Bond Case Briefs

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National P3 Update: Water and Sewer Infrastructure

We recently provided an update on the status of higher-education and social-infrastructure projects being delivered under the P3 model. This update focuses on water and sewer projects—although water and sewer infrastructure is rarely given much attention, its proper operation is obviously critical to our well being. Unfortunately, many of our nation's water and sewer systems are the victims of deferred maintenance (a problem that P3s can address), and the current situation is dire. As discussed at last week's USP3 conference in New York, public water systems in the United States require $335 billion in upgrades over the next 20 years, and the public sewer systems require another $298 billion in upgrades. Fortunately, several jurisdictions are considering P3s to address these needed projects. Water-and-sewer P3s currently in the procurement pipeline include:

Miami-Dade County, Florida, Biosolids Processing Facility
The biosolids facility remains in the County's P3 pipeline. An RFQ has not yet been issued. Estimated construction costs are approximately $140 million.

Ascension Parish, Louisiana, Consolidated Sewer System
Ascension Parish selected a preferred proponent last month for the development of a new regional sewer system under a 30-year DBFOM P3 agreement. Estimated construction costs for the first phase of the system are $225 million. The preferred proponent is led by Bernhard Capital Partners.

Lake Oswego, Oregon, Wastewater Treatment Plant
Lake Oswego shortlisted three teams last month for this project with an estimated construction cost of $130 million. The shortlisted proponents are EPCOR Foothills Water Partners, Foothills Water LLC, and NW Natural Holding Company.

Edison, New Jersey, Water and Sewer Concession
The Township of Edison has negotiated a 40-year concession agreement, which includes $481 million in infrastructure improvements, with Edison Environmental Partners, which is led by KKR Global Infrastructure Investors and Suez. The agreement is pending approval by the Township.

Fargo-Moorhead, North Dakota, Diversion Project
After a delay due to litigation, the Fargo-Moorhead Flood Diversion Authority is going to move forward with the procurement for this $2.75 billion project this summer. The shortlisted teams are Lake Agassiz Partners (AECOM, Meridiam, and Walsh), Red River Valley Partners (Plenary, Fluor, Ames, and Bernard), and Red River Valley Alliance (Acciona, InfraRed, Shikun & Binui, and North American Construction Group).

June 19, 2019

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Ashley Tison: Operating Business OZ Fund Strategies

The second tranche of regulations that were published two months ago clarified many questions regarding opportunity zone businesses. What are...

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Jessica Millett: QOF Formation Legal Considerations

What are some of the most important legal considerations when forming an Opportunity Zone Fund? What are some of the

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June 19, 2019

SIFMA's LIBOR Transition Briefing, July 15 in NYC

July 15, 2019 | SIFMA Conference Center, NYC

Registration Open

On July 15, SIFMA will host the LIBOR Transition Briefing in New York City to discuss the transition from the London Inter-bank Offered Rate (LIBOR) to alternative interest rate benchmarks.

Hear from policymakers at the center of the transition on what financial firms need to do today as well as the next stage in the move away from LIBOR to ensure a sound, coordinated industry effort.

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Click here to learn more.

[A Year After Online Sales Tax Ruling, Are States Reaping More Revenues?]

Almost every state has jumped at the opportunity to tax online purchases.

One year after the U.S. Supreme Court overturned a decades-old ban on states collecting sales taxes from online sellers, nearly every state has instituted a tax.

The swift and relatively painless transition has been a strong rebuke to the argument that requiring online sellers to remit sales taxes to 40-some states would be too cumbersome for states and sellers. "It's absolutely amazing that just one year in, we've seen that kind of widespread geographic coverage," says Charles Maniace, vice president of regulatory analysis for the consulting firm Sovos.

As of this week, the District of Columbia and 42 of the 45 states with a sales tax have enacted laws or regulations requiring remote sellers to remit a sales tax. The remaining three states — Florida, Kansas and Missouri — have already proposed bills, "and it is only a matter of time before they are enacted," says the Urban Institute's Lucy Dadayan.

The action comes in response to the court's ruling in South Dakota v. Wayfair, issued one year ago today, calling the old precedent "flawed" and a "tax shelter for businesses." The 5-4 decision did away with the notion that governments can only collect sales taxes on purchases made from retailers with a physical presence in their state. In doing so, the court overturned two previous rulings that predated the world of e-commerce.

In addition to enacting laws for direct sellers, 32 states and Washington, D.C., have passed laws or regulations requiring marketplace facilitators to collect sales taxes on behalf of their sellers, according to the National Conference of State Legislatures. Marketplace facilitators are online brokers, such as Amazon or Ebay, that sell a third party's goods and services. More states are expected to take similar action in the coming year.

Has the Ruling Helped State Budgets?

Prior to the Wayfair ruling, some observers estimated that states were collectively missing out on anywhere from $13 billion to $23 billion a year in potential online sales tax revenue. It's too early to know whether those estimates are accurate.

For one, it's nearly impossible to separate out the impact of the ruling from economic growth that would have occurred anyway over the last year. Furthermore, the data for this year is incomplete because states began officially collecting online sales taxes at different points throughout the past 12 months — some will start collecting them later this year.

Still, there are signs that the new taxes are helping state budgets.

For starters, sales tax growth over the past fiscal year, which for most states will end on June 30, has exceeded expectations. According to the latest data from the National Association of State Budget Officers (NASBO), 32 states are collecting more than they anticipated. The tax is outperforming budget forecasts by 1.4 percent, or $3.6 billion. That's better than the income tax, which is exceeding forecasts by 0.6 percent.

In total, sales tax revenue is projected to grow by 3.5 percent in fiscal 2019, an increase NASBO attributes at least in part to the uptick in online sales tax collections.

And with more states implementing a tax over the coming year, states collectively are projecting even stronger growth — 4.8 percent in 2020. Among those, California is projecting $616 million in additional sales tax revenue, and New York is projecting $346 million more.

Still, Dadayan warns, the revenue boosts “might be more modest than expected if the economy slows down and if consumer spending declines.”

What’s Next?

With a tax in place, most states are now looking at how to make their process for collecting online sales taxes more efficient.

The main way they’re doing that is by defining how much business an online retailer needs to do for it to be worthwhile for the state to tax. This threshold is referred to as “economic nexus” in tax circles.

In most places, that means a retailer has to either sell more than $100,000 in goods or services, or conduct more than 200 transactions in a certain state over the course of a year to qualify as having an economic nexus. But that nexus doesn’t make sense for all states.

After it enacted its sales tax legislation this year, for example, California bumped up its nexus to $500,000 and got rid of the transaction minimum. The higher threshold makes more sense for a state with the fifth-largest economy in the world.

Other states are taking similar action to redefine what their threshold is, according to Sovos. So far, Colorado, Iowa, North Dakota and Washington have done away with their minimum transaction requirement but kept their $100,000 threshold.

Meanwhile, the threats to ban online sales taxes that emerged in the months following the Wayfair decision appear to have subsided. And while a bill still lingers in Congress that would create a federal sales tax standard for online sellers, it doesn’t appear to be heading anywhere.

States’ swift action to implement their own standards, plus their work with technology companies and vendors, has done a lot to quiet any concerns, says Sovos’ Maniace.

“There was a bit of ‘the world would come to an end’ reaction on the idea that governments would impose a sales tax on all these small businesses,” he says. “I think we’ve found that states have been pretty reasonable about things, and the technology is there to provide management and compliance in a way that’s affordable.”

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BY LIZ FARMER | JUNE 21, 2019 AT 4:00 AM

It's Been a Rough Year for Mass Transit.

With falling ridership and scrapped expansion projects, urban transit faces an uncertain future.

Writing in this space last June, I made a confident prediction about the trajectory of urbanism in two Southern cities. Nashville had just decisively rejected a $5 billion plan aimed at remaking its entire transportation system, one that would have added enough new light rail lines and bus routes to change metro Nashville from a car-dependent mishmash of sprawl into a 21st-century metropolis where many people would find cars unnecessary.

Meanwhile, metro Atlanta was making plans to try something similar, with its big suburban counties preparing to vote to extend rail service to those hugely populous but transit-deprived population centers. The implication was obvious. Atlanta's suburbs, after casting decades of anti-transit votes, were ready for change. Nashville was lagging years, if not decades, behind.

I got it wrong. This spring, voters in Gwinnett County, the nearly 1-million-resident behemoth thought to be central to the entire Atlanta project, turned down transit expansion and the extra sales tax it would have required. So much for the region's 21st-century turn toward urbanism. It wasn't that different from Nashville after all.

It's still possible that Gwinnett will reverse itself, or that the other metro counties will tilt the other way and keep the transit vision intact. But at this point, I doubt it.

This spring was a really bad time for transit activists and advocates almost everywhere. In April, the board of directors of the Regional Transit Commission of Southern Nevada rejected a light rail project that appeared to have public support. That was a few weeks after the city council in Phoenix, a beacon of transit success in the past few years, voted against a major expansion out into the western desert suburbs. In August, a popular referendum will decide whether the system needs to have any real expansion at all. At this point, it's looking like the anti-transit side could prevail.

In what may be the most discouraging decision of all, transit promoters in Durham, N.C., had to pull the plug, after nearly a decade of planning, on a transit project that would have run through Durham and adjoining Orange County. Duke University, a major sponsor, abruptly pulled its money out, invoking safety concerns.

But it's not just this bad project news that's turned 2019 into a season of national transit anxiety. It's the overall ridership numbers coming in from practically every part of the country. Data for the first three quarters of 2018 shows that total U.S. transit ridership was down 2.36 percent over those nine months. Heavy rail was down 2.86 percent; light rail, 3.97 percent. Bus trips were down 2.32 percent. The only category that came in higher was commuter rail.

The numbers from Los Angeles are perhaps the most alarming. Through the first three quarters of 2018, L.A.'s heavy rail subway lost 4.45 percent of its riders; the light rail system lost an even worse 5.21 percent — in a region that has perhaps staked more of its future on transit than any growing metro in the United States.

There are some intriguing anomalies in this largely bleak picture. The places in the South and the West that had seemed to be most bullish about transit expansion over the past decade — L.A., Phoenix, the North Carolina Research Triangle, and even Dallas and Las Vegas — have seen their prospects decline. But at the same time, and without much national attention, older cities with legacy transit systems long plagued by physical decay and poor maintenance have begun sprucing them up in hopes of generating a revival.

In the current decade, for example, Chicago has rebuilt more than a third of its subway and elevated tracks and redone 40 aging stations, at a cost of $7.2 billion. Boston, after a decade of haggling over the future of its Green Line, is hard at work spending more than $2 billion on a 4.7-mile extension and the rebuilding of 67 stations. Philadelphia's SEPTA has been spending $750 million a year since 2011 on a comprehensive modernization process. These cities know how bad the national ridership numbers look. They are gambling that all this expense and effort will make a difference. And Philadelphia’s heavy rail system did post a gain in the second half of 2018.

Then, of course, there is New York. In March, the state legislature agreed to let the city begin imposing a congestion tax that could reach $15 on private vehicles that enter Manhattan below 60th Street during peak travel hours. Part of the rationale, obviously, is to reduce automobile congestion. But an equally crucial component is the money that congestion pricing will deliver to the debt-ridden Metropolitan Transit Authority — as much as a billion dollars a year, in addition to $15 billion in revenue projected to come in through new bonding authority.

So just as the Phoenixes of America are losing interest in building their modern lives on the pedestal of transit, the cities with creaky trains and rusty platforms are chasing the state of the art as a way to keep themselves healthy. There is a disconnect here, though. When it comes to transit, renewal and ridership are two very different things. The money that allows older cities to rebuild tracks and debut shiny new trains doesn’t guarantee that people are going to come back and ride them. To complete that difficult transformation, cities will need to do a better job of figuring out just what has driven the riders away in the first place.

There isn’t one answer. Transit’s troubles stem from a whole complex of factors. But it’s worth looking at them one by one.

The explanation behind falling transit numbers that gets tossed out most frequently is the rise of ride-hailing. People who used to commute to work by train or bus are taking Uber or Lyft instead. Obviously, that’s a contributing factor to ridership declines. But it’s happening mostly in a few big cities, and the ones with the biggest Uber and Lyft penetration are not necessarily the ones with the biggest transit declines. Besides, the cost of an Uber ride from a suburb into the city — $25 or more at peak hours in a crowded metropolis — suggests a ceiling on just how ubiquitous ride-sharing is actually going to be.

Telecommuting is another commonly suggested culprit, and there may be more to this one. The number of pure telecommuters is still relatively small — the latest data show that only about 3 percent of employees work from home most of the time. But the number of one-day-a-week telecommuters is huge and growing very fast. Taking transit to work four days a week instead of five represents a 20 percent falloff in ridership. So this obviously matters.

What may matter more, however, is the price of gas and the rising level of car ownership. In the summer of 2008, a gallon of gas sold in much of the United States for more than $4; in the summer of 2018, the price was down below $2.75. A decade ago, I thought the effect of declining gas prices wouldn’t be that elastic: Once people started driving less to save money, they’d keep doing that. But they haven’t. A spike in gas prices still cuts our driving significantly; a plunge in those prices puts millions of people back on the road quickly.

Just as important, there’s evidence that once the 2008 recession ended, Americans started buying more cars. A study last year by researchers at the University of California, Los Angeles, found that in the years from 2000 to 2015, but especially from 2010 to 2015, the number of household vehicles in metropolitan L.A. grew by 2.1 million — a higher rate than in previous decades. Most interesting of all: The growth was greatest among immigrant families.

When you think about it, you can see the reason for that. Immigrants, and poorer families in general, have been settling in less expensive inner suburbs rather than in the central cities where they used to cluster. As they do that, they move farther from the transit lines — especially bus lines — that carried them to work. They buy cars, and their bus-riding numbers go down. As the transportation scholar Yonah Freemark told me recently, “Poorer people are living in increasingly transit-hostile environments.”

One might expect this trend to be counteracted by the number of single millennials who have chosen to live near city centers and aren’t buying cars at all. That may be happening to an extent. But many of those millennials are settling so close to their jobs that they don’t need transportation of any sort — except for their feet and maybe a scooter or bicycle. As Freemark puts it, “They are not a natural transit constituency.”

None of this is to suggest that big-city transit systems are on the brink of imminent collapse. They remain indispensable civic institutions, and the older ones are doing exactly the right thing by restoring their capital investment, their level of service, their reliability and their reputations. In the long run, though, they need to worry about one other important thing: finding ways to get their service out to where their riders have gone.

GOVERNING.COM

By Alan Ehrenhalt | Senior Editor

JUNE 2019

Spring 2019 Fiscal Survey of States: NASBO

Governors’ recommended budgets for fiscal 2020 reflect stable state fiscal conditions, calling for investments in key priorities while saving for future challenges. Proposed spending plans would increase general fund expenditures by **3.7 percent** in fiscal 2020, with **47 states** proposing spending increases and governors directing the majority of new money to education.

Other key findings from the report:

- Governors proposed appropriation increases totaling **$30.8 billion** in fiscal 2020, including **$14.1 billion** in new money for K-12 education and **$3.6 billion** for higher education.
- States estimate general fund spending grew **5.8 percent** in fiscal 2019, the fastest annual growth rate since fiscal 2007.
- **No states** made mid-year budget cuts in fiscal 2019 due to a revenue shortfall, and only **3 states** made small mid-year reductions for other reasons.
- **28 states** reported fiscal 2019 general fund revenue collections exceeding projections, with this number expected to grow after accounting for April receipts.
- Governors’ budgets are based on forecasted general fund revenue growth of **4.0 percent** in fiscal 2020.
- Governors proposed a series of revenue actions consisting mostly of tax increases, including a number of proposals directed towards transportation, with a net revenue impact of **$8.1 billion** in fiscal 2020.
- The median rainy day fund balance as a share of general fund spending reached **7.5 percent** in fiscal 2019, a new all-time high.
- Medicaid spending from all funds is expected to grow **4.0 percent** in fiscal 2020, with state funds increasing **3.1 percen**t and federal funds growing **4.5 percent**.

