firm. Given the scale of the impact, the judgment "is a start, but it falls short of a fiscally-just investment," according to the report from Activest co-founder Ryan Bowers and his team.

Market View

Jason Appleson, a portfolio manager at PT Asset Management said that the bonds could come to market at higher yields than other appropriation debt because of the unusual nature of settlement bonds.

"The size mixed together with the non-standard format, the fact that it's a appropriation for a settlement, I think there will be some concession baked in there," he said, adding that any price drop is likely to be minimized by the ample demand for municipal bonds.

"It will probably get strong numbers but will likely be a little weaker than an essential project that is normally financed with appropriations," he said. "It is an ideal time to come to market."

Bloomberg Markets

By Danielle Moran

June 15, 2021, 9:05 AM PDT

— With assistance by Fola Akinnibi

Puerto Rico's Plan to Fix Its Power Grid Is Off to a Rocky Start.

Protests, a cyberattack, and a fire have marked the transition to a controversial public-private partnership.

Puerto Rico's attempts to overhaul its troubled public power utility are off to a rough start.

Luma Energy LLC, the private consortium that began managing the grid for the Puerto Rico Electric Power Authority, or Prepa, on June 1, has been besieged by protests, a cyberattack, and a major fire that briefly knocked out power to 900,000 customers on the island of 3.3 million.

Improving the electrical system is key to pulling the U.S. territory out of a deep economic slump and stopping rampant population decline. Blackouts and appliance-frying voltage spikes are common, even as customers pay rates that are higher than on the U.S. mainland. Hurricane Maria in 2017 decimated the already weak grid, and this year's Atlantic hurricane season began just as Luma took over.

Continue reading.

Bloomberg Businessweek

June 17, 2021,

Munis Are the 'Valedvictorian' of Fixed-Income: Newfleet's Heaney

Tim Heaney, a senior managing director at Newfleet Asset Management, favors higher-quality municipals that have fallen out of favor as investors shift into riskier assets, he said on “Bloomberg Markets: The Close.”

Watch video.

Bloomberg MarketsTV Shows

June 15th, 2021, 1:50 PM PDT

Texas Student Housing Authority Files for Bankruptcy.

- **Filing listed between $10 million and $50 million liabilities**
- **Properties feature resort-style pools, fitness centers**

Texas Student Housing Authority filed for Chapter 9 bankruptcy protection, listing between $10 million and $50 million of liabilities.

The non-profit, state chartered corporation had assets of $1 million to $10 million, and as many as 199 creditors, according to a June 18 filing in U.S. Bankruptcy Court for the Northern District of Texas.

The Southlake, Texas-based organization was established in 1995 to purchase and manage student housing facilities located near the campuses of major colleges and universities, according to its website. It owns housing properties near the University of North Texas in Denton and Texas A&M University in College Station. Both projects offer premium facilities, equipped with resort-style swimming pools and fitness centers.

“Both schools have had troubled muni-financed private student housing projects for years,” said Matt Fabian, a partner at Municipal Market Analytics. “So while the pandemic has made student housing financial conditions more challenging generally, that’s not the whole story when it comes to these schools.”

Across the U.S., bondholders are betting on the resurrection of American campus life after a year of declining enrollment, online classes and vacant quads. Student housing bonds, which came under pressure during the pandemic, are now traded with “substantially more optimism,” Fabian said. “The sector has lingering issues, but we shouldn’t overstate the risks via this new bankruptcy.”

In April, the board of the Texas Student Housing Authority met to consider Chapter 9 bankruptcy proceedings for “The Cambridge,” its property in College Station. The organization didn’t respond to a request for comment on Saturday.

The purpose of Chapter 9 is to provide protections for financially-distressed municipalities from their creditors so they can develop and negotiate a plan for adjusting debt, according to the U.S. Courts website.

Bloomberg Markets

By Yueqi Yang and James Ludden

June 19, 2021, 9:35 AM PDT Updated on June 19, 2021, 1:17 PM PDT

Improving Public Pension Returns Add to Case for Muni Bond ETFs.

On the back of surprisingly strong tax collection, state and local finances are solidifying and that's constructive for municipal bonds.

The VanEck Vectors CEF Municipal Income ETF (XMPT) is higher by nearly 2% over the past month, an impressive feat in that time frame for a municipal bond exchange traded fund. The $194.5 million XMPT, which is just a few weeks away from its tenth anniversary, follows the S-Network Municipal Bond Closed-End Fund Index. That benchmark is a basket of closed-end municipal bond funds focusing on dollar-denominated tax-exempt debt.