Download the Full Report.

[Appellate Division Reverses Tax Court On Kean University Restaurant Tax Exemption.]

In a case of first impression, New Jersey's Appellate Division reversed the Tax Court's decision in *Gourmet Dining, LLC v. Union Township*, 30 N.J. Tax 381 (Tax Ct. 2018), which denied a property tax exemption to a restaurant on Kean University's campus. Kean contracted, through a management agreement, with Gourmet Dining, LLC, for the "exclusive right to operate, manage and control" the restaurant in question for a 10-year period, wherein Gourmet was designated the "exclusive manager" for that period of time. The agreement required the annual payment by Gourmet to Kean of $250,000 for the first nine years and $500,000 for the 10th year. Gourmet also agreed to pay Kean's operating foundation 12.5 percent of the gross revenues derived from the restaurant. Revenue generated by the restaurant and paid to Kean was slated to fund scholarship programs, and since its opening the restaurant generated more than $377,000 for such programs. Moreover, more than 85 percent of the restaurant's employees were students of Kean.

The Tax Court denied the exemption on the ground that the restaurant was not used for public purposes, which is a statutory requirement for tax exemptions pursuant to N.J.S.A. 54:4-3.3 and N.J.S.A. 54:4-3.6. The Appellate Division disagreed, noting, "We are convinced … that the [tax] court took an unduly narrow view of the facts." The Appellate Division noted that "the restaurant is unique because it is located on-campus. The record shows that the University's students and their parents regularly dine at the restaurants. Moreover, the University views the restaurant as an important recruiting tool for students and faculty." The Appellate Division also concluded that the restaurant "provides students, other members of the University community, and visitors to the campus an alternative dining experience." Additional facts that weighed in favor of its public purpose were that the restaurant "provides revenues that are specifically earmarked for scholarships for University students," that "approximately eighty-five percent of the restaurant's employees are University students," and that "the restaurant will use produce grown on the University's property and will provide compostable waste for the University's science program, where it will be used for research by faculty and students."

The Appellate Division also emphasized "the concept of public purpose 'must expand when necessary to encompass changing public needs of a modern dynamic society.'" The court held that "when all of the relationships between the restaurant and the University are considered, they warrant the conclusion that the subject property is being used for a public purpose."

The Tax Court also denied the exemption on the grounds that the restaurant's management agreement was "functionally a lease" to a for-profit organization under N.J.S.A. 54:4-2.3 and N.J.S.A. 54:4-3.6, which also deprived the restaurant of an exemption. The Appellate Division again disagreed. In that regard, the Appellate Division noted, a lease is a possessory interest in land. The management agreement gave Gourmet the "exclusive right to operate, manage and control the restaurant, not the property," and was therefore more akin to a license which permits use, rather than a possessory interest in land. Therefore, the Appellate Division held that Gourmet was not subject to local property taxation under either N.J.S.A. 54:4-2.3 or N.J.S.A. 54:4-3.6. This holding has a much broader implication since N.J.S.A. 54:4-2.3 and N.J.S.A. 54:4-3.6 typically exclude from exempt status the leased portion of property if the lessees are not themselves nonprofit or nonexempt entities. Under the Tax Court's rationale, a license or a management agreement was the equivalent of a lease, which could deprive a property of exempt status. The Appellate Division has settled the issue and permits exemptions under management or similar agreements provided there is a continuum of the public use of the property.

Publisher: Day Pitney Advisory

Day Pitney Author(s) Christopher John Stracco Katharine A. Coffey

June 18, 2019

- GASB Proposes Guidance on Public-Private and Public-Public Partnership Arrangements.
- BDA Submits Comment Letter on TRACE Pilot/Corporate Bond Block Trade Dissemination.
- States, Cities Forgo Projects to Keep Glittering Balance Sheets.
- S&P: As U.S. State Debt Levels Moderate, Transportation Funding Takes Center Stage.
- Opportunity Zones: Second Round of Proposed Regulations Are Helpful for Agribusiness and Forestry, but Refinements Are Needed to Support Revitalization of OZs in Farm and Timber Country
- And finally, Practical Practice Tip of the Week is brought to us this particular week by *Webb v. Town of Saint Joseph*, in which a small-town mayor was absolved of various shenanigans due to the fact that his misbehavior was the result of “poor decisions and bureaucratic dysfunction,” rather than “municipal policy established by an authorized policymaker.” “Honey, sleeping with your sister was a poor decision, not an established policy, so we’re all good, right?” So easy!

WASTEWATER FEES - CALIFORNIA

Plantier v. Ramona Municipal Water District

Supreme Court of California - May 30, 2019 - P.3d - 2019 WL 2292829

Commercial property owners brought putative class action to invalidate a wastewater service charge imposed by municipal water district, seeking declaratory relief and refund of charges.

The Superior Court held bifurcated bench trial and ultimately dismissed for lack of exhaustion of administrative remedies. Property owners appealed. The Court of Appeal reversed and remanded. Review was granted.

The Supreme Court held that public hearing pursuant to Proposition 218, which placed restrictions on assessments and property-related fees and established majority protest remedy, to consider a rate increase was inadequate to resolve property owners’ challenge, and thus even if hearing constituted an administrative remedy, property owners were not required to exhaust it.

Public hearing pursuant to Proposition 218, which placed restrictions on assessments and property-related fees and established majority protest remedy, to consider a rate increase was inadequate to resolve commercial property owners’ challenge to method of calculating wastewater service charges, and thus even if hearing constituted an administrative remedy, property owners were not required to exhaust it prior to bringing action against municipal water district; as noticed, hearing would not have permitted agency to change method for calculating fee, since change in method was considered fee increase rather than rate increase, and Proposition 218 did not define what consideration was required to be given to protests.

EMINENT DOMAIN - COLORADO

[Carousel Farms Metropolitan District v. Woodcrest Homes, Inc.]

Supreme Court of Colorado - June 10, 2019 - P.3d - 2019 WL 2414999 - 2019 CO 51

Metropolitan district, that was created by developer, petitioned the court for condemnation of a certain parcel of land.

After immediate possession hearing, the District Court granted the district's request to take immediate possession. Landowner appealed. The Court of Appeals reversed in part, vacated in part, and remanded. Metropolitan district petitioned for review.

The Supreme Court held that:

- Takings questions present mixed questions of law and fact, with public use determinations reviewed de novo, overruling *City & County. of Denver v. Block 173 Associates*, 814 P.2d 824*, and Public Service Company of Colorado. v. Shaklee*, 784 P.2d 314;
- Metropolitan district's condemnation of parcel of land that developer sought to subdivide created a public benefit, for purposes of determining whether the taking was necessary for the intended public use, and thus valid; and
- Statute that prohibited taking of private property for transfer to a private entity for the purpose of economic development did not apply to taking of parcel for public use.

Takings questions present mixed questions of law and fact, with public use determinations reviewed de novo, overruling *City & County. of Denver v. Block 173 Associates*, 814 P.2d 824, and *Public Service Company of Colorado. v. Shaklee*, 784 P.2d 314.

Metropolitan district's condemnation of parcel of land that developer sought to subdivide created a public benefit, for purposes of determining whether the taking was necessary for the intended public use, and thus valid, even though developer would have also benefited from the taking and the district was only formed after developer failed in negotiations with land owner; the parcel to be taken would have been used for public right of ways, storm drainage, and sewer improvements, and the district properly exercised its power of eminent domain to prevent holdout landowner from thwarting the assembly of adjacent properties that would have benefited the public.

Statute that prohibited taking of private property for transfer to a private entity for the purpose of economic development did not apply to taking of parcel for public use, even if developer would also benefit from the taking; the condemned property was never transferred to someone else when the metropolitan district that initiated the condemnation proceeding condemned the parcel and then kept it, and even it somehow did transfer the parcel, the only entity involved was a public one, the district, which had the power of eminent domain.

ZONING & PLANNING - DELAWARE

[City of Lewes v. Nepa]

Supreme Court of Delaware - June 10, 2019 - A.3d - 2019 WL 2415047

Owners of home in historic district appealed denials of area variances to complete unauthorized addition to house.

The Superior Court reversed decision of the city's board of adjustment and city appealed.

The Supreme Court held that:

- City had the authority to adopt variance requirements;
- City ordinance required stricter standards for granting area variances than state law; and
- Statute allowed city to adopt stricter variance review standards than standards set forth in state law.

City had the authority to adopt variance requirements to be applied by its board of adjustment; charter authorized city "generally to exercise all the powers and authorities vested in the legislative body of cities," state had authorized municipalities to adopt their own laws governing their boards of adjustment, and statute allowed municipalities to "provide for the manner in which" its land use regulations and restrictions "shall be enforced."

City ordinance required stricter standards for granting area variances than state law, where ordinance contained heightened exceptional practical difficulty test by requiring the benefit to the property owner in granting the variances to substantially outweigh the detriment to the neighboring properties, ordinance imposed a "uniqueness" requirement, and ordinance excluded nonconformity as a reason for granting a variance.

Statute providing that boards of adjustment "may" grant variances when "special conditions" or "exceptional situations" exist that cause "unnecessary hardship" or "exceptional practical difficulties" allowed city to adopt stricter variance review standards than standards set forth in state law.

NEGLIGENCE - ILLINOIS

Berry v. City of Chicago

Appellate Court of Illinois, First District, Sixth Division - May 22, 2019 - N.E.3d - 2019 IL App (1st) 180871 - 2019 WL 2234496

City residents filed class action complaint against city, alleging negligence and inverse condemnation based on high levels of lead in their water following replacement of water mains and service lines by city.

The Circuit Court granted city's motion to dismiss. Residents appealed.

The Appellate Court held that:

- Consuming lead-contaminated water was a present injury;
- Residents' need for medical testing and monitoring was not damages for risk of future harm;
- City was not entitled to immunity for methods used to replace water mains and service lines; and
- Residents sufficiently alleged special damages as required for inverse condemnation claim.

Consuming lead-contaminated water was a present injury, as necessary to support negligence claim brought by city residents against city for causing lead to leach into their water following replacement of water mains and service lines, even if residents had yet to develop physical ailments linked to such consumption; complaint alleged that lead accumulates in the human body over time and that it could be many years before a person develops physical ailments linked to such consumption.

City residents' need for medical testing and monitoring was a harm which flowed from the present injury of consuming lead-contaminated water, and was not damages for risk of future harm, supporting claim for damages in their negligence action against city for causing lead contamination in their water following replacement of water mains and service lines.

Methods used by city to replace water mains and service lines was not a policy decision, and thus city was not entitled to immunity under the Tort Immunity Act in negligence action brought by residents whose water was contaminated by lead as alleged result of the replacement; residents took issue with how city conducted replacement project, not with decision to modernize city's water system.

City residents sufficiently alleged special damages as required for inverse condemnation claim in action against city for lead contamination of residents' water, where residents alleged that city's replacement of water mains and meters, and partially replacement of lead service lines, caused harmful levels of lead to leach into their water, rendering their lead service lines more dangerous than other lines.

ANNEXATION - INDIANA

Town of Brownsburg v. Fight Against Brownsburg Annexation

Supreme Court of Indiana - June 5, 2019 - N.E.3d - 2019 WL 2366730

Owners of annexed land, acting through a political action committee, brought remonstration action based on claim that town did not meet the statutory annexation requirements, and owners also sought a declaratory judgment.

After a bench trial, the Superior Court entered judgment for landowners' committee, but dismissed the declaratory-judgment action. Town appealed, and landowners' committee cross-appealed.

On petition to transfer, the Supreme Court held that:

- Sufficient evidence supported finding that the territory in question failed to meet statutory requirement that 60% of territory be subdivided, and
- Town failed to show that the territory was needed and could be used by the town for its development in the reasonably near future.

Sufficient evidence supported finding that territory that municipality wished to annex failed to meet statutory requirement that 60% of territory be subdivided, where town's expert witness used six different methods for determining whether the annexation area was 60% subdivided, only one of the expert's methods considered the urban character of the proposed annexed area, and the trial court chose to credit the testimony of expert witness for objectors to the annexation that the area in question was 17.54% subdivided, which a figure that the expert witness, who was a county cartographer, calculated after compiling a list detailing, by name, the 36 residential subdivisions and 19 minor residential plats within the annexed territory.

Town failed to show that the territory that it wanted to annex was needed and could be used by the town for its development in the reasonably near future, where plans for extending a parkway through the annexation area did not involve the town and involved an unknown timeframe, a possible bridge crossing an interstate highway in the annexation area was in the planning stages but not scheduled for installation for nine years, school corporation that owned acres in the annexation area and no planned projects for the area, and town had no plans for a substantial majority of the annexation area.

EMINENT DOMAIN - IOWA

Puntenney v. Iowa Utilities Board

Supreme Court of Iowa - May 31, 2019 - N.W.2d - 2019 WL 2306289

Landowners and nonprofit environmental organization sought judicial review of decision by Utilities Board which approved construction of underground crude oil pipeline across state and approved use of eminent domain where necessary to condemn easements along pipeline route.

The District Court denied petitions. Landowners and organization appealed.

The Supreme Court held that:

- Organization had standing to appeal;
- Pipeline promoted public convenience and necessity;
- Use of eminent domain did not violate statutes governing condemnation of agricultural land and setting forth additional limitations on exercise of eminent domain;
- Use of eminent domain did not violate Takings Clause of state constitution or federal constitution; and
- Statute authorizing Board to grant rights of eminent domain where necessary did not require pipeline to be rerouted to avoid cutting through landowner's property.

Nonprofit environmental organization had standing to appeal trial court's affirmance of decision by Utilities Board, which approved construction of underground crude oil pipeline across state and approved use of eminent domain where necessary to condemn easements along pipeline route; organization was asserting interests of two of its members, including trail coordinator for Department of Natural Resources and homeowner whose home sat one mile from pipeline, members submitted affidavits describing their use and enjoyment of rivers, streams, soil, and other natural areas and aesthetics, members described concerns that construction and operation of pipeline would have adverse environmental impact on areas they used and enjoyed, and members' concerns were not entirely speculative, remote, or in uncertain future.

Underground crude oil pipeline across state promoted public convenience and necessity as to authorize Utilities Board to approve construction of pipeline; shippers wanted pipeline as way of reducing transportation costs, given that petroleum products were commodities sold in competitive market, lower costs for transportation tended to keep prices of crude oil derivatives lower than they otherwise would be, pipeline would lead to longer-term, reduced prices on refined products and goods and services dependent on crude oil and refined products, which were public benefits, and there was no authority stating that Board could not consider rely on secondary economic benefits resulting from pipeline, e.g., resulting in at least 3,100 construction jobs and more than $27 million annually in property tax revenue, as public convenience and necessity.

Use of eminent domain to condemn easements along underground crude oil pipeline route did not violate statutes governing condemnation of agricultural land and setting forth additional limitations on exercise of eminent domain; company that constructed pipeline was company under jurisdiction of Utilities Board and, thus, landowner consent was not required prior to condemnation, and company qualified as common carrier, such that acquisition of any interest in property necessary to its function was authorized, since its service had not been limited to those under contract and ten percent availability for walk-up business was sufficient for common carriers under Federal Energy Regulatory Commission.

Use of eminent domain to condemn easements along underground crude oil pipeline route, as authorized by statute governing use of eminent domain for pipelines, did not violate Takings Clause of state constitution or federal constitution; pipeline was common carrier akin to railroad or public utility, which was kind of taking recognized as valid public use, even when operator was private entity and primary benefit was reduction in operational costs, pipeline provided public benefits in form of cheaper and safer transportation of oil, which in competitive marketplace resulted in lower prices for petroleum products, and pipeline would lead to longer-term reduced prices on refined products and goods and services dependent on crude oil and refined products.

Statute authorizing Utilities Board to grant rights of eminent domain where necessary did not require underground crude oil pipeline to be rerouted to avoid cutting through southwest corner of landowner's property; while landowner claimed that it was not necessary for pipeline to traverse his property, demands of statute were met if pipeline company demonstrated that pipeline required exercise of eminent domain and why particular route proposed was superior, while landowner claimed that pipeline should have been relocated to accommodate plan to install wind turbines, he had merely conceived idea, had no specific plan, and failed to show how pipeline would interfere with plans to erect turbines, and landowner was allowed to file written objections that detailed his concerns about impact of pipeline on his drainage tile.

Installer of underground crude oil pipeline was not required to reroute line to avoid property, whose owner feared that pipeline would destroy drainage tile and concrete pipe installed on his land; diversion of pipeline as owner requested was not feasible, as area of proposed diversion included forest, creek, and county drain line such that installer would have to cut out trees, cross creek, and encumber another drain line, and, thus, least intrusive alternative was to direct installation of pipeline below owner's entire drainage system, including 24-inch concrete main that was already buried up to 22 feet deep.

MUNICIPAL LIABILITY - LOUISIANA

Webb v. Town of Saint Joseph

United States Court of Appeals, Fifth Circuit - May 24, 2019 - F.3d - 2019 WL 2238415

Alderman filed § 1983 action alleging that town and its mayor violated his federal and state constitutional rights by seeking—and then seeking to collect on—judgment that he owed for violating local ordinance.

After alderman died and his heirs were substituted as plaintiffs, the United States District Court denied heirs' motion to disqualify town attorney and entered summary judgment in defendants' favor. Alderman appealed.

The Court of Appeals held that:

- Town attorney was not final policymaker for town;
- Town was not subject to liability under § 1983 based on its three-month delay in returning wages to alderman after judgment was annulled;
- Town was not subject to liability under § 1983 for mayor's decision to undertake efforts to collect on judgment;

- Mayor was not subject to liability under § 1983 for undertaking efforts to collect on judgment; and
- District court did not abuse its discretion in declining to disqualify town attorney.

Town attorney was not final policymaker for town, and thus town was not subject to *Monell* liability under § 1983 based on town attorney's actions in seeking, and then seeking to collect on, judgment that town resident owed for violating local ordinance, even though town attorney had discretion to make certain decisions about how to pursue town's judgment; town attorney was authorized by statute to act in representative—not policymaking—capacity, and there was no evidence that state or local custom imbued town attorney with general policymaking authority, that mayor was deliberately indifferent in failing to control town attorney, or that mayor ratified town attorney's actions.

Town was not subject to liability under § 1983 based on its three-month delay in returning wages to alderman that had previously been withheld to satisfy town's judgment against him after judgment was overturned on appeal, absent evidence that delay was result of anything but simple oversight by mayor's office.

Town was not subject to liability under § 1983 for mayor's decision, as final policymaker, to undertake efforts to collect on judgment that alderman owed for violating town ordinance by withholding his alderman's wages without formal garnishment procedures, even though judgment was later annulled, where judgment was rendered final by alderman's failure to perfect his appeal, and there was no indication that town policy—rather than poor decisions and bureaucratic dysfunction—was moving force behind violation of any constitutional right.

Mayor was not subject to liability under § 1983 for undertaking efforts to collect on judgment that alderman owed for violating town ordinance by withholding his alderman's wages without formal garnishment procedures, even if mayor made initial decision to pursue collection on final judgment against alderman, which was later annulled, absent evidence that mayor was personally involved in challenged conduct, or that alderman asked mayor for his wages to be reinstated and was denied.

District court did not abuse its discretion in declining to disqualify town attorney in alderman's § 1983 action alleging that town and its mayor violated his federal and state constitutional rights by seeking—and then seeking to collect on—judgment that he owed for violating local ordinance, even though it was town attorney who sought judgment and acted to collect on it, where town attorney's motivations and reasoning were irrelevant to fundamental question of whether complained-of conduct emerged from municipal policy established by authorized policymaker.

WATER LAW - NEW HAMPSHIRE

Appeal of Town of Lincoln

Supreme Court of New Hampshire - June 7, 2019 - A.3d - 2019 WL 2402232

Town appealed from order of the Department of Environmental Services ordering town to repair river levee.

The New Hampshire Water Council upheld the Department's decision, and town appealed.

The Supreme Court held that town was not owner of levee for purposes of statute that required owners of dams to maintain and repair the dam so that they shall not become a dam in disrepair.

Town was not owner of levee for purposes of statute that required owners of dams to maintain and repair the dam so that they shall not become a dam in disrepair; town was not the fee owner of the levee, under a right-of-entry (REA) agreement, the town and the United States only had a limited right to enter upon the land at any time to inspect the restored levee with a view to its proper maintenance and operation, the town was not seeking rights reasonably necessary to enjoy its easement and protect its citizens and property, when it already held those rights under the REA, which did not place any obligations on the town, and while the fee owner had the capacity to transfer ownership to the town, with its attendant rights and obligations, it chose not to do so.

ZONING & PLANNING - PENNSYLVANIA

EQT Production Company v. Borough of Jefferson Hills

Supreme Court of Pennsylvania - May 31, 2019 - A.3d - 2019 WL 2313377

Landowner sought review of borough council decision denying its conditional use application to construct, operate, and maintain natural gas production facility.

The Court of Common Pleas reversed council's decision. Borough appealed. The Commonwealth Court affirmed. Borough filed petition for allowance of appeal, which was granted.

The Supreme Court held that testimonial evidence of objectors, from different municipality, to application was properly received and considered by borough council when rendering its decision on application.

Testimonial evidence of objectors from different municipality to conditional use application for landowner to construct, operate and maintain natural gas production facility was relevant and probative to question whether grant of application for landowner to construct and operate site would adversely impact health, safety, and general welfare of borough's residents and, thus, was properly received and considered by borough council when rendering its decision on application; there was significant degree of similarity between nature of proposed land use in borough and present use of site in different municipality, landowner would be similar drilling activities, both sites were located in similar close proximity to residences, and testimony about landowner's proffer of waiver agreements to residents living near site in different municipality, in response to deleterious effects of drilling activities, was suggestive of how landowner would handle complaints from borough residences near site.

TAX - ALASKA

Kelley v. Municipality of Anchorage, Board of Equalization

Supreme Court of Alaska - May 31, 2019 - P.3d - 2019 WL 2314083

Landowner sought review of municipality's tax valuation of property.

The Superior Court affirmed. Landowner appealed.

The Supreme Court held that:

- Municipal board of equalization acted within its discretion in refusing to admit, on timeliness grounds, landowner's offered documentary evidence of other lots' values;
- Board was not required to find that landowner's sale of different lot in same subdivision for particular amount was definitive evidence of value of lot at issue; and

- Board was not required to find that landowner's payment of particular amount for lot was definitive evidence of its value.

Municipal board of equalization was not required to find that landowner's sale of different lot in same subdivision for particular amount was definitive evidence of value of lot for which landowner disputed assessed value for taxation purposes; assessor testified that because other lot had not been listed on central listing service, there was no assurance that lot had actually been exposed to the open market.

GASB Proposes Guidance on Public-Private and Public-Public Partnership Arrangements.

Norwalk, CT, June 13, 2019 — The Governmental Accounting Standards Board (GASB) has proposed new guidance to improve accounting and financial reporting for public-private and public-public partnership arrangements (both referred to as PPPs) and availability payment arrangements (APAs).

The Exposure Draft, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, provides proposed guidance for PPP arrangements that are outside of the scope of its existing literature for these transactions, namely Statement No. 60, Accounting and Financial Reporting for Service Concession Arrangements, and Statement No. 87, Leases. The proposed Statement also would make certain improvements to the guidance currently included in Statement 60 and provide accounting and financial reporting guidance for APAs.

PPPs

The proposal defines a PPP as an arrangement in which a government transferor contracts with a governmental or nongovernmental operator to provide public services by conveying control of the right to operate or use an infrastructure or other nonfinancial asset—the underlying PPP asset—for a period of time in an exchange or exchange-like transaction. Some PPPs meet the definition of a service concession arrangement (SCA). The proposed Statement includes the following definition of an SCA:

- The transferor conveys to the operator the right and related obligation to provide public services through the use and operation of the underlying PPP asset
- The operator collects and is compensated by fees from third parties
- The transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates that can be charged for the services, and
- The transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement.

The proposed Statement carries forward the financial reporting requirements for SCAs that currently are included in Statement 60. For PPPs that meet the definition of a lease, but not the definition of an SCA, the proposed Statement would require governments to apply the requirements of Statement 87. For all other PPPs that are not SCAs and are not leases, the proposed Statement generally would require a transferor to recognize an asset for the underlying PPP asset and a deferred inflow of resources for consideration received or to be received as part of the PPP.

The proposed Statement would require a governmental operator to report an intangible right-to-use asset related to the underlying PPP asset that either is owned by the transferor or is the underlying asset of an SCA.

APAs

Under the proposal, an APA would be defined as an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying infrastructure or other nonfinancial asset for a period of time in an exchange or exchange-like transaction.

The proposed Statement would require governments to account for APAs related to those activities and in which ownership of the asset transfers by the end of the contract as a financed purchase of the underlying infrastructure or other nonfinancial asset.

A government would be required to report an APA that is related to operating or maintaining an infrastructure or other nonfinancial asset as an outflow of resources in the period to which payments relate.

The proposed Statement would be effective for fiscal years beginning after June 15, 2021, and all reporting periods thereafter. Earlier application would be encouraged.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by September 13, 2019.

‘Smart’ Technology Could Change the Future of City Finances.

For one thing, the technology may save enough money so that city projects will be able to pay for themselves

Cities and transit systems across the U.S. have borrowed hundreds of millions of dollars in recent years to finance investments in systems that produce streams of data on traffic, trains, ports, streetlights and more.

But future city projects with new technologies that generate real-time data may change how cities finance such projects.

Citigroup Inc., C 0.60% which advises cities on municipal fundraising and provides a bevy of other banking services to governments, has been working with a handful of cities and experts to study the outcomes of “smart” investments, in part to gauge how they change a municipality’s financial picture. Such studies may help inform continuing debates about how cities can harness new technology while also managing the costs and privacy concerns that often accompany it.

Proponents say that if the benefits from new technologies prove substantial and become sufficiently predictable, this could produce cost savings for city services, create new financial flexibility in budgets and lead to lower financing costs. It could cut cities’ need for long-term borrowing, for instance, boost their creditworthiness, and open new paths for generating revenue. So-called smart cities, for example, might be able to turn to cash generated or saved by these kinds of projects to pay for them without new borrowing, according to some financial advisers.

“With better data, smart cities will actually budget things completely differently, from bus usage and road maintenance to parking revenue and emergency-responder needs,” says Jay Collins, vice chairman of the banking, capital markets and advisory group at Citigroup. “The smarter cities get, the more investment they will attract, the more they will drive legacy costs down, and the easier they will be to finance.”

For example, a city that collects real-time data about transit can reroute buses at less-busy times to minimize wear-and-tear expenses, freeing up cash. The data could also be a lure to tech companies that want to form partnerships with the city on private forms of transit.

Cash for U.S. cities isn’t scarce at the moment. Investors have poured money into municipal-bond funds, even for riskier bonds, as they seek higher-yielding investments.

But many cities are facing some long-term financial headaches from technology that will require creative thinking, says Scott Corwin, a managing director at Deloitte LLP who leads a practice on the future of mobility in cities.

For instance, cities may see reduced revenue from cars if more people use ride-sharing or if they drive more fuel-efficient vehicles that generate smaller gas-tax receipts.

Mr. Corwin, along with urban planners and banks like Citigroup, is studying how cities can replace lost tax receipts in that area by again leaning on data and technology. For example, a city that is able to track the use of shared-scooter services can charge the companies for use of city bike lanes.

“Cities have limited investment capital to keep pace, so there’s a greater emphasis on how you self-fund,” Mr. Corwin says.

To get to that point, however, cities will have to consider a number of nonfinancial variables.

Most notably, data collection raises privacy concerns. In one recent instance, a government-sponsored “smart” project in Toronto has faced local resistance over questions about how personal data will be used.

Eva Blum-Dumontet, a researcher for Privacy International, a privacy-rights advocacy group, says that unlike with websites that ask permission to track your browsing, many people may not even realize they live in a city using smart technologies—or understand how it might benefit them.

“The question that cities and companies helping them really need to be asking themselves is, ‘How do we engage the citizens?’ ” says Ms. Blum-Dumontet. “The protection of people in public spaces is still very much unexplored.”

Cities will “need to make sure they have addressed both citizen-data-privacy concerns, and ultimately have citizen support for their data usage model,” says Citigroup’s Mr. Collins.

Mechanisms for that could include linking tax cuts to the budgetary success of a “smart” investment, or giving micro credits to citizens for discounted or free city services.

Beyond privacy, cities may also face challenges administering new technologies, something financial analysts would have to consider, says Thomas Doe, president of Municipal Market Analytics Inc., which provides research for municipal-bond investments.

That includes making sure cities can hire people able to manage and analyze all of the data being collected. Cities may end up relying on outside vendors, which could cause disputes over who owns the data generated, or lead vendors to ask for deregulation in exchange for their help.

“There are a lot of old brick-and-mortar factors inhibiting the efficiencies of a smart city,” says Mr. Doe.

The Wall Street Journal

By Telis Demos

June 10, 2019 10:03 p.m. ET

Mr. Demos is a reporter for The Wall Street Journal in New York. He can be reached at telis.demos@wsj.com.

BDA Submits Comment Letter on TRACE Pilot/Corporate Bond Block Trade Dissemination.

Thank you to those who participated in BDA’s calls regarding FINRA’s proposal (Notice 19-12) to implement a pilot program to test changes in TRACE dissemination rules on corporate bond market liquidity.

The final BDA comment letter is available here.

Summary of BDA’s comment letter:

- BDA opposes the pilot program proposal.
- The proposed 48-hour delay in disseminating any trade information would introduce significant and damaging opacity to the market.
- The pilot would disadvantage institutional and retail investors in several ways.
- The proposal includes no incentives for middle market firms to increase their capital commitment or provision of liquidity. In practice, the proposal would likely reduce liquidity in trading for smaller block sizes as mid-size dealers would be reluctant to take risk positions without knowing whether a large, undisseminated block trade has taken place in the last 48 hours.
- If FINRA decides to move forward with the pilot, several key changes would be required to protect investors and maintain market integrity.

Bond Dealers of America

June 12, 2019

Fitch Ratings: U.S. Managed Lanes Speeding Past Projections

Fitch Ratings-New York-11 June 2019: Performance is exceeding projections for eight managed lanes that are currently up and running, according to Fitch Ratings in its latest peer review for U.S. managed lane projects.

Strong performance led to Fitch upgrading two SR-91 express lane projects in Southern California, owned by Orange County Transportation Authority (OCTA) and Riverside County Transportation

Commission (RCTC). “The opening of the RCTC SR-91 project in 2017 was very successful in its own right and also led to lasting revenue gains for the connecting OCTA project,” said Director Scott Monroe.

The sector’s better-than-expected performance reflects a combination of strong traffic and revenue trends in a sound overarching economic environment, solid demonstrated pricing power as an asset class, and a degree of conservatism in the development of Fitch’s cash flow cases.