For investors considering XMPT and other muni bond ETFs, it's encouraging that states and cities are thriving on the tax collection front. Another positive is that public pension returns are perking up.

"With under a month left until their fiscal 2021 year end on 30 June, many US public pension systems are on pace to post exceptional, and potentially record-setting investment returns," according to Moody's Investors Service. "Such strong investment returns would broadly improve near-term funding, lessen negative non-investment cash flow (NICF) relative to retirement system assets and provide governments with a respite from growth in annual costs."

Why It's Important to XMPT

Many novice muni bond investors may be apt to simply assess a state's economic health when venturing into individual issuers or funds such as XMPT, but public pension health is vital to investor outcomes in this asset class as well.

Several state public pension systems, including CalPERS and CalSTRS, are among the largest pension investors in the world. Additionally, some states are grappling with the scenario of lavish benefits to plan participants that guaranteed young retirement ages (in some cases in a worker's early 50s) and increasingly long life expectancies.

Municipalities can issue pension obligation bonds (POBs) to fill shortfalls in their contributions to public pension systems, but too much of that type of issuance can prompt rising pension risk, potentially leading to downgrades or higher interest rates on new issues. Over the near-term, those ominous scenarios don't appear to be cause for concern for investors considering XMPT.

"With the 30 June fiscal year end for many US public pension systems, we project that investment returns are approaching 25%-30%for many if market conditions maintain their strength in the coming weeks, based on our composite of market indices meant to represent typical US public pension system asset allocations," adds Moody's.

XMPT, which yields 3.89%, is up 6.06% year-to-date, an advantage of nearly 400 basis points over the widely followed S&P National AMT-Free Municipal Bond Index.

ETF TRENDS

by TOM LYDON

JUNE 16, 2021

- NFMA Draft Toll Roads Recommended Best Practices.
- SEC Climate Change-Related Disclosure Rules: SIFMA
- Public Input on Climate Change Disclosures: SIFMA
- Junk Bonds Are Dominating Even One of America's Safe Havens.
- *Denny v. Arntz* – In challenge to the issuance of affordable housing bonds, Court of Appeal upholds the issuance on both substantive and procedural grounds. Although technically non-citable, the opinion is instructive as to the court's evaluation of bond ballot proposals and the resulting issuance.
- And finally, Not Exactly Brown v. Board is brought to us this week by *Southport Commons, LLC v. Wisconsin Department of Transportation*, in which the Supreme Court of Wisconsin went way out on ye olde limb and concluded that the word "'occurred' does not mean 'discovered.'" Well ok. Extrapolating, suppose they would also agree that "transpired" does not mean "ascertained." That "meatloaf" does not mean "koala bear." How 'bout "snow globe" does not mean "U.S.S. Indianapolis?" Wisconsinites can take comfort in the knowledge that their Supreme Court retains a firm grasp of the obvious.

BONDS - CALIFORNIA

Denny v. Arntz

Court of Appeal, First District, Division 2, California - May 12, 2021 - Not Reported in Cal.Rptr. - 2021 WL 1903766

On July 30, 2019, the San Francisco Board of Supervisors (Board) passed an ordinance providing for a special election on November 5, 2019, for the purpose of submitting to the city's voters "a proposition to incur bonded indebtedness not to exceed $600 million to finance the construction, development, acquisition, improvement, rehabilitation, preservation, and repair of affordable housing improvements, and related costs necessary or convenient for the foregoing purposes" and related matters."

The ordinance specified the official language to be included on the ballots as follows: " 'SAN FRANCISCO AFFORDABLE HOUSING BONDS. To finance the construction, development, acquisition, and preservation of housing affordable to extremely-low, low- and middle-income households through programs that will prioritize vulnerable populations such as San Francisco's working families, veterans, seniors, and persons with disabilities; to assist in the acquisition, rehabilitation, and preservation of existing affordable housing to prevent the displacement of residents; to repair and reconstruct distressed and dilapidated public housing developments and their underlying infrastructure; to assist the City's middle-income residents or workers in obtaining affordable rental or home ownership opportunities including down payment assistance and support for new construction of affordable housing for San Francisco Unified School District and City College of San Francisco employees; and to pay related costs; shall the City and County of San Francisco issue $600,000,000 in general obligation bonds with a duration of up to 30 years from the time of issuance, an estimated average tax rate of $0.019/$100 of assessed property value, and projected average annual revenues of $50,000,000, subject to independent citizen oversight and regular audits?'"

In November 2019, San Francisco voters passed Proposition A, San Francisco Affordable Housing Bonds. Citizen/Appellant brought an action to set aside the measure. His lawsuit alleged various deficiencies in the ballot materials as grounds for contesting the election pursuant to Elections Code section 16100, as well as a claim that the measure violated the California Constitution.

The Court of Appeal held that:

- Appellant had provided no reason to believe the ballot materials for Proposition A "were so inaccurate or misleading as to prevent the voters from making informed choices."
- The overriding purpose of the proposed bonds was to finance the development of affordable housing through new construction and rehabilitation of existing housing. This purpose involves acquisition and improvement of real property within the parameters of article XIIIA, section 1, subdivision (b), of our state Constitution, negating Appellant's argument that Proposition A authorized bonds for purposes other than "acquisition or improvement of real property."

The court also addressed procedural issues, including: res judicata, the inclusion of paid arguments in the voter information guide; maximum word count in the ballot description; whether housing projects should be funded by revenue, as opposed to general obligation, bonds due to the payment of rents; judicial compensation; and jurisdiction.

MUNICIPAL ORDINANCE - ILLINOIS

Word Seed Church v. Village of Hazel Crest

United States District Court, N.D. Illinois, Eastern Division - April 12, 2021 - F.Supp.3d - 2021 WL 1379497

Church and church association brought action against village alleging zoning ordinance that restricted religious land use unreasonably limited First Amendment free exercise rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and Fourteenth Amendment and was causing serious, irreparable harm.

Church and association brought motion for preliminary injunction and a declaratory judgment.

The District Court held that:

- Church and association were not likely to succeed on claim that ordinance violated equal terms provision of RLUIPA;
- Church and association were not likely to succeed on claim that village did not treat similarly situated assembly uses equally in violation of equal protection;
- Church and association were not likely to succeed on claim that designation of churches as a special use in residential districts violated unreasonable limits provision of RLUIPA; and
- Church and association were not likely to succeed on claim that restriction of religious land use to three residential districts violated unreasonable limits provision of RLUIPA.

ANNEXATION - NEBRASKA

Darling Ingredients Inc. v. City of Bellevue

Supreme Court of Nebraska - May 28, 2021 - N.W.2d - 309 Neb. 338 - 2021 WL 2172079

Landowners brought actions to challenge annexation, asking the court to declare the annexation ordinance invalid and to permanently enjoin the city from taking actions to enforce it.

The District Court entered judgment for landowners, and city appealed.

The Supreme Court held that:

- Annexation of largely agricultural area was not invalid based on the character of the use, and
- Due to neighboring baseball complex, largely agricultural area was adjacent and contiguous to the city.

Annexation of largely agricultural area was not invalid based on the character of the use, although some of the land within the area had greenbelt tax valuation status; area was not isolated but was near major road and several residential subdivisions, as well as an Air Force base which employed 10,000 people, area contained an industrial plant, city's comprehensive plan anticipated the area would be used for industrial and other nonagricultural purposes in the future, "for sale" listing for certain land in the area had divided it into several "small industrial lots," and city had initiated procedures to annex subdivision immediately south of the area.

Due to neighboring baseball complex, largely agricultural area was adjacent and contiguous to the city for purposes of annexation requirements; although prior annexation of baseball complex appeared to be isolated from the rest of the city and created distinct masses within the city, that unchallenged annexation could be used to establish adjacency.

ZONING & PLANNING - VIRGINIA

Historic Alexandria Foundation v. City of Alexandria

Supreme Court of Virginia - May 27, 2021 - S.E.2d - 2021 WL 2149459

Historic preservation group brought action challenging city's approval of landowner's applications for permits for the renovation of a historic property in city's old and historic district.

The Alexandria Circuit Court sustained city's demurrers and dismissed the challenge, and preservation group appealed.

The Supreme Court held that group did not suffer particularized harm and thus lacked standing.

Historic preservation group lacked standing to challenge city's approval of landowner's permits to renovate historic property in city's old and historic district, as, even assuming that renovation would compromise the integrity of the historic residence located on the property and would diminish the protected open space on the property, the resulting harm would be shared by the public generally, and the group did not suffer any particularized harm; group's interest in the preservation of historic buildings did not give it standing to challenge the city's decision.

EMINENT DOMAIN - WISCONSIN

[Southport Commons, LLC v. Wisconsin Department of Transportation]

Supreme Court of Wisconsin - June 8, 2021 - N.W.2d - 2021 WL 2325008 - 2021 WI 52

Property owner filed an inverse-condemnation claim against the state Department of Transportation (DOT).