Fitch changed its Managed Lanes characteristics assessment for four facilities to Midrange from Weaker. Three of them, 95 Express Lanes, LBJ Infrastructure Group, and NTE 1 & 2 are exiting ramp-up with an adequately long history of strong demand and revenue generation, solid pricing power and adequate protections against exempt vehicles. The remaining facility, RCTC, has a short operating history but is performing far in excess of Fitch’s projections and represents an extension of a long-lived facility with a good track record.

Fitch also rates five managed lane projects under construction, which are broadly on their way to being completed on time and within budget, according to Fitch Ratings in its latest annual peer review for U.S. managed lanes.

Fitch’s “Peer Review of U.S. Managed Lanes” is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Buyer Beware of States With a High Number of Muni Bankruptcies.

- **Nebraska has the highest number of municipal bankruptcies**
- **California has second-most failures, followed by Arkansas**

Municipal bankruptcies are so rare that bondholders scour each for potential precedents. But they’re far more common in some states than others, according to data from Municipal Market Analytics Inc.

Of the 94 filed since 2007, California saw 16, the second most, MMA figures show. That’s understandable given the most populous U.S. state’s dominance among bond issuers in the $3.8 trillion market and its permissive attitude to such filings, which included the cities of Vallejo, Stockton and San Bernardino.

Continue reading.

Bloomberg Markets

By Romy Varghese

June 12, 2019, 9:00 AM PDT

Surging Cash Piles Leave States as Ready as Ever for a Recession.

- **Reserve balances rise to record high, budget group says**
- **Bond market is demanding smaller yield penalties from states**

If a recession comes soon, America's state governments are better prepared than ever.

With most states seeing tax collections rise at a faster-than-expected pace, governments have been setting aside more money to help them avert deep spending cuts the next time the economy contracts. Those so-called rainy-day funds have swelled to about $68.2 billion, with the median state having enough to cover about 7.5% of its annual budget, the most on record, according to a report released Thursday by the National Association of State Budget Officers. Next year, those reserves are expected to grow to $74.7 billion.

Continue reading.

Bloomberg Markets

By Elizabeth Campbell

June 13, 2019, 10:39 AM PDT

States, Cities Forgo Projects to Keep Glittering Balance Sheets.

- **While corporations step up borrowing, governments cut back**
- **States and cities owe $143 billion less than they did in 2010**

Asheville, North Carolina, has a growing population, a burgeoning beer industry and a big slice of the billions of dollars tourists spend each year visiting the Blue Ridge Mountains. It also has $390 million of work it wants to do on its infrastructure.

What the city hasn't been doing is running up debt to pay for it, with its 92,500 residents on the hook for only about $78 each for bonds backed by the general government budget. "We have a lot of people politely asking, 'You're a AAA city and your roads are terrible,'" said Vijay Kapoor, a city councilman. "What gives?"

That's the paradox of America's states and cities. The decade-long economic expansion has left surpluses where there were once deficits, interest rates are veering back toward more than half-century lows and there's hundreds of billions of dollars of spending needed to refurbish roads, sewers and public transportation systems. Yet around the country, governments are showing little interest in borrowing money, cautious that a recession that by some measures seems overdue could resurrect the years of austerity that followed the last one.

Continue reading.

Bloomberg Markets

By Amanda Albright

June 14, 2019, 3:00 AM PDT

S&P: As U.S. State Debt Levels Moderate, Transportation Funding Takes Center Stage.

State debt levels remain moderate despite many states experiencing increasing revenues following the last recession and the 2017 Tax Cuts and Jobs Act. However, S&P Global Ratings has observed a renewed focus on transportation projects as states consider taking on new debt, reform transportation-related revenues, and increasingly consider public-private partnerships (P3s) or other alternative deli…

Continue Reading

Jun. 11, 2019

How Building Schools Can Create Good Local Jobs Right Now.

Building a new school can benefit a community in more ways than one. Sure, there's the value of a new educational institution where students can take classes and graduate with their diplomas, but why wait years for that spanking new building to pay off?

Schools matter, but so does having a job. There is a high correlation between educational attainment and family income. Families in which parents are part of the workforce are more likely to send their children to college than families in which parents are unemployed. Instead of celebrating construction of a new school only for what it will offer students over the long term, we should also see it as an opportunity for underemployed family members to improve their children's schooling through the result of their own employment.

Some construction jobs pay above local averages, presenting opportunities to uplift an entire community. For example, in New Orleans, the median hourly wage is $16.36 per hour; some construction jobs pay more than $20 per hour. Instead of waiting for years for a new construction to pay off, it's time urban planners and education officials focus on investing in the community from the moment the first brick is laid.

Continue reading.

The Brookings Institute

by Andre M. Perry

Thursday, June 13, 2019

North American Corporate and Municipal CUSIP Request Volume Climbs in May.

NEW YORK, NY, JUNE 13, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for May 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a noteworthy increase in requests for new North American corporate and municipal debt identifiers in May.

Read Report

Fifth Straight Month of Muni CUSIP Volume Growth.

“Corporate and municipal issuers have been busy over the past few months, clearly taking advantage of the sustained low rate environment to raise new debt,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “While year-to-date CUSIP request volumes are still in negative territory for several asset classes due to a slower pace in Q1, the recent trend has been toward a significant increase in pre-market activity among North American issuers.”

Read Press Release

Fitch Webinar: ESG Relevance Scores for US Public Finance, and Infrastructure and Project Finance Now Available On-Demand

Environmental, Social and Governance (ESG) factors are increasingly important for investment decisions, which is why Fitch has introduced ESG relevance scores to show relevance and materiality of ESG to ratings.

Speakers:

- **Laura Porter** – Managing Director, US Public Finance (Moderator)
- **Andrew Steel** – Managing Director, Sustainable Finance
- **Sara Anzinger** – Director, Sustainable Finance
- **Michael Rinaldi** – Senior Director, US Public Finance
- **Scott Zuchorski** – Managing Director, US Infrastructure and Project Finance
- **Glaucia Calp** – Managing Director, LATAM Infrastructure and Project Finance

Listen Now

New York Mall's $300 Million Muni Bonds Cut to Junk by Moody's.

- **Destiny USA gets loan extension but may not meet covenants**
- **Mall has limited competition but online shopping taking toll**

Syracuse, New York's Destiny USA, one of the largest malls in the U.S., had the ratings on about $300 million of municipal bonds cut to junk by Moody's Investors Service, which said shrinking profits may hinder its ability to meet the terms of a real estate loan.

Moody's cut the rating on the mall-backed debt sold through a city development agency from Baa3 to Ba2, two steps below investment grade, and assigned a negative outlook, indicating the securities may be downgraded further.

Destiny USA, owned by Pyramid Cos., issued bonds backed by payments in lieu of taxes by the developer in 2007 to expand its Carousel Center mall into a super-regional shopping and entertainment complex. The company refinanced the debt in 2016. Pyramid owns 15 malls, including the Palisades Center in Rockland County outside New York City

A 19-screen move theater, go-kart raceway and a comedy club haven't been enough to stem the pressure from online shopping and the sluggish upstate New York economy. The 2.4 million square-foot mall was able to avert default on a subordinate commercial mortgage backed security on May 31 by extending and modifying the loan. However, the mall's ability to meet covenants to secure the second and third years of the extension remains uncertain, Moody's said.

"While the loan extension provides time to execute the proposed business plan that has tangible agreements and other likely new tenants in the pipeline over the next few years, Carousel Mall will likely remain challenged to grow margins to meet an annually rising debt service repayment schedule," Moody's said.

Under Siege

"We are comfortable with the terms of the Wells Fargo extension and continue to have a strong outlook on Destiny USA.," Stephen Congel, chief executive officer of Pyramid, said in an emailed statement. "We were surprised with the rating action taken by Moody's and disagree with their assessment considering the positive outlook and overall performance of the property. This does in no way change our plan, approach or commitment to ensuring the health and longevity of the center for decades to come."

Destiny is among scores of malls besieged by the rise of online shopping and retailer bankruptcies. A Bloomberg index of regional-mall owners has declined about 5% this year compared with a 18% gain for all real estate investment trusts. Bloomberg's U.S. mall REIT index has declined 30% over the last three years.

The population of Onondaga County, home to Syracuse, is about the same as it was in 1990 and its 4.7% annual average unemployment rate in 2018 is higher than New York's 4.1%.

Destiny USA, which attracted 26 million visitors last year, benefits from limited competition in the Syracuse region and its ability to attract visitors from all over Central New York. In addition, Pyramid has a strong incentive to make payments backing the bonds because failure to do so could lead to foreclosure.

Moody's expects the bonds to be paid on time and bondholders should expect full recovery in the case of default. However, the bonds are still at risk in a bankruptcy, the rating company said.

Bloomberg Business

By Martin Z Braun

June 13, 2019, 9:32 AM PDT Updated on June 13, 2019, 12:02 PM PDT

[S&P Live Webcast and Q&A: U.S. Not-for-Profit Higher Education Median Webcast]

Jun. 26, 2019 | New York

Please join S&P Global Ratings U.S Public Finance on Wednesday, June 26th at 2:00 pm Eastern Time, for a live webcast and Q&A discussion on the U.S Not-for-Profit Higher Education sector, highlighting both the Fiscal 2018 Public University Median Report and the Fiscal 2018 Private University Median Report, which will be published the week prior to the webcast. While you will be able to submit questions live during the webcast, please also feel free to submit questions in advance with your registration.

[Register For This Webcast]

[The Stealth Bull Market In Bonds Of The Past Year.]

For many, summer means days at the beach and, ideally, nights at the ice cream parlor. Picking a flavor of ice cream is never an easy decision. The same can be said for bonds. Like ice cream, bonds come in 31 flavors (or so). U.S. government bonds are really different flavors of vanilla, from just plain vanilla to French to New York. Interest rates are the driver of the prices of government bonds; a rise in rates pressures prices down and vice-versa. A risk of default is virtually nil so credit risk does not influence the price.

Default risk becomes more important to investors considering buying the bonds of corporations, emerging markets or municipalities. With ice cream still on my mind, high-yield corporate bonds, or "junk," are the equivalent of the Ben & Jerry's flavor "Everything but the Ice Cream"; there is a good chance you don't care for something in the scoop, but it can still be a great choice. In addition to interest rates, junk bonds come with other risk considerations such as management quality, industry position or total debt service. For these reasons, junk bond prices are influenced not just by interest rate movements, but anything that could influence the ability of the issuer to pay back its debt.

Interestingly, the entire spectrum of bonds has participated in a stealth bull market for the past year. Over the 12 months ended May 31, 2019, the S&P 500 eked out a 3.8 percent gain. Any flavor of bonds earned better than that. The Bloomberg Barclays U.S. Aggregate Bond was up nearly 7 percent over the same time period. Municipal bonds, high-yield corporate bonds and emerging markets debt all outpaced the broad U.S. stock market too and, even better, did so with less drawdown. The S&P 500 shed just over 6 percent in May and nearly 20 percent in late 2018. No bond asset class suffered those kinds of losses. Bottom line: all flavors of bonds have provided better return with less risk than U.S. stocks over the past year.

This bull market in bonds, though, has hardly been noticed. It could be due to the difficulties and challenges that come with choosing between such different flavors of bonds and then participating in uptrends while stepping aside during declines. We use a rules-based approach. Rather than trying to predict the outcomes of tariff negotiations, of Federal Reserve meetings, of the shape of the yield curve or the weather next month, we study what the market is telling us and react with a truly tactical discipline.

Last month, a few of our holdings in high-yield corporate bond funds fell enough to reach sell signals. Those monies were redeployed into long-term government bond funds, which have been in a strong upward trend. Our rules are currently guiding us to a preference for municipal bond, preferred stock and long-duration Treasury fund where the trends are strong. Now, if only choosing an ice cream flavor were this easy.

FINANCIAL ADVISOR

JUNE 14, 2019 • TERRI SPATH

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Muni Bond Mid-Year Outlook: Despite Favorable Tailwinds, Be Cautious

Summary

- The municipal bond market is off to its hottest start in five years, led by the lower-rated segments of the muni market.
- Year-to-date, the municipal market has returned 4.9% due to a combination of favorable supply-and-demand dynamics and falling Treasury yields.
- While the pace of fund flows may slow, we expect demand for municipal bonds to remain strong over the rest of the year.

The municipal bond market is off to its hottest start in five years, led by the lower-rated segments of the muni market. It may be tempting to chase returns, but we suggest that investors instead take a cautious approach and focus on higher-rated issuers during the second half of the year. We see heightened risks on the horizon, with the possibility of a prolonged trade war, uncertainty about Federal Reserve policy, and the possibility of a decline in tax revenues caused by a slowdown in the economy.

Continue reading.

Seeking Alpha

By Cooper J Howard

Jun. 14, 2019

A Ponzi Scheme, a Retiree and a Revolt Against OppenheimerFunds.

- **Florida real estate district files for bankruptcy protection**
- **Sets fight with bondholder over legacy of subprime collapse**

Donald Dwyer left statehouse politics for retirement in Clearwater, Florida, at the Grand Venezia, a 336-unit condominium complex with a pool, tennis courts and ill-fated ambitions to bring a touch of Italian luxury to the Gulf Coast.

But the former Maryland lawmaker is now leading an unusual community tax revolt against OppenheimerFunds Inc., which oversees $230 billion in assets, that may echo far beyond his tiny patch of Florida's western shore.

During the height of the real estate bubble, the Clearwater Cay Community Development District sold notes and bonds for a development that was supposed to include a water park and a gondola-lined canal with Venice-style bridges that would turn the Grand Venezia into a destination resort. But those amenities were never constructed, and the developer is serving a 40-year prison sentence for running a Ponzi scheme. So on June 4, Dwyer and the district's board of supervisors opted to push it into bankruptcy, seeking to reduce the debt and the approximately $1,500 they each pay every year for it.

The district had $13.9 million in bonds outstanding as of September 2017, according to its financial report, though Dwyer said he has doubts about the accuracy of that figure. OppenheimerFunds owns all of it.

"I have no option other than filing bankruptcy," said Dwyer, 61. "We're going to let somebody else intervene on our behalf because this has gotten insane."

The step marks a rare, if quixotic, challenge to a major corner of the tax-exempt bond market where companies routinely raise money to build roads, sewers and other infrastructure for new real estate developments. When the properties are sold, fees charged to homeowners by their land districts cover the debt. There is about $7.3 billion of such securities outstanding in Florida alone, with billions more in fast-growing states such as California, Texas and Colorado.

Uphill Battle

James Spiotto, managing director of Chapman Strategic Advisors LLC and an expert of municipal bankruptcies, said the district faces an uphill fight. He said he's not aware of any other community-development district that has gone bankrupt in Florida, and it will need the approval of the governor. Moreover, the revenue securing the bonds — the assessments — is a very secure type of debt that is "not supposed to be impaired," he said.

"I don't really know if they can avoid the debt obligation," Spiotto said.

An OppenheimerFunds spokesman declined to comment. In August, a state judge sided with the firm by striking down residents' earlier effort to dissolve the Clearwater Cay district and claw back debt payments. At a meeting with residents that month, Brian Crumbaker, a Tallahassee-based lawyer for OppenheimerFunds, said there would be widespread defaults in Florida if such districts were allowed to repudiate their debts.

The Clearwater Cay district was created in 2005, during the height of the housing mania, to bring the look of Venice, Italy, to a stretch of coastal property about 22 miles (35 kilometers) from Tampa. It issued debt backed by a tax levy on a 49-acre area that developer Dave Clark promised to transform into a "luxury, regional resort destination" with apartments, shopping, and a water park, according to 2005 debt offering documents.