The Circuit Court entered judgment on the pleadings for the DOT. Property owner appealed. The Court of Appeals affirmed. Property owner petitioned for review.

The Supreme Court held that the three-year period in which a property owner must file a notice of claim of damages from violation of statute enacted to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to construction of highways or railroad beds begins to run when the damage happens or take place and not when it is discovered.

[NFMA Draft Toll Roads RBP Released.]

The National Federation of Municipal Analysts' Disclosure Committee has released the Draft Recommended Best Practices in Disclosure for Toll Road Bonds for public comment through August 15, 2021.

To view the paper, [click here].

To view the press release, [click here].

['Food Fight' in the Municipal-Bond Market as Demand Devours all Supply.]

'Money just keeps pouring in'

The U.S. municipal bond market is known for being many things: staid, stuffy, well-suited to capital preservation, if not growthy opportunity. But now, lopsided metrics of supply and demand, with no relief in sight, suggest it might be outright shrinking.

Investors have poured record amounts of money into muni funds, even as a series of events have conspired to keep state and local government entities from issuing enough debt to satisfy investors. Some corners of the market are so tight that funds are turning money away, noted Brian Steeves, portfolio manager for Rye Brook, New York-based Belle Haven Investments.

"It's a food fight," Steeves told MarketWatch.

[Continue reading.]

MarketWatch

By Andrea Riquier

June 11, 2021

[Muni-Bond Hunters Left Empty-Handed With Trading at 16-Year Low.]

- **Average number of daily trades has been at lowest since 2005**
- **With cash pouring in, ‘there are not a lot of options’**

For municipal-bond fund managers flush with cash, it’s not easy finding something to buy.

The amount of debt changing hands in the secondary market has become unusually thin, with investors holding on to their bonds after a rally that drove a key measure of valuations to a record high.

There were an average of about 32,500 municipal-bond trades every day since the start of the year, the smallest average over the same time period since 2005, according to Municipal Security Rulemaking Board transaction data. That added up to about $9.3 billion worth changing hands each day, the lowest over that same time period in two decades.

Continue reading.

Bloomberg Markets

By Danielle Moran

June 10, 2021, 10:01 AM PDT

Lofty Muni Valuations Show No Sign of Ebbing in Demand Onslaught.

- **30-year muni yields are near historic low versus Treasuries**
- **‘Technical tailwinds’ set to support prices, LPL’s Gillum says**

The strength of the municipal-bond market shows no sign of fading in the next few months, sustaining the securities’ historic valuations with investors plowing money into funds that buy tax-exempt debt.

Amid robust demand as lawmakers in Washington debate higher taxes on the wealthy, munis have offered shelter in a tough year overall for fixed-income securities. They’ve eked out a positive return in 2021, while most parts of the bond market have lost money.

The outperformance relative to Treasuries has been historic. Yields on 30-year state and local bonds are about as low as they’ve ever been compared with their federal counterparts. The upshot is that it’s an appealing time to borrow for issuers of all stripes. In just one example, American Samoa is bringing junk-rated debt to market this month, in its first offering in years.

“Yes, munis are expensive, but there’s a lot of technical tailwinds that could help support those prices, at least on a near-term basis,” said Lawrence Gillum, fixed-income strategist at LPL Financial. “Valuations in and of themselves don’t mean that markets need to sell off, especially if there’s a technical tailwind and that’s certainly what we’re seeing in the municipal market.”

Municipal mutual funds and exchange-traded funds have seen a flood of cash in 2021. The ETFs have pulled in $9.4 billion this year, on track to beat the record set in 2020, data compiled by Bloomberg show. With investors hunting for extra yield, junk muni funds have seen 13 straight weeks of inflows, according to Refinitiv Lipper US Fund Flows data.

In the U.S. summer months, the state and local debt market also typically benefits from a surge of principal and interest payments, adding to demand as buyers look to reinvest.

It's all happening against an improving credit backdrop as the economy reopens from the pandemic and as municipalities receive an influx of federal aid through President Joe Biden's American Rescue Plan Act. The president's pitch for higher levies helps as well.

"The market is preparing for the current administration to spend and lay out their tax plan," said Debra Crovicz, a portfolio manager at Chilton Investment Co. "If tax rates go up, I still think we're going to see inflows into this sector because June, July and August coupon reinvestments will typically outstrip the amount of supply."

Bloomberg Markets

By Peyton Forte

June 9, 2021, 11:15 AM PDT

— With assistance by Amanda Albright

Munis Hit $100 Billion in Net Inflows from January to May.

The appetite for municipal bond exchange traded funds (ETFs) has been readily apparent, with the start of the year through May bringing in over $100 billion in net inflows, further fueling funds like the Invesco National AMT-Free Municipal Bond ETF (PZA).

"More than a dozen municipal bond ETFs each gathered over $100 million of net inflows year-t--date through May 2021 highlighting the diversity of popular offerings," CFRA Research noted in an email. "The sub-category gathered $8.6 billion of new money and is on pace to exceed 2020's flows."

PZA seeks to track the investment results of the ICE BofAML National Long-Term Core Plus Municipal Securities Index. The fund generally will invest at least 80% of its total assets in the components of the index.

The index is composed of U.S. dollar-denominated, tax-exempt municipal debt publicly issued by U.S. states and territories and their political subdivisions in the U.S. domestic market. PZA's expense ratio comes in at 0.28%.

A "Food Fight" in the Muni Space

While municipal bonds may not have the risk appeal of high-yield debt, investors remain interested. An influx of investor capital came as U.S. president Joe Biden presented his massive infrastructure plan, which would require state and local debt funding.

"The U.S. municipal bond market is known for being many things: staid, stuffy, well-suited to capital preservation, if not growthy opportunity," a MarketWatch article said. "But now, lopsided metrics of supply and demand, with no relief in sight, suggest it might be outright shrinking."

The article also noted: "Investors have poured record amounts of money into muni funds, even as a series of events have conspired to keep state and local government entities from issuing enough debt to satisfy investors. Some corners of the market are so tight that funds are turning money away, noted Brian Steeves, portfolio manager for Rye Brook, New York-based Belle Haven Investments."

"It's a food fight," Steeves told MarketWatch.

How long this proverbial food fight can last remains to be seen. For now, municipal bonds have been the toast of the town in the debt market.

"Bankers and buyers may both see less activity than needed, the influx of Federal cash and surging state and local revenues cut borrowers' needs for working capital," wrote analysts at Municipal Market Analytics in a June 7 note. "State and local governments, which are not yet showing a strong rebound in hiring, are also likely a few quarters away from restarting traditional new money infrastructure plans in earnest."

ETF TRENDS

by BEN HERNANDEZ

JUNE 14, 2021

Investors Are Backing 'BAB' as State and Local Finances Solidify.

Investors could be forgiven if, at the height of the coronavirus pandemic, they grew jittery over municipal bonds.

Back then, concerns about some states' and municipalities' finances were exposed amid economic shutdowns and accelerating unemployment. Fast forward to 2021 and the darkest of scenarios didn't come to pass for municipal bonds, indicating that debt and exchange traded funds such as the Invesco Taxable Municipal Bond Fund (NYSEArca: BAB) are on firm footing.

"Higher-earning individuals remained disproportionately employed, and real estate and equity markets bounced back fairly quickly—all of which helped buoy tax revenues in certain states," writes Charles Schwab's Cooper Howard. "As a result, the municipal bonds issued by state and local governments proved similarly resilient, with defaults in 2020 tracking well below the totals realized in the wake of the Great Recession."

Some of the progress on the state and local financing front is starting to be reflected in BAB's price action. The Invesco ETF gained 1.07% last week and resides just 2.36% below its 52-week high.

Building Back Better with BAB

There are other encouraging signs for muni bonds and BAB. As Schwab's Howard notes, despite the pandemic, almost half the 50 states actually collected more in taxes during the April through December 2020 period than they did in year-earlier time frame. Plus, municipal bond credit risk appears benign for now.

“Indeed, credit risks in the muni market are waning, largely due to the recently passed $1.9 trillion relief package, which provided substantial direct aid to many muni issuers,” said Howard. “It also contained a number of provisions to help support economic growth, which should eventually flow to many municipalities via higher income, sales, and other tax revenues.”

On the credit quality front, BAB is ideal for conservative investors because 85% of its 585 holdings are rated AAA, AA, or A on the S&P scale, according to Invesco data.

Even if state finances suddenly sour, which doesn’t appear likely at the moment, prevailing wisdom is that the worst-case scenario is ratings downgrades, not defaults. With the economic recovery gaining traction, neither outcome appears likely. Additionally, BAB’s credit profile is ideally positioned for an environment in which the unexpected could arrive at any moment.

“Although credit risks are lower now, it’s wise to focus the bulk of your portfolio on issuers rated A/A and higher, with some exposure to issuers at the lower end of the investment-grade spectrum (BBB/Baa) if your risk tolerance allows it,” concludes Howard.