But Clark's business ventures unraveled. According to the U.S. Justice Department, his company, Cay Clubs, defrauded investors by raising $300 million to redevelop dilapidated vacation-rental properties in Florida, Las Vegas and the Caribbean. Regulators said it was a Ponzi scheme that relied on fraudulent purchases to artificially inflate the property's values, including those in Clearwater. In 2016, he was sentenced to 40 years in prison.

Suing Over Fallout

Bruce Barnes, a lawyer based in Safety Harbor, Florida, who has represented those who sued Clark, says he has been dealing with the fallout from the Clearwater development for 12 years. Barnes said that in 2014 he began to look into residents' concerns over why they were still paying assessment charges associated with the district's debt.

That money was going to OppenheimerFunds, which purchased the debt in 2006 and 2007 for two of its mutual funds, including its high-yield municipal fund, according to court filings. That fund, the fourth-biggest of its kind with $7 billion in assets, has been known to make risky bets, includingon debt sold by real estate development districts roiled by the subprime crash.

In 2016, Barnes sued the district and the mutual funds on behalf of a condo association at the Venezia, saying the annual fees between $1,400 and $1,500 were going to debt issued for a district that wasn't legitimate. The lawsuit asked for OppenheimerFunds to refund the assessments, claiming the debt wasn't used to benefit the community. Last year, the judge ruled against the homeowners while ordering the size of the fees to be reassessed, according to court records.

In a lengthy district board meeting with residents in August, Crumbaker, the OppenheimerFunds lawyer, said the bond proceeds did provide a benefit by funding land purchases and water and sewer services. He said the only risk that the firm took on was that the debt payments would fall short if individuals stopped paying their tax bills, not that the district would repudiate its obligations. "Otherwise, every city, county, school board, 600 community development districts in Florida, et cetera, would be doing the same thing," he said.

After the judge sided with the investment firm, Dwyer mounted a takeover of the district board in November. He said OppenheimerFunds hasn't provided details about how the assessment money is being used or how much debt is still owed. The 2017 financial report notes that the district couldn't provide "evidential matter" on the trustee's expenditures from the debt service fund.

"I'm not going to assess my community for a debt I can't justify," he said.

OppenheimerFunds is no stranger to such legal fights. Its funds were big owners of bonds issued by Puerto Rico, which is now working through a record bankruptcy. In September, it sued Harvey, Illinois, after it defaulted on bonds issued in 2007.

The district decided to file for bankruptcy in the hopes of getting the investment firm to the bargaining table, Dwyer said. "It might mean that the bondholders take a haircut," he said. "They're going to have to write down some of their debt, or walk away from all of it."

Bloomberg Markets

By Amanda Albright

June 10, 2019, 4:30 AM PDT

Fitch Webinar: Texas SB2 May Impact Local Government Ratings - Now Available On Demand

June 13, 2019 and 3:00PM EST

Texas legislature recently approved and sent to the governor Senate Bill 2, which will reduce local government control of property tax rate increases for operations. While not expected to trigger a significant number of rating actions immediately, Fitch will discuss the potential impact on local governments.

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Final IRS Rules Leave States Few Options for Evading the SALT Cap.

"There is something to upset everyone in the IRS rule."

The IRS has officially blocked one of the ways that high-tax, Democratic states are letting residents circumvent limits on tax deductions.

The 2017 federal tax overhaul imposed a $10,000 cap on state and local tax (SALT) deductions, which can increase what some owe in federal taxes. In response, some states changed their rules to let people "pay" some of their state and local taxes into a state or local charitable trust because federal tax reform did not cap the deductiblity of charitable contributions.

This week, the IRS closed the charitable deduction loophole — and did so in a way that charities say will have a far-reaching impact.

"Wherever you are in the country or on the political spectrum, there is something to upset everyone in the IRS rule," says the National Council of Nonprofits' David L. Thompson.

Furthermore, it might be the first of several moves the federal government makes to end federal tax workarounds.

Other Workarounds

Earlier this year, the IRS indicated that it was "likely" to issue additional regulations to address other efforts by high-tax states to help residents avoid the SALT cap.

So far, only Connecticut and New York have passed other workarounds — both of which are aimed at shifting more of the tax burden to businesses, which are not subject to the cap.

New York created a payroll tax that allows employers to shield their employees from the cap. An employer would reduce an employee's taxable wages while not reducing net take-home pay. Connecticut implemented a similar tax-shifting system for LLCs, which are businesses that file taxes as individuals.

Neither of the workarounds have had much employer participation, largely because they're complicated and require significant understanding and buy-in from employees.

Still, "from the IRS perspective, the workarounds certainly have not gone unnoticed," said Scott Dinwiddie of the IRS Income Tax and Accounting Division at an event in Washington, D.C., earlier this year.

The federal agency hasn't given any indication about when it might issue more crackdowns, but the Tax Foundation's Jared Walczak told Governing this week that the IRS certainly has legal standing to do so.

“With those payroll taxes, there is a legal question,” he says. “That is, whether the business is simply remitting income tax on behalf of their employees.”

In other words, all this shifting around of who’s paying the tax doesn’t change the fact that it started out as an income tax and that is basically still what it is. The packaging may have changed, but the contents remain the same.

In legalese, this is known as the substance-over-form doctrine. It says a taxpayer is bound by the economic substance of a transaction (in this case, the substance is the income tax) even if the substance varies from its legal form (who’s remitting the tax).

What the New Rules Do

That doctrine and another called “quid pro quo” are the basis for the new rules the IRS issued this week.

The IRS essentially expanded the quid pro quo doctrine to tax credits. For example, if someone donates to a charity and receives a tote bag in return, she is supposed to subtract the value of that bag from her charitable contribution when claiming it on tax forms. For residents receiving a tax credit when donating to a charitable trust, they have to now deduct the value of that credit from their contribution. It effectively blocks residents from claiming their entire payment to a state or local trust as tax-deductible.

The new IRS rule squashes charitable-trust-loophole laws passed by Connecticut, New Jersey, New York and Oregon. Similar proposals are pending in California and Illinois.

But the IRS language is so broad that it also applies to long-established state-run trusts (for things like environmental preservation and charter schools), which give out tax credits in exchange for donations. Dozens of states — not just high-tax or Democratically controlled ones — have these trusts. The rule applies to any donation from an individual who has already hit the state and local tax deduction cap.

Plan B and Plan C

State and local governments have two other options: fight the cap in court — or be patient.

A lawsuit filed last July by Connecticut, Maryland, New Jersey and New York argues that the cap violates the U.S. Constitution’s Equal Protection Clause and the 10th Amendment, which protects states’ rights. The suit accuses the federal government of meddling in state taxation and fiscal policies by making it more politically difficult for states to raise revenue.

Many experts say the suit is a longshot.

But New York Assemblywoman Amy Paulin, who represents a New York coalition of localities, school districts and professional organizations, says her group is pushing for the issue to be settled in the courtroom.

“We fully plan to turn to the courts to continue to press the case that this regulation is arbitrary, capricious, unfair and should not be allowed to stand,” she said in a response this week to the IRS ruling.

The other option? Wait it out.

The SALT cap is temporary. It expires in 2025. There's also a proposal in Congress that would repeal the cap, but it's not expected to go anywhere. Some argue that states should simply wait to see if the politics on Capitol Hill shift in a way that diminishes support for keeping the cap.

GOVERNING.COM

BY LIZ FARMER | JUNE 13, 2019 AT 4:20 PM

S&P: Texas Local Governments Could Face Budget Headwinds--And Credit Quality Strain--From Property Tax Reform

On June 12, 2019, the governor of Texas signed the Texas Property Tax Reform and Transparency Act of 2019, a law requiring certain local government units to obtain voter approval to increase maintenance and operations (M&O) property tax revenues more than 3.5% above the previous year, excluding new construction.

Continue Reading

Jun. 12, 2019

Puerto Rico Pension Deal Scales Back on Planned Cuts to Retiree Benefits.

Proposed deal with U.S. territory's federal overseers would keep 61% of retirees whole, up from 25%

Puerto Rico's federal overseers have agreed to roll back some planned pension cuts under a proposed settlement with retirees, a key step toward wrapping up the largest U.S. municipal bankruptcy.

The official retiree committee appointed in Puerto Rico's court-supervised bankruptcy said the agreement would substantially improve the treatment of retirement benefits for 167,000 pensioners compared with a 30-year framework approved by the U.S. territory's financial-oversight board in May.

The deal, which requires court approval, covers Puerto Rico's $50 billion pension debt, the island's largest single liability. It also brings Puerto Rico closer to lifting the central government out of its more than two-year old bankruptcy. But it could face opposition from investors worried that shifting additional revenue to pensioners would deepen losses on billions of dollars in bond debt.

Government retirees who receive $1,200 a month or less in benefits would be shielded from any reduction under the settlement, up from a $600 threshold previously proposed by the board, according to signed settlement papers reviewed by The Wall Street Journal. The deal keeps 102,000 pensioners, or 61% of the total number, safe from cuts, compared with 45,000 or 25% in the earlier proposal, according to the retiree committee.

Those collecting pensions above the threshold would face progressively deeper cuts, but no more than 8.5%. Retirees wouldn't be penalized for Social Security and medical-insurance payments when cuts are calculated. Puerto Rico also would create a reserve fund to finance pension payments toward the end of the board's 30-year framework, when the government is projected to run deficits as economic growth slows and federal disaster-relief funding runs dry.

A board spokesman said the agreement "protects and secures pensions going forward" for both active and retired employees by putting near-term surplus aside to pay future benefits. "This agreement also provides for a fairer, simpler policy for adjusting pensions than what is in the fiscal plan," the spokesman said.

Puerto Rico Gov. Ricardo Rosselló has argued against any pension cuts, saying his administration has found $1.4 billion in savings elsewhere in the government budget to avoid benefit reductions. The board expects to file a plan of adjustment covering the central government within weeks, according to a person familiar with the matter.

The governor's top finance adviser, Christian Sobrino, said in a statement Wednesday the deal was "not acceptable" to the administration and that bond debt could be restructured "without having to impact our retirees."

The settlement would be put to a vote of all pensioners whose benefits are being cut and requires approval from half by number and two-thirds by dollar amount. The board has said that as unsecured creditors, pensioners would need to accept reductions on their claims alongside bondholders, as has occurred in other municipal bankruptcies.

The city of Detroit's 2014 bankruptcy plan cut pensions by 4.5% and froze cost-of-living increases while imposing steeper reductions on financial creditors. But the California cities of Stockton and San Bernardino cut bondholder claims through bankruptcy in 2015 and 2017, respectively, without corresponding pension cutbacks.

Since the assets of Puerto Rico's pension funds were almost completely exhausted, benefits since 2017 have been paid out of budget appropriations at a cost of more than $2 billion a year.

The Wall Street Journal

By Andrew Scurria

June 12, 2019 6:00 a.m. ET

Puerto Rico's Oversight Board Strikes $35 Billion Restructuring Deal With Commonwealth's Bondholders.

KEY POINTS

- The agreement, which is on the framework for the plan of adjustment, provide for more than a 60% average haircut for all $35 billion, a 36% haircut on pre-2012 general obligation or "GO" bonds, and a 27% haircut on public authority bonds.
- Of the roughly $13 billion in outstanding GO bonds, the bonds issued pre-2012 would receive 64 cents on the dollar, while the 2012 and 2014 GO bonds have a settlement option of receiving 45 cents on the dollar and 35 cents on the dollar.

The oversight board in charge of Puerto Rico's ongoing debt restructuring saga announced late on

Sunday they have come to terms with bondholders of around $35 billion, which accounts for nearly 50% of the bankrupt island's total bonded debt.

The agreement, which is on the framework for the plan of adjustment, provide for more than a 60% average haircut for all $35 billion, a 36% haircut on pre-2012 general obligation or "GO" bonds, and a 27% haircut on public authority bonds that carry a constitutional guarantee on payment.

The deal with supporting creditors "will reduce the amount of Commonwealth-related bonds outstanding to less than $12 billion," the oversight board said in a press release. It will also slash the bankrupt island's debt service, including principal and interest over the next 30 years, by roughly half to $21 billion from $43 billion.

Of the roughly $13 billion in outstanding GO bonds, the bonds issued pre-2012 would receive 64 cents on the dollar, while the 2012 and 2014 GO bonds have a settlement option of receiving 45 cents on the dollar and 35 cents on the dollar, respectively, according to the deck for the proposed agreement.

The difference in recoveries stems from a legal move the federally appointed board made in January when they requested that the judge overseeing the bankruptcy proceedings invalidate $6 billion in general obligation bonds. The board argues that the bonds issued in 2012 and 2014 violated the terms of Puerto Rico's constitution and therefore are not valid.

If the 2012 and 2014 bondholders decide not to settle for the proposed amounts, they have the option to litigate for pari recovery with pre-2012 bonds.

"We have fought hard for the interests of the people of Puerto Rico and we are glad to have reached a consensual agreement with creditors that lowers Puerto Rico's total debt burden and its annual debt payments significantly," said the Oversight Board's Executive Director Natalie Jaresko. "These were tough negotiations and we are confident we reached the best deal possible for Puerto Rico to move on from decades of incurring debt we could not afford."

Puerto Rico first defaulted on its general obligation bonds in July 2016, when it failed to pay roughly $1 billion owed to its creditors and hasn't made any payments since.

"It is a very positive development for Puerto Rico that a cross section of large bondholders has worked with the Oversight Board to develop a consensual restructuring agreement that will accelerate the Commonwealth's exit from bankruptcy, respect the lawful priority of valid public debt, and help ultimately restore capital markets access." said Susheel Kirpalani, an attorney from Quinn Emanuel Urquhart & Sullivan who represents bondholders in the Lawful Constitutional Debt Coalition.

That group holds approximately $1.4 billion in constitutionally backed debt and includes hedge funds GoldenTree Asset Management, Monarch Alternative Capital, Whitebox Advisors and Taconic Capital, according to public filings.

The deal, which took about three months of negotiations, is expected to be filed with the court within 30 days with bondholders anticipating the plan's ultimate approval by early 2020, according to a source familiar with the settlement agreement.

The Government of Puerto Rico issued a statement rejecting the deal, citing the administration's strong opposition to pension cuts, which are included in the amended fiscal plan the restructuring deal is premised on.

“Not one word of the PSA (Plan Support Agreement) is considered acceptable to AAFAF,” Christian Sobrino Vega, the CEO and president of the Puerto Rico Fiscal Agency and Financial Advisory Authority said in the statement. AAFAF is the acronym for the agency’s name in Spanish.

“And we can confidently state that no legislation, executive action or other administrative approval required from the Government of Puerto Rico will be taken to implement an agreement that directly or indirectly supports a Plan of Adjustment that cuts payments to our retirees,” Sobrino Vega said.

The island’s oversight board has been making some progress in 2019 after being appointed in 2017 to oversee the $73 billion restructuring, which is the largest in the history of the U.S. municipal bond market.

In February, U.S. District Judge Laura Taylor Swain, who is overseeing the record bankruptcy-like proceedings, approved a deal to restructure about $17 billion of sales tax backed bonds, known as COFINA for the Spanish acronym. In that deal, senior bondholders saw 93% recoveries, while junior bondholders received 53%.

Additionally, the court also approved the restructuring of around $4 billion for the Government Development Bank’s debt.

There is also a preliminary agreement in place for about $8 billion in debt issued by the island’s beleaguered electric power authority. And, on Wednesday, the oversight board announced a tentative deal to restructure more than $50 billion in unfunded pension liabilities.

CNBC

by Dawn Giel

JUN 16 2019 9:49 PM EDT

How Can City Governments Protect Themselves Against Ransomware Attacks?