ETF TRENDS

JUN 14, 2021

Junk Bonds Are Dominating Even One of America’s Safe Havens.

- **High-yield muni returns beat broad market by most since 2014**
- **Drives yields to lowest on record, quickens pace of new deals**

The municipal junk-bond boom is roaring back.

With the economy rebounding swiftly from the pandemic, interest rates on high-yield state and local government securities have tumbled to the lowest in over two decades. Cash is pouring into mutual funds focused on the junk-rated debt so quickly that money managers are fighting to get in on new deals. And prices have rallied, driving high-yield bonds to their biggest run of outperformance since 2014.

The demand is so strong that a California agency sold 35-year bonds for the development of a senior-living community at a yield of 4.43%, about two-and-a-half percentage points less than bankers initially anticipated. The price went on to surge 8% in secondary trading.

“We couldn’t think of a better time to come to market,” said Sarkis Garabedian, an investment banker at Ziegler, the underwriter on the bonds. He said the firm hadn’t seen such interest in a transaction for a new senior living campus since they started tracking the metrics in the 1980s. “We really hit the sweet spot here.”

Recent bond sales have raised money for an ethanol production facility in North Dakota, a bevy of charter schools, and a youth-sports complex in Arizona. American Samoa, a junk-rated territory, is tapping the market for the first time since 2018. And the owner of a plant that recycles rice waste into fiberboard may sell more debt even though it has already been driven to default.

The dynamics show how much the municipal-bond market has been swept up in the global push into higher yield assets as central banks worldwide hold interest rates low to stoke the economic recovery.

That’s fueled a surge in debt sales by corporations and governments battered by virus lockdowns. And for the state and local government debt market, it has revived the years-long rally in junk bonds that was only temporarily derailed by the coronavirus lockdowns.

So far this year, government agencies across the U.S. have sold more than $6.5 billion of bonds that can only be marketed to institutional investors able to bear the risk, driving such issuance toward the biggest year on record, according to data compiled by Bloomberg.

Cynthia Clemson, co-director of municipal investments at Eaton Vance, said the flood of demand means it’s harder for buyers to push for better protections on such deals.

“It’s definitely an issuer-driven market right now as opposed to a lender-driven market,” she said.

Emboldened Borrowers

Junk or unrated municipal bonds are often sold by governments or public agencies on behalf of businesses like real estate developers, clean-energy factories and others that are qualified to borrow in the tax-exempt market.

“I’ve never seen a market environment more favorable to borrowers than this one,” said Charles Peck, head of public finance investment banking for Wells Fargo & Co.

Buyers may be emboldened by the experience during the pandemic, when defaults remained rare even as the economic shutdowns threatened many industries that have raised money in the municipal market. Only a little over $3 billion of bonds defaulted in 2020 and 2021, a small share of the $3.9 trillion market, according to data compiled by Bloomberg Intelligence.

“Through Covid and into today, market defaults continue to be exceedingly, exceedingly low,” said Ben Barber, head of municipal investing at Franklin Templeton. “A lot of sectors that caused great concern have survived in pretty remarkable fashion.”

‘Full-blown Return’

After a steep downturn when the pandemic first hit in 2020, high-yield municipal bonds have rallied strongly back, delivering a return of 5.8% so far this year. That’s over 4 percentage points more than the broader market, the biggest gap in returns since 2014, according to Bloomberg Barclays indexes.

Nuveen’s Anders Persson and John Miller highlighted the demand for high-yield municipals in a note this week, saying that some offerings have been as much as 30 times oversubscribed.

There seems to be little sign that demand is slowing. High-yield funds have absorbed a fourth of the $44.7 billion of inflows into muni funds this year, according to Refinitiv Lipper US Fund Flows data.

“We are on the precipice of going into full-blown return to normal and the commensurate economic boost as a result of that,” Nuveen’s Miller said in an interview this month.

“There is a lot of cash coming in and not that many bonds,” he said. “In that environment, I think spreads are going to keep tightening, bottom line.”

Bloomberg Markets

By Amanda Albright and Danielle Moran

June 10, 2021, 7:00 AM PDT Updated on June 10, 2021, 7:26 AM PDT

— With assistance by Shruti Singh, and Nic Querolo

Munis In Focus: Buyers HODL As Spread Ship Hits Iceberg (Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses the latest news from the municipal bond market.

Listen to audio.

Bloomberg Radio

June 11, 2021

S&P: U.S. Big Box Retailers' 'Dark Store' Practices Continue To Pressure Some Local Governments' Finances

Key Takeaways

- E-commerce continues to pressure traditional brick-and-mortar retail as online sales account for an ever-greater share of total U.S. retail sales.
- Big box and other retail chains are expanding their use of the "dark store" tactics to appeal assessed valuations and reduce their property taxes.
- In some states, these appeals can have a fiscal impact on local governments, resulting in significant devaluation of retail properties and sometimes large tax settlements.
- The widespread use of dark store appeals has spawned calls for legislative reform in many states as local governments push back at the threat of losing much-needed tax revenue.

Continue reading.

8 Jun, 2021

S&P U.S. State Ratings And Outlooks: Current List.

View the Current List.

11 Jun, 2021

S&P: History Of U.S. State Ratings

[View the history.](#)

11 Jun, 2021

[S&P: How U.S. CDFIs Meet Financial And Social Missions, And The Rating Implications That Follow](#)

[View the S&P report.](#)

10 Jun, 2021

[S&P: U.S. States' And Transit Debt Hit Emergency Brake During Pandemic As Infrastructure Needs Accelerated](#)

Key Takeaways

- Most states' debt levels are sustainable and continuing to moderate compared to the peak in 2012. Unlike past recessions, only three states issued debt for budgetary or deficit purposes in fiscal 2020.
- Infrastructure needs exceed what states and transportation agencies can finance if credit quality is to be maintained. A large federal plan could propel their recovery and make a substantial down payment on a decade-long $1.5 trillion underinvestment.
- Mass transit systems, key to the economic recovery in some states, are beginning to regain ridership, but pandemic-delayed projects will have riders returning to systems with continued costly infrastructure needs.
- Aligning infrastructure and capital borrowing with sustainability principles is gaining momentum.

[Continue reading.](#)

[Cities Need More Than Rescue Aid to Fix Their Roads.](#)

Nearly a quarter of municipalities surveyed by the National League of Cities took on fewer infrastructure upgrades over the past year, and projects are still in need of funding.

The White House's multibillion-dollar rescue package to U.S. cities won't solve their infrastructure challenges, underscoring the case for more support as Congress debates a federal infrastructure plan, according to a report by the National League of Cities.

The lobbying group released its [State of the Cities](#) report on Thursday that uses survey data from about 600 communities and mayoral speeches, finding that some city infrastructure upgrades have fallen by the wayside during the pandemic. Funding for those projects ranked as one of the top challenges facing cities and a top mayoral priority for 2021, according to the report.

The findings bolster the case for more federal funding for roads, bridges and other projects, with nearly a quarter of cities experiencing fewer infrastructure upgrades over the last year, according to the group. The path to a bipartisan plan got more complicated this week after talks ended between President Joe Biden and Republican Senator Shelley Moore Capito, who couldn't agree on the scope of spending or how to pay for it.

Continue reading.

Bloomberg CityLab

By Amanda Albright

June 10, 2021, 7:00 AM PDT

Finding the Revenues to Pay for Infrastructure.

The warring camps in Washington are unlikely to find a middle ground on their own. Governors and mayors need to take a seat at the adult tax-policy table.

It's too early to predict which, how or whether any of the competing federal infrastructure proposals now bouncing between the White House and Capitol Hill will eventually become law. Perhaps a bipartisan deal can be reached on at least the physical infrastructure features that are of utmost importance to states and localities, but Senate GOP resistance to "pay-for" rollbacks of the 2017 corporate tax breaks could be a deal-killer. Republicans' recent shell-game pitch to fund $300 billion worth of projects by "repurposing" aid committed to the states and municipalities in the American Rescue Plan Act has rankled most local officials as disingenuous.

As various counterproposals ping-pong up and down Pennsylvania Avenue, the partisan dynamics are clear: Democrats might be able to cram a bill through by using the budget reconciliation process, if they can hold together all 50 blue votes in the Senate. But if they are unable to take the reconciliation route, they will need at least 10 GOP senators' votes to achieve a bipartisan compromise.

If Democrats decide to go it alone, it's pretty clear that they will include a host of progressive tax features to pay for some or much of the deal. Meanwhile, GOP leaders aligned with business and wealth lobbyists oppose both a corporate tax hike and deficit financing for infrastructure.

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June 8, 2021 • Girard Miller

Fitch: Public Infrastructure Cyberattacks May Pose Broad Financial Risk

Fitch Ratings-Austin/New York-09 June 2021: The recent Colonial Pipeline cyberattack illustrates the broader financial effects that can result from attacks on critical public infrastructure, Fitch Ratings says. A breach of critical assets, such as power or water supply or public transportation, that halts service could result in widespread public and private sector shutdowns if utilities cannot provide service or employees are not able to commute to their places of work.