The most recent incident in a series of ransomware attacks on American cities and municipalities happened in May in Baltimore. The hackers locked multiple systems such as emails, voicemail, and the parking fines database. The debacle delayed the sales of about 1500 homes in the city. Hackers have demanded over $100,000 in bitcoins in order to release these files, which has been declined by Baltimore’s mayor.

Ransomware attacks have quickly become a preferred method of hacking with the emergence of bitcoins and other cryptocurrencies that enable hackers to receive their ransom without being tracked and identified. The popularity of cryptocurrency has soared in the recent years with fluctuations in their value. As these currencies become more mainstream, so does the incentive of hackers to make a quick buck through ransomware attacks. As I had warned before, we should expect ransomware attacks to become more frequent as cryptocurrency becomes more popular.

The bad news is that once a computer system is hacked with ransomware the options are very limited. The first option is to pay the ransom. While this is the quickest way to release the files, law enforcement officials strictly advise against it, simply because paying the ransom invites future attacks. Once the hackers know that an organization pays the ransom, they will repeat their attacks for more money. The other option is to refuse the payment. While this solution reduces the chances of future attacks, it will impose significant costs on the organization as it may take weeks or even months to remove all the malicious software from the computer systems.

The good news is, although there is not much to do once a system is attacked with ransomware, it is very easy to significantly reduce the chances of being attacked. While even the most secure computer systems could be hacked as there is no security technology that guarantees 100% protection against threats, implementing the most basic security solutions could significantly reduce the chances of experiencing a ransomware attack.

Most such attacks are not targeted, but opportunistic. Hackers look for organizations and businesses that seem more vulnerable than others. The ones that have neglected to set basic security standards in place are more likely to be targeted for ransomware attacks. The process is very similar to burglaries in which the criminals do not target a specific home, but rather cruise neighborhoods to find houses that do not seem to have security systems.

The best defense against ransomware attacks is putting basic security safeguards in place. It will most likely dissuade hackers that are after a quick buck and are not motivated to spend time hacking into a secure system while there are easier targets out there.

The critical services provided by government agencies make them attractive targets for ransomware attacks. In the case of Baltimore, the attack halted home sales and water bill payments. Due to the sensitivity and urgency of services that government agencies provide to the public, cities cannot afford to leave their computer systems suspended for prolonged periods. Hackers are more likely to attack city governments, assuming that cities will be desperate to release their files and pay the demanded ransom.

As I have discussed earlier, compared to private organizations, government agencies usually have less resources to invest in information security technologies. Old and fragmented computer systems exacerbate this problem, since older systems are much more difficult and expensive to maintain than newer ones. Despite these difficulties, all levels of government should invest in upgrading security technologies to reasonable levels, or else many more agencies will soon become victims of ransomware attacks in the future.

The Brookings Institute

by Niam Yaraghi

Tuesday, June 11, 2019

How to Choose a Municipal Advisor.

State and local governments rely on municipal securities to raise money to finance projects for their citizens.

The process of issuing these securities involves working with municipal advisors to negotiate the structure, pricing, timing and distribution of bonds with the underwriters. Like a fee-only personal financial advisor, municipal advisors work to ensure deals are made in the best interest of their client.

Let’s take a look at the role that municipal advisors play in the process and how to select the right advisor.

Who Are Municipal Advisors?

Municipal advisors assist state and local governments with issuing municipal securities. Unlike underwriters, they have a federal fiduciary duty to their government clients and are required to act in their best interests. They are regulated by the Municipal Securities Rulemaking Board, or MSRB.

Municipal advisors offer a wide range of different services and have various compensation structures. When selecting an advisor, it's important to consider skill gaps in the municipal staff, the expertise of the municipal advisor, and how that expertise applies to the specific project.

Many state and local governments use municipal advisors to ensure that deals with underwriters are fairly structured, as well as to ensure that their documents are up to par. After all, any accidental or intentional omissions in regulatory disclosures can lead to costly lawsuits and fines.

What Services They Provide

The process of issuing municipal securities begins with the preparation of an official statement that explains the bond's features and characteristics. In addition, state and local governments must provide continuing disclosures and may want to present them to rating agencies for coverage.

Municipal advisors can help with each of these steps by:

- Developing a financing plan
- Evaluating and selecting an underwriter
- Preparing rating agency presentations
- Preparing offering documents
- Evaluating market conditions

It's worth noting that underwriters have different financial interests than issuers – their goal is to profit from the bond offering by buying low and selling high. Municipal advisors can help negotiate the structure, pricing, timing and distribution of the bond offering with underwriters to ensure a fair deal.

How to Select the Right Advisor

Municipal advisors offer a wide range of services with many different compensation structures, which means that it's important to find the right advisor for your needs.

The first step is finding the right match for your requirements. For example, issuers that don't plan on rating their bonds do not require a municipal advisor that specializes in presenting to rating agencies. The best advisors close any skill gaps with specific expertise.

The second step is determining the right compensation structure, which might include:

- Fixed fees
- Hourly fees
- Contingent fees
- Retainer fees
- Transaction fees

A fixed fee structure is a great option since it caps the total expenditure to a known amount, whereas hourly fees could quickly add up and go over budget without oversight. Contingent or transaction fees may be preferable to some issuers that want to ensure a transaction closure before spending money.

The final step is documenting the agreed upon services and fees. In order to avoid any confusion, both parties should agree on a detailed scope of services and their fees, including services that are NOT provided and any maximum compensation amounts or other conditions that may exist.

For more information, see the MSRB's Financial Considerations for Hiring Municipal Advisors here.

The Bottom Line

Municipal advisors are instrumental for state or local governments that are issuing bonds. Like a fee-based personal financial advisor, they work in the issuer's best interest to ensure a fairly structured deal with underwriters that includes all of the necessary disclosures for investors.

municipalbonds.com

by Justin Kuepper

Jun 12, 2019

Philadelphia's Road to Pension Recovery.

Stakeholders and experts discuss city contributions, stock-market volatility, and other risk factors

The Pew Charitable Trusts brought together about 40 city policymakers, municipal union leaders, and public finance experts on May 3 to discuss these questions and others. The conversation followed the release of Pew's pension "stress test" analysis of the Philadelphia municipal system. This analytical tool looks at a range of scenarios for economic projections and investment returns to provide insight into potential long-term liabilities and costs.

The analysis showed that the city should move toward full funding over the next 15 to 20 years—even under the more pessimistic scenarios—if leaders continue to make large contributions and maintain other reforms.

"The city is taking its medicine," said Greg Mennis, director of Pew's public sector retirement system project. "On the other hand, it can be hard to stick to the plan. Stress testing is … really a reminder of what could go wrong."

Continue reading.

The Pew Charitable Trusts

By: Larry Eichel & Thomas Ginsberg

June 11, 2019

Illinois Last State in Nation to File Official Budget Report.

"Illinois is the only state in America that has yet to release its official report from fiscal year 2018 and state officials don't yet know when it will be released. … 'The Auditor General still has pending audits and until those financial statements are finalized, the Comptroller cannot complete the Fiscal Year 2018 CAFR,' said Abdon Pallach, spokesman for Illinois Comptroller Susana Mendoza. 'No date of issuance has been determined until this process is completed.' …"

Read the full article on: Daily Journal (Illinois)

Cole Lauterbach | June 14, 2019

Florida Creates Blockchain Task Force to Study Benefits of Blockchain Technology.

On May 23, 2019, Florida Gov. Ron DeSantis signed SB 1024 (Florida Blockchain Bill) into law to establish the Florida Blockchain Task Force (Blockchain Task Force) within the Florida Department of Financial Services. The Blockchain Task Force will study if and how Florida's state, county, and municipal governments can benefit from a transition to blockchain-based systems for recordkeeping, data security, financial transactions, and service delivery, and identify ways blockchain technology can be used to improve government interaction with businesses and the public.

The Florida legislation recognizes that blockchain and distributed ledger technology allow the secure recording of transactions and that blockchain can facilitate more efficient government service delivery, including facilitating safe paperless transactions and recordkeeping protected from cyberattacks and data destruction. With the passing of the Florida Blockchain Bill, Florida has joined a growing list of states – including New York, New Jersey, Illinois and Wyoming — that have formed task forces to study the potential benefits of blockchain.

Who Will Be on the Blockchain Task Force?

The Blockchain Task Force will consist of 13 members:

1. Three agency heads or executive directors of cabinet agencies, or their designees (all of whom will be appointed by the Florida governor).
2. Seven members of the public or private sector with knowledge and experience in blockchain technology (four members will be appointed by the governor and three members will be appointed by the chief financial officer).
3. Two members of the private sector with knowledge and experience in blockchain technology (one member will be appointed by the president of the Florida Senate; the other will be appointed by the speaker of the Florida House of Representatives).
4. One certified and licensed public accountant with knowledge and experience in blockchain technology (appointed by the governor).

What Will the Blockchain Task Force Do?

The Blockchain Task Force will explore and develop a master plan (Master Plan) for the expansion of the blockchain industry in Florida and will recommend policies and state investments that will help make Florida a leader in blockchain technology. The Master Plan will:

1. Identify the economic growth and development opportunities presented by blockchain technology.
2. Assess the existing blockchain technology in Florida.
3. Identify innovative and successful blockchain applications currently used by industry and other governments to determine viability for the state.
4. Review workforce needs and academic programs required to build blockchain technology expertise across all relevant industries.
5. Make recommendations to the Florida governor and the legislature that will promote innovation and economic growth and expedite the expansion of Florida's blockchain industry.

The Blockchain Task Force will study blockchain technology including:

1. Opportunities and risks associated with using blockchain technology for state and local governments.
2. Different types of blockchains (public and private) and different consensus algorithms.
3. Projects and cases currently under development in other states and local governments.
4. Legislative amendments to support secure paperless recordkeeping, increase cybersecurity, improve interactions with citizens, and encourage blockchain innovation for Florida businesses.
5. Identifying potential economic incentives for companies investing in blockchain technologies in collaboration with the state.
6. Recommending projects for potential blockchain solutions that would improve services for citizens and businesses.
7. Identifying the technical skills necessary to develop blockchain technology and ensuring that instruction in such skills is available at Florida secondary and post-secondary educational institutions.

The Blockchain Task Force will hold its first meeting within 90 days of May 23, 2019, and it must deliver its findings to the Florida governor and the Florida Legislature within 180 days of its first meeting.

by Carl A. Fornaris, John Hutton and Marina Olman-Pal

June 13 2019

Greenberg Traurig LLP

Iowa Supreme Court Upholds Amendments Narrowing Bargaining Rights for Public Sector Unions.

The Iowa Supreme Court released five eagerly awaited opinions upholding the 2017 amendments to the Public Employment Relations Act (PERA). The main case on which the four other companion cases relied was *American Federation of State, County and Municipal Employees Iowa Counsel 61 v. State of Iowa*, No. 17-1841 (May 17, 2019). Taken together, the cases upheld the amendments, which narrowed collective bargaining rights for certain public sector employee unions.

2017 Amendments to PERA

When Iowa's newly elected Republican legislature assumed office following the 2016 election, it quickly passed amendments to PERA. These amendments greatly increased government employer rights. The amendments did the following:

- Maintained collective bargaining rights for unions with membership consisting of greater than 30 percent public safety employees, effectively creating a two-class scheme of bargaining
- Narrowed *mandatory* subjects of bargaining for unions with membership consisting of less than 30 percent public safety employees to "base wages and other matters mutually agreed upon"
- Expanded *permissive* subjects of bargaining for unions with membership consisting of less than 30 percent public safety employees on topics such as shift differentials, overtime compensation, and longevity pay
- Ended the right to payroll deductions for union dues for all public employees

AFSCME Iowa Counsel 61 v. State of Iowa

In *AFSCME Iowa Counsel 61*, the court applied the rational basis test when considering the union's equal protection challenge to the two-class bargaining scheme. The test is "very deferential" to the legislature. Under this test, plaintiffs must show the legislation in question treats similarly situated individuals differently, and plaintiffs bear the heavy burden of refuting "every reasonable basis" on which the legislation could be sustained. The court struck down the plaintiffs' challenge, explaining that its "role is to decide whether constitutional lines were crossed, not to sit as a superlegislature rethinking policy choices of the elected branches." Accordingly, the court held that a concern for labor peace and the health and safety risks faced especially by public safety employees were "valid, realistically conceivable purpose[s]" for supporting the legislation.

When considering the freedom of association challenge, the court likewise applied the rational basis test. The Iowa constitution reviews laws touching upon the fundamental right to organize and join labor unions under strict scrutiny. But the court decided the rights affected by PERA did not touch upon these fundamental rights, adopting the state's argument that "[d]eclining to collectively bargain over certain topics does not inhibit the ability to associate." Because the amendments were facially neutral and the unions failed to show that the two-class bargaining scheme was chosen to target certain unions, the court held that the legislation survived rational basis review.

Companion Cases to *AFSCME Iowa Counsel 61*

In the four other cases, the court:

- rejected the plaintiffs' equal protection challenge to the payroll deduction prohibition by again applying the deferential rational basis test;
- clearly defined "base wages"—the remaining mandatory subject of bargaining—to mean the "minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay, performance pay or longevity pay" (In addition, the court held that "past collective bargaining agreements" mean agreements predating the expiring agreement.);
- required a public employer to meet to vote to finalize an agreement already ratified by the union before the contract became effective; and
- upheld a trial court's grant of summary judgement to the union in a contested ratification case, rejecting the state's argument that the Iowa Administrative Code required the state to ratify after the union's vote where the union had accepted the state's offer as a final act.

Key Takeaways

Public sector unions continue to face significant blows following the Supreme Court of the United States' decision in *Janus v. American Federation of State, County, and Municipal Employees, Council*

31. While not directly affecting private sector workplaces in Iowa, these five cases will have a financial impact on unions that represent both private and public sector unions. Moreover, given the prevailing winds of Janus and an employer-friendly National Labor Relations Board, employers in general are likely to face more aggressive organizing efforts. In turn, employers may want to consider preparing comprehensive strategies for addressing campaigns.

by Christina L. Wabiszewski

June 10 2019

Ogletree Deakins

US Opportunity Zone Legislation Is Moving Capital.

The buzz surrounding U.S. opportunity zones keeps growing as the list of investors piling into these vehicles lengthens. Is it all buzz though, or is the program having a palpable impact on capital flows to low-income areas?

Looking at variation in sales activity between opportunity zones and areas that were not selected, there are signs that the program is making a difference.

In business and economics there are few experiments available to show us that a policy goal is having an impact. Measuring capital flows based on tax changes is difficult because there are so many other variables which are not always observable.

The U.S. opportunity zone program, however, provides a natural experiment to gauge the impact of new policy. For every low-income census tract that was selected for the opportunity zone designation, another three or so were left behind. These tracts that were not given the designation we are terming “Also Rans”.

Continue reading.

RC Analytics

By Jim Costello on June 4th, 2019

Opportunity Zone Investing: Is It for You?

A new type of fund that invests in low-income communities gives some investors a tax break, but it’s not for everyone.

The prospect of investing in dilapidated inner-city neighborhoods or tumbleweed-ridden rural towns may not excite most investors. But a program embedded in the 2017 Tax Cuts and Jobs Act offers investors a tax incentive to do just that. As a result, a new type of fund that invests in low-income communities has popped up, and investors and institutions alike are starting to take notice. You’ve probably heard of opportunity zones. If you’re wealthy enough, you may have received a pitch to invest in an opportunity zone fund. These new investments sound appealing, but they’re not for everyone.