Infrastructure that has been compromised can directly affect state and municipal government finances in the near term through ransom payments and/or the costs of remediation and restoration of data and service, as well as over the longer term, as a result of broad economic disruption that leads to loss of tax revenue.

The highly public nature and necessity of critical public infrastructure marks it as an extremely tempting target for cyber criminals, where the rewards for successful breaches can be significant. Public safety and security and the direct accountability of government entities to their citizens make infrastructure attacks attractive to those who seek to maximize headline risk.

The Biden administration issued exploratory executive orders directing federal agencies to look into ways to strengthen cyber defenses in recognition of the threat to public works. The comprehensive federal regulations around grid security are a prime example of the focus on national security and economic and public safety concerns. Public power entities are required to maintain the cyber best practices of the North American Electric Reliability Corporation.

The trend of global cybercrime has been undergoing a metamorphosis in the past two years. Criminals are now more focused on pivoting from the direct theft of data to disrupting critical operations using ransomware and exfiltrating information. Making systems more resilient to evolving cyberattacks requires ongoing and robust capital investment in digital defenses to ensure operational security and physical safety. Employee and management vigilance remains an important guard against cybercrime.

Remote work and the use of technology in the operation of public critical infrastructure has created new cyber challenges and vulnerabilities. Service and safety were not jeopardized in the recent attacks on the Metropolitan Transportation Authority of New York (transportation revenue bonds rated ‘A-‘/Negative) and the Massachusetts Steamship Authority (not rated by Fitch), but the breaches pointed to the need for robust digital security.

Attacks on the water infrastructure in the City of Oldsmar, Florida and Post Rock Rural Water District, Kansas (neither rated by Fitch) evidence the importance of manual redundancies and safeguards if cyber defenses are breached. Management was able to limit damage at these utilities, even though the control systems of water treatment plants were compromised.

Fitch considers cybersecurity in its review of public sector credits and as part of its global environmental, social and governance (ESG) framework. Cyber breaches pose significant social risks in terms of public safety and security, as well as a governance risk in terms of management effectiveness. An entity’s ESG Relevance Score (ESG.RS) for Customer Welfare – Fair Messaging, Privacy & Data Security (SCW), could be elevated if cyber risk were deemed to be material to the rating, such as the score assigned to Marriott International, prior to the issuer’s rating withdrawal in September 2020, in recognition of the widescale data breach of their systems in 2018, and to Capital One (COF; ‘A-‘/Stable) following a July 2019 data breach. COF’s elevated ESG.RS for SCW was reduced in May 2021, as the breach did not result in any noticeable damage to COF’s franchise.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

American Rescue Plan Revenue Replacement Calculator Now Available: GFOA

For governments considering spending under eligible use category C, "*for government services to the extent that there was a reduction in revenue*," calculating the jurisdiction's base revenue, revenue loss and growth rate are among the first steps of the process.

Learn more.

Governors Begin Proposing Uses of American Rescue Plan Act Funds.

The American Rescue Plan Act (ARPA) of 2021 was signed into law by President Biden on March 11. The bill includes $350 billion in emergency funding for state, local, territorial, and Tribal governments. These State and Local Fiscal Recovery Funds are to remain available until December 31, 2024. The legislation details certain eligible use of the funds including responding to the public health emergency or its negative economic impacts, providing premium pay for essential front-line workers, replacing revenue losses due to the COVID-19 public health emergency, and necessary investments in water, sewer, or broadband infrastructure. Meanwhile, restrictions include using the funds to either directly or indirectly offset a reduction in net tax revenue or depositing the funds into any pension fund. Governors' initial plans for spending ARPA funds have included: **continued efforts to address COVID-19; economic recovery and relief; public health and other health initiatives; education; workforce training; promoting economic development and tourism; bonuses for first responders; shoring up the Unemployment Insurance Trust Fund; housing assistance; and infrastructure including broadband, water, and sewer.**

Continue reading.

National Association of State Budget Officers

By Brian Sigritz

Public Input on Climate Change Disclosures: SIFMA

SUMMARY

SIFMA provides comments to the Securities and Exchange Commission (SEC) on issues to consider as the SEC evaluates creating climate change-related disclosure rules in response to Commissioner Lee’s March 15, 2021 statement requesting public input on climate change disclosures.

Read the SIFMA comments.