The new OZ funds pool money from multiple investors and invest in businesses and real estate development projects located in economically distressed communities that the federal government has designated as in need of investment. The more than 8,700 opportunity zones include parts of nearly every major American city, including Chicago and Los Angeles, as well as all of Puerto Rico and remote towns in Alaska. Investors who put money in OZ funds can defer and eventually reduce taxable capital gains, depending on how long they stay invested.

Triple tax break. The tax benefits apply only to capital gains, but it's a threefold incentive. First, you can defer federal capital gains tax on money you have earned from another investment by putting it into an OZ fund. Say you sell shares in a stock and realize a $100,000 capital gain (though a gain on almost any kind of investment qualifies). If, within 180 days, you roll over the $100,000 gain into an OZ fund, you can defer paying capital gains tax on it until you sell your stake in the fund or until December 31, 2026, whichever comes first. (The idea is to encourage investors to sell existing investments and invest the proceeds in an OZ fund.)

Second, the longer you hold your investment in the fund, the more you can reduce the amount of rolled-over gain that will be subject to tax. Investors who hold the fund for five years get a 10% reduction on the gain they'll owe taxes on; hold for seven years, and you'll get another 5% reduction. For example, an investor who rolls $100,000 of capital gains from a previous investment into an OZ fund in 2019 would owe capital gains tax on only $90,000 if she sold after five years and on only $85,000 after seven years.

No matter when you invest, however, "the December 2026 date is set in stone," says Frazer Rice, senior wealth strategist at Calamos Wealth Management. For the 2026 tax year, whether you sell or hold your investment in the OZ fund, you must pay any federal capital gains tax you owe on the profits you rolled into the OZ fund.

Hold for 10 years or more and a third benefit kicks in: Any gain in your investment in the fund is tax-free—as long as your outlay was made with capital gains from a prior investment. Some funds require that you hold for 10 years, but the vast majority allow you to sell at any time.

Since the tax act passed, 130 qualified OZ funds have opened, according to the National Council of State Housing Agencies, a nonprofit group focused on affordable housing (it maintains a directory of OZ funds on its website, www.ncsha.org). The funds, which range in asset size from less than $1 million to $3 billion, are run mostly by money-management firms and real estate developers.

A fund from the developer HHKirby Real Estate Ventures, for example, aims to transform a former cotton mill in Burlington, N.C., into a complex with a live event center, restaurants and sports facilities. The North Country Opportunity Zone Fund, run by American Ag Energy, a company that builds greenhouses, invests in agricultural facilities in Berlin, N.H.

As interest ramps up, high net worth investors may see OZ funds offered at bigger money-management firms, such as Charles Schwab or Merrill Lynch, says Tim Steffen, of Baird Private Wealth Management.

But not everyone can buy in. With most OZ funds, you must be an accredited investor—that is, you must have a net worth of $1 million, excluding your primary residence, or have two consecutive years of at least $200,000 in annual income if you're a single tax filer ($300,000 for married filers). Most funds come with a six-figure investment minimum, too.

Fee structures tend to mimic those of hedge funds and private-equity investments: Investors pay an annual fee of 1.5% to 2.0% in expenses and, when they sell, fork over another 20% of any excess return a fund earns above an amount promised to the investor. The typical promised rate of return is between 6% and 10% for funds with diversified portfolios, and more for funds that invest in a single project, says Quinn Palomino, CEO of Virtua Partners, a private equity real estate development firm that offers opportunity zone funds.

Not ready for prime time. It's too early to say what kind of gains, if any, these OZ funds will deliver, or which OZ funds are worthy investments. In fact, the rules on what an OZ fund can invest in and how it should operate are still evolving. That can pose a problem: An OZ fund must comply with myriad IRS guidelines. If it doesn't, it may have to pay a penalty or, worse, the fund's investors won't be eligible for the capital gains tax breaks.

In general, an OZ fund must invest at least 90% of its assets in businesses located within a qualified opportunity zone. Many kinds of businesses qualify under the current guidelines, but a few, including golf courses, massage parlors, casinos and liquor stores, are excluded. Even so, real estate development projects, such as single- or multifamily housing and commercial real estate, are typical investments, says Neil Faden, a partner at Manatt, Phelps & Phillips, a law firm that advises OZ fund managers.

If you qualify and you want to invest in an OZ fund, first consider whether the investment is a good one, regardless of the potential tax benefit. "Don't let the tax tail wag the investment dog," says Bill Smith, a managing director at CBIZ MHM, an accounting and consulting firm.

Understand, too, that distressed real estate deals are inherently risky. "There isn't a lot of beachfront property in Malibu in these funds. You're buying into an area that people otherwise weren't willing to invest in," says Steffen.

The bigger concern, however, is whether the manager is new or inexperienced. Many OZ fund managers, it turns out, are untried, according to a survey from alternative investment research firm Preqin.

Some research is also required on the contractors and developers who will execute the investment projects. Ideally, you want to see that an OZ fund is working with established developers that have experience in the kinds of planned projects laid out in the fund's documents. "Maybe a developer has experience in hotels but not in multifamily homes. If you can ask about these things before you invest, you can help mitigate some of the risks," says Rice.

But with little track record, inexperienced managers, high fees and a high hurdle to entry, OZ funds are not right for retirement savings or money you can't stand to lose or lock up for the required holding periods. They're geared more for deep-pocketed, savvy investors than mom-and-pop savers. "If you've never invested in private equity or a closely held investment in which you're a minority investor," says Smith, "these probably aren't for you."

Kiplinger's Personal Finance

By Ryan Ermey

June 5, 2019

[EDA Prioritizes Applications for Projects Located in Opportunity Zones.]

Today, U.S. Assistant Secretary of Commerce for Economic Development Dr. John C. Fleming announced that EDA has added Opportunity Zones as an Investment Priority. This new Investment Priority will significantly increase the number of catalytic Opportunity Zone-related projects that EDA can fund to spur greater public investment in these areas.

“Opportunity Zones were created under President Trump’s 2017 Tax Cuts and Jobs Act to stimulate economic development and job creation by incentivizing long-term investments in low-income and underserved neighborhoods across the country,” said Dr. Fleming. “By making Opportunity Zones an EDA investment priority, we are better able to align our work to advance this important Trump Administration priority.”

EDA’s investment priorities guide the agency’s investment portfolio to ensure its investments make the strongest impact on sustainable regional economic growth and diversification.

Through its competitive grant process, EDA evaluates all project applications to determine the extent to which they:

- Align with EDA’s investment priorities,
- Effectively address the creation and/or retention of high-quality jobs,
- Document that the applicant can or will leverage other resources, both public and private,
- Demonstrate the applicant’s capacity to commence the proposed project promptly, to use funds quickly and effectively,
- Provide a clear scope of work that includes a description of specific, measureable project outputs.

EDA has previously taken steps in its 2018 Notice of Funding Opportunity for Public Works and Economic Adjustment Assistance Programs to make eligible entities within qualified Opportunity Zones generally eligible for EDA funds.

With today’s announcement, the Opportunity Zone Investment Priority immediately applies to most existing EDA funding notices.

The full list of EDA Investment Priorities can be found here.

To date, EDA has invested close to $30 million in 40 projects in designated Opportunity Zones to help communities and regions across the country build the capacity for economic development.

To learn more about the Opportunity Zone program, see the Treasury Department resources page here. To learn more about the Department’s work in Opportunity Zones, read our blog post.

U.S. Economic Development Administration sent this bulletin at 06/12/2019 12:04 PM EDT

CDFA, LISC, and Ford Foundation Collaborate on Community OZ Playbook.

Navigating the Opportunity Zones.

Opportunity Zones promise to drive billions—even trillions—of dollars in long-term investment into low-income urban and rural census tracts across the country. The goal of this new incentive, part of the 2017 Tax Reform and Jobs Act, is to achieve a double bottom line: fueling inclusive local economies in communities that benefit the people who live and work there, and providing a solid return to investors.

But to make that happen, community stakeholders, state and local government leaders, investors and developers must work together to engage responsibly with this powerful but untested tool, and to help create the kinds of communities that benefit residents and the U.S. economy as a whole. For community stakeholders, that engagement demands careful, collaborative and inclusive planning, establishing incentives and guardrails for investment, collecting metrics on community impact, and reporting on outcomes in a transparent and accessible manner.

This playbook, targeted to community partners, is the first in a LISC series that aims to lay out possible trajectories and best practices for the range of Opportunity Zone (OZ) actors.

Continue reading.

LISC | Jun. 13

[Opportunity Zones: Second Round of Proposed Regulations Are Helpful for Agribusiness and Forestry, but Refinements Are Needed to Support Revitalization of OZs in Farm and Timber Country]

The Opportunity Zones ("OZ") incentive created in the 2017 Tax Cuts and Jobs Act (the "TCJA") can be a powerful tool for many industries, as we discussed soon after the TCJA became law. The first set of proposed regulations interpreting the complicated statutory provisions governing the incentive were released in October 2018 (the "First Round Regulations"), which are discussed in an alert we released at that time.

As we discussed in a subsequent alert, the OZ incentive can be beneficial for small farmers and big agribusiness for a number of reasons, including financing new infrastructure and large assets. However, we and many members of the agribusiness community have been waiting for valuable clarifications to the rules. On April 17, 2019, our patience was rewarded with a 169 page release (the "Second Round Regulations") from the Department of the Treasury ("Treasury") that lays the groundwork for many more ways to use the OZ incentive in farm country, including through the use of leased assets and, potentially, conversion of land to a new type of crop.

As helpful as the Second Round Regulations are, there are several points that should be clarified, as discussed below. Taxpayer comments would be valuable for Treasury to recognize the importance of these points to many rural industries so they can be taken into account when the Second Round Regulations are finalized. Taxpayers may comment on the Second Round Regulations through July 1, 2019.

What is the OZ incentive?

The OZ incentive consists of three tax benefits for investors.

1. U.S. federal income taxes on capital gains invested in a qualified opportunity fund ("OZ Fund") may be deferred until the earlier of the day on which the taxpayer disposes of its interest in the OZ Fund or December 31, 2026. The amount ultimately recognized may also be reduced if the fair market value of the taxpayer's OZ Fund interest is lower than the capital gain that the taxpayer deferred by investing in the OZ Fund.

2. If the taxpayer holds the OZ Fund investment for at least five years, the basis of the taxpayer's OZ Fund interest may be increased by up to 10 percent of the gain the taxpayer deferred by investing in

the OZ Fund. The taxpayer's basis will be increased by up to another 5 percent of that gain if the taxpayer holds the OZ Fund investment for at least seven years.

3. If the taxpayer holds the OZ Fund investment for at least 10 years, capital gains realized upon disposition of the investment are free from federal income tax due to a step up in basis of the investment to its fair market value at the time of disposition.

Any U.S. or non-U.S. person with capital gains subject to U.S. federal income tax can invest in an OZ Fund and use the OZ incentive. This includes individuals, corporations, partnerships, and trusts. Partners investing capital gains from a partnership can choose to have a longer window to invest in an OZ Fund than the partnership would.

An OZ Fund is a partnership or corporation that acquires qualifying tangible property or an equity interest in a second partnership or corporation that is a qualified OZ business (an "OZ Business") and uses those assets in a trade or business other than several "sin" businesses listed in the law. Both the OZ Fund and any OZ Business must meet several requirements concerning, among other things, where they use the tangible assets they own or lease and how much of their assets are intangibles, cash, cash equivalents, and short-term debt.

Does the OZ incentive matter only for people who pay tax or have capital gains to invest?

No. While only people who pay U.S. federal income tax and have capital gains to invest can receive the tax benefits of the OZ incentive, tax-exempts and taxpayers who do not have capital gains to invest should pay attention.

First, the value of property located in or near an OZ is already increasing and is expected to continue to increase as more OZ Funds deploy capital in OZs. Therefore, tax-exempt and nontaxable organizations should expect more competition for investments located in OZs and should also consider whether they should demand a premium for assets they own in OZs when it is time to exit.

In addition, due to the nature of the OZ incentive and certain other tax-incentive programs, we also anticipate that there will continue to be a place in OZs for tax-exempts and taxpayers that do not have capital gains to invest. For example, many OZ Funds and OZ Businesses will need to borrow to fund operations and cash distributions and Non-OZ investor taxpayers may be able to use other tax incentives generated by OZ Businesses that cannot be efficiently used by OZ investors. In addition, some of the most attractive infrastructure projects require more capital than can be efficiently raised or deployed by many OZ Funds or require non-OZ capital for portions of a project located outside of an OZ.

In all of these cases, tax-exempts and taxpayers without capital gains to invest will need to consider and understand the unique effects that the OZ incentives have on the market and their counterparties.

How do the Second Round Regulations help the agribusiness community?

1. The range of assets that should qualify for the OZ incentive is now clearer, but additional clarification is needed.

One of the key requirements of the OZ incentive is that an OZ Fund or OZ Business act as the person that puts tangible property to "original use" in an OZ or substantially improves tangible property that has been previously used in an OZ. The concept of tangible property is very broad and clearly includes many assets used in agribusiness and forestry, e.g., barns, processing and packing lines, farm equipment, mills, pellet plants, and biomass facilities. The First Round Regulations indicated that substantial improvement means that an OZ Fund or OZ Business must at least double its investment in used tangible property (not land) that the OZ Fund or OZ Business acquires by improving it. However, the concept of original use was not defined in Section 1400Z-2 of the Internal Revenue Code of 1986, as amended (the "Code"), or the First Round Regulations.

Particularly in this regard, clarification is needed regarding the definition of "tangible property." In defining original use, the Second Round Regulations expressly state that the OZ Fund or OZ Business, as applicable, must be the first person to use the relevant tangible property in an OZ in a manner in which the property may be depreciated or amortized. The reference to depreciation clearly indicates that property such as permanent crops (e.g., grape vines and orchard trees) and pumping stations, canals, tiling, and certain other water infrastructure improvements should also be treated as qualified OZ property. However, it is problematic because the reference to depreciation appears to exclude newly planted timber, which is not depreciated (rather, depletion deductions may be available), but requires extensive capital investment and can materially contribute to increased economic activity in rural OZs. Agribusiness would benefit from another clarification from Treasury. Specifically, in the Second Round Regulations, Treasury expressed a concern about "land banking," stating that land will not be treated as qualified OZ property if the land is "unimproved or minimally improved" and the OZ Fund or OZ Business does not intend or expect to "improve the land by more than an insubstantial amount within 30 months" after its acquisition. However, Treasury did not indicate what constitutes an improvement, let alone an "insubstantial amount" of improvements. This raises questions, for example, about whether non-depreciable, but very expensive improvements such as precision grading would be substantial or insubstantial. It also raises a question about whether conversion of property from one type of agribusiness application (e.g., pastureland), to another (e.g., commodity crops) would be sufficiently substantial without constructing a building, even if there is a material increase in workforce or value per acre as a result.

2. OZ investors can participate in leasing structures.

The Second Round Regulations state that tangible assets that are leased from another person and used by an OZ Fund or OZ Business may be qualified property for purposes of the asset tests applicable to OZ Funds and OZ Businesses. There are several important points to raise in this respect:

New and used property can be qualified OZ property, provided that the OZ Fund or OZ Business entered into the lease after 2017, and the lessee and lessor are not related (generally, 20% or more common ownership or one entity owns more than 20% of the other entity). In this scenario, lease prepayments are not limited by the OZ rules, but generally applicable tax law still applies. For example, the lease must otherwise qualify as a lease for U.S. federal income tax purposes.

Used property that is leased by an OZ Fund or OZ Business from a person that is related (as described above) to the OZ Fund or OZ Business will still be qualified OZ property if, within 30 months after the lessee takes possession of the leased property under the lease, the lessee purchases a sufficient amount of additional property that is used in the same or a substantially overlapping OZ. Thus, it should generally be possible for an OZ Fund to lease from a related person an operating farm, equipment, or other buildings, and then purchase and place in service additional property, e.g., a new packing line or new orchard trees, provided that the OZ Fund spends enough money purchasing the additional property. In this scenario, no more than 12 months of lease payments may be prepaid.

Tangible assets that an OZ Fund or OZ Business leases to another person also may be qualified property for purposes of the asset tests. Put another way, an OZ Fund or OZ Business may be in the equipment financing business if certain requirements are met (for example, equipment must be substantially used in an OZ and the lessor is treated as the owner of the leased property under generally applicable U.S. federal income tax law). In addition, because of the rules above, a lessee in an equipment financing arrangement structured as a sale leaseback could be an OZ investor.

These rules increase the monetization opportunities for owners of agribusiness assets and the ways in which OZ capital can be effectively and efficiently deployed to improve the economy in OZs. Nonetheless, care should be taken to ensure that the leases or leasing activity satisfy the restrictions applicable to OZ investments as well as tax rules that are generally applicable to leasing activities. In addition, the Second Round Regulations also include a generally applicable anti-abuse rule that permits the government to recharacterize a transaction if it is determined, based on all applicable facts and circumstances, that a significant purpose of the transaction is to achieve a result that is inconsistent with the purpose of the OZ incentive.

3. It is now easier to use OZ Fund structures to invest in operating businesses.

The statute established several criteria that required that an OZ Fund or OZ Business must operate a “trade or business,” but was unclear about how an OZ Fund or OZ Business could satisfy these rules. The Second Round Regulations provide significant clarification in this regard by stating that the standard for trade or business activities is Code Section 162, a well-established and extensively explored provision of existing law that generally indicates that a trade or business is any activity that is continuously and regularly carried on primarily for the purpose of earning income (as opposed to benefiting from a mere increase in value of property). The Second Round Regulations also provide a special rule for operating (and leasing) real property.

In addition, the Second Round Regulations provide several safe harbors for establishing whether at least 50% of an OZ Business’s income is properly sourced to an OZ (the “Operating Safe Harbors”). These safe harbors refer to different factors, including hours worked by employees and independent contractors, amounts paid to employees and independent contractors, and a combination of location of management and tangible assets and their contribution to the business. Further, there is now also a facts and circumstances based category to determine the source of income earned by an OZ Business. This array gives OZ Businesses many options and should allow properly structured businesses to meet the 50% test.

Another initial concern under the statute and First Round Regulations was that it appeared that an OZ Fund investment had to be “frozen” for at least 10 years in order to reap the full benefits of the OZ incentive. This made many investors cautious of investing in certain types of activities, including venture stage and operating businesses that may be hampered by remaining in an OZ or avoiding ordinary course business combinations. The Second Round Regulations ease these concerns somewhat by providing that many – though not all – types of reorganizations that are tax-free under generally applicable tax law can be completed by an OZ Fund investor, OZ Fund, or OZ Business without triggering tax and while retaining OZ benefits. In addition, if these reorganizations are completed properly, the OZ Fund investor’s holding period will be preserved so that the investor can still avoid taxation on capital gain recognized on an exit that occurs 10 years or later after the investor’s initial OZ Fund investment, assuming, of course, that all otherwise applicable requirements are met.

4. It also is easier now to manage investor privacy (including certain regulatory disclosures) and exits from an OZ Fund structure.

One of the concerns with the statute and the First Round Regulations was that they made it seem that an OZ Fund structure had to be very flat, specifically that taxpayers seeking to defer capital gain had to directly invest in an OZ Fund. This would have created many problems ranging from privacy to massive logistical headaches for accomplishing an exit, which under previously released rules had to be done by disposing of OZ Fund interests. Thankfully, through a few clarifications about the consequences of an OZ Fund's disposition of qualified OZ property and transfers of a partnership OZ Fund interest, the Second Round Regulations make it possible to create a multi-asset investment fund that can look and feel a lot more like a traditional investment fund.

For example, the Second Round Regulations specify that an OZ investor may exchange its interest in an OZ Fund for an interest in a partnership without accelerating recognition of deferred capital gain if the OZ investor's beneficial interest in the OZ Fund is not reduced and certain other criteria are met. In addition, an OZ investor will be permitted to elect to increase its indirect basis in an OZ Fund's assets after holding an OZ Fund interest for at least 10 years. Therefore, an OZ investor also would not recognize capital gain as a result of an OZ Fund's disposition of its assets after the OZ investor has held an interest in the OZ Fund for at least 10 years. In addition, although the relevant proposed regulation is not as clear as could be hoped, there are arguments that a direct or indirect disposition of depreciable property held by an OZ Fund treated as a partnership would not result in recapture of depreciation deductions.

The rule discussed in the immediately preceding paragraph is very useful for many OZ Funds, but it is not clear whether a taxpayer may also benefit from its 10-year holding period in respect of a sale of assets by an OZ Business. However, a failure to permit a taxpayer benefit on a sale of assets held by an OZ Business unfairly disfavors structures that include an investment in an OZ Business (which would include, among other things, most investments in the operating businesses that have the most potential to bring jobs to OZs). In addition, depreciation recapture is a very material tax consequence for many taxpayers, including those active in the agribusiness industry, when it is time to dispose of equipment and real property. Finally, these clarifications are in line with generally applicable partnership tax principles. Thus, clarifications of the Second Round Regulations to reflect these points are not only important (and very valuable) to the agribusiness industry, but would also rationalize the OZ provisions with generally applicable law. Here again, taxpayer comments are needed to accomplish these clarifications.

5. There is additional hope for projects that straddle OZ boundaries.

A new rule provided in the context of the Operating Safe Harbors discussed above provides that activities that occur on real property that lies partly within and partly outside an OZ may be treated as sufficient for an OZ Business to meet the Operating Safe Harbors. However, this rule does not address the location of tangible property (for example, solar panels, substations, and batteries) for purposes of determining whether at least 70% of an OZ Business's tangible property are qualified OZ property.

Interestingly, Treasury requested comments regarding whether a similar "straddle" rule should be applied to other portions of Code Section 1400Z-2. Adding this type of straddle rule to the 70% standard for location of tangible property of an OZ Business would reconcile the business goal of finding the optimal location of an operating business without creating false incentives to site 70% of a facility on one side of an imaginary line that divides a discrete parcel or contiguous parcels of property. This would be particularly beneficial to the agribusiness industry and many other industries that can bring jobs and wealth to rural areas, including resort hospitality, large manufacturing, and renewable energy. Moreover, there already are established concepts in the tax law that can function as anti-abuse mechanisms by specific inclusion in the final regulations.

6. OZ investors can use the five- and seven-year basis increases to claim accumulated depreciation or withdraw accumulated cash tax-free.

An OZ investor’s initial basis in an OZ Fund is zero to the extent of the OZ investor’s investment of qualified capital gains. In the case of an OZ Fund that is a partnership, the investor’s zero basis limits the investor’s ability to claim U.S. federal income tax credits and depreciation deductions in respect of the OZ Fund’s property. It can also limit the investor’s ability to withdraw cash from the structure. An investor’s basis can be increased by causing a partnership OZ Fund or OZ Business to borrow. Basis is also increased when net income (that is, income after expenses and deductions) is earned by the OZ Fund and allocated to the OZ investor. As noted earlier, Code Section 1400Z-2, which authorizes the OZ incentive, indicates that an OZ investor that holds its OZ Fund interest for at least seven years prior to recognizing deferred gain could also increase its basis in its OZ Fund interest by up to 15%.

The Second Round Regulations clarify that the basis increases available after a five- or seven-year holding period are available only before deferred gain is recognized, which will occur upon the earlier of a disposition of the OZ Fund interest or the 2026 tax year. (However, while we anticipate additional legislation will be proposed to give investors an additional year to meet these holding periods, the chances of enactment are unclear.) Importantly, the Second Round Regulations also clarify that these basis increases can be used for any purpose under the Code. Therefore, they can be used to absorb depreciation deductions and cash that have accumulated in a partnership OZ Fund as a consequence of the investor’s low basis and related legal limitations. Moreover, cash withdrawals to the extent of the basis increase would not be subject to tax or accelerate recognition of deferred capital gain to the extent that the withdrawals did not exceed the investor’s basis at the time of the withdrawal (see below).

What’s the catch?

Aside from the limitations discussed above and some other restrictions, there are a few points in the Second Round Regulations that must be carefully navigated.

1. Managers will have hard choices to make about distributing cash or property from an OZ Fund.

A partnership OZ Fund can make a distribution in excess of an investor’s basis in its OZ Fund interest. While it has always been the case that a cash distribution in excess of basis would be subject to taxation as a capital gain, the Second Round Regulations go a step further and require that distributions from a partnership OZ Fund constitute an acceleration of recognition of deferred capital gain to the extent the fair market value of the distribution exceeds the investor’s basis in its OZ Fund interest. It is important to note that the investor will not be taxed twice, that is, under the Second Round Regulations and the general rule regarding distributions in excess of basis.

The result above is troubling for a number of reasons. First, a similar rule applies to corporate distributions, but it is more favorable to investors than the partnership rule discussed above. Partnerships, however, are more widely used in project finance and real estate. More worrisome is that partnerships with depreciation deductions that exceed income will find it difficult to distribute operating cash. This concern is particularly acute for project finance, e.g., large investments in new processing and packing facilities, and also for operating businesses using 100% expensing of capital investments, which was also enacted in the TCJA. While an investor’s basis can be increased if the OZ Fund borrows, borrowing solely to support cash withdrawals may not be aligned with sensible business goals or, in some cases, with applicable tax law. In addition, there are restrictions on the amount of cash that may be retained in the OZ Fund structure.

Thus, if a business does not, in the ordinary course, need to spend or invest excess cash, the business manager will have to make a very difficult choice that essentially boils down to how she will choose to harm her investors. For example, does she choose to trigger a taxable distribution or pay penalties for causing the OZ Fund to hold too much cash?

Given the seriousness of the consequences to taxpayers and reasonable options to favorably address them, this rule may be a good topic for Treasury to reconsider when preparing final regulations. Taxpayer comments would help to shed light on this issue for Treasury.

2. Certain direct and indirect transfers of OZ Fund interests or qualified OZ property can trigger early recognition of deferred capital gain.

As in the case of the Investment Tax Credit ("ITC") and certain other U.S. federal incentives, certain direct and indirect transfers of an interest in an OZ Fund or qualified OZ property will trigger taxation. In the case of the ITC, there is recapture of a credit. In the case of the OZ incentive, there is an acceleration of taxation of the capital gain that was deferred by investing in an OZ Fund. While this type of restriction was generally expected, there are a few surprising exceptions. For example, certain liquidations of a corporate OZ Fund are not inclusion events, and an investor's death is not treated as a disposition event, nor is a transfer of an OZ Fund interest by an investor's estate to an heir. However, most gifts of an OZ Fund interest (including charitable gifts) and certain kinds of reorganizations that would otherwise be tax-free will trigger taxation under the OZ rules.

3. Some of the more novel arrangements used in agribusiness require further study for compatibility with the OZ incentive.

Many types of legal arrangements are unique to modern agribusiness (e.g., plant trait licensing) or unique legacies from historical agribusiness practices (e.g., crop sharing). In addition, some of the assets required for agribusiness operations are owned or distributed in ways that are dictated by local law, for example, the many ways in which water rights can be structured and water can become personal property. In addition, given the use of seasonal labor in some areas and geographic dispersal of many integrated farming, packing, and processing operations, it is important to carefully calculate the various thresholds applicable under the OZ incentive. While there is potential for many of these types of arrangements to be useful in the OZ context, they are highly specific and must be carefully considered under the facts applicable to a particular operation.

Please contact the K&L Gates OZ team for assistance in implementing any aspect of the OZ incentive or if you wish to provide comments, input and ideas to the White House, Treasury and Congress. (Comments regarding the Second Round Regulations are due on July 1, 2019.) For more information, please contact the authors or visit our website.

By Elizabeth Crouse, Mary Burke Baker, Marisa Bocci

12 June 2019

K&L Gates

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June 12, 2019

Opioid Makers Squeezed as Cities Try to Form Group for Talks.

- **Counties, cities seek to negotiate settlement collectively**
- **Suits already consolidated by judge for pre-trial discovery**

More than 1,500 U.S. municipalities are seeking to negotiate as a group with Johnson & Johnson, Purdue Pharma LP and other drug makers over the opioid epidemic, hoping that will spur the companies to pay billions of dollars to settle lawsuits.

The cities and counties, which blame the drug makers and distributors for creating a national public-health crisis by illegally promoting addictive painkillers, asked U.S. District Judge Dan Polster in Cleveland Friday to let them create a negotiation class. The suits were already consolidated for pre-trial exchanges of information in the so-called multidistrict litigation, or MDL.

“This is not a litigation class,” the group wrote. “It does not affect the prosecution of existing actions filed against opioid manufacturers, opioid distributors or pharmacies.”

Settlement talks between J&J and Purdue, along with drug distributors such as McKesson Corp. and Cardinal Health Inc., and states and local governments who have their cases before Polster, have been dragging, as it appears the companies are prepared to take their chances in court.

Under the proposal presented to Polster, the municipalities would have a supermajority voting process that can approve any proposed settlement, with three-quarters being required to vote in favor.

“It has long been recognized that a coordinated group is best able to secure better returns by offering the prospect of complete resolution of a dispute," the municipalities said.

Purdue said it's committed to working with everyone toward a resolution that benefits communities and states.

"We continue to work collaboratively within the MDL process outlined by Judge Polster," Bob Josephson, a Purdue spokesman, said in an email.

J&J didn't immediately respond to a request for comment on the proposal.

J&J is currently trying to fend off Oklahoma's $13 billion lawsuit before a judge in Norman. It's the first trial in which a state seeks to force a drug maker to cover the cost of the fall-out from opioid-related overdoses and addictions.

New Brunswick, New Jersey-based J&J is alone fighting the Oklahoma lawsuit. Purdue, the top marketer in the state, settled in March for $270 million. Teva Pharmaceutical Industries Ltd. agreed to pay $85 million, days before the trial started on May 28.

In Cleveland, the judge has pushed both sides hard to settle.

"It is no secret that there have been settlement discussions right from the onset,'' Rice and other plaintiffs' lawyers said in court filings. The talks are ongoing, according to the filing.

Allowing the plaintiffs to come together for negotiation purposes offers "the perfect mechanism for allowing the affected cities and counties to negotiate credibly and effectively as a group,'' the lawyers said.

The case is In Re National Prescription Opioid Litigation, 17-md-2804, U.S. District Court, Northern District of Ohio (Cleveland).

Bloomberg Business

By Jef Feeley and Andrew M Harris

June 14, 2019, 8:41 AM PDT Updated on June 14, 2019, 10:16 AM PDT

MBFA's 2019 Mid-Year Advocacy Report.

Read the report.

JUNE 6, 2019

Local Governments Seek Negotiating Power in Opioid Lawsuit.

COLUMBUS, Ohio — Lawyers suing over the toll of opioids asked a judge Friday to allow a structure for all 25,000 municipal and county governments in the U.S. to be paid — if a settlement can be reached with companies that make and distribute powerful prescription painkillers.

The approach, if approved, would create dueling negotiating systems as state governments are also in collective settlement negotiations with the drug industry.

The unified approach on behalf of municipalities would also help the manufacturers and distributors by defining a finalized group of entities benefiting from a settlement, said Joseph Rice, a South Carolina-based attorney representing local governments in the complaint.

“If you’re a corporation trying to address this problem, you need to get closure, you need to put it behind you,” Rice said in an interview Friday. “If you’re going to put significant resources into the resolution, you’ve got to know it’s behind you. The only way to do that is to get releases from everybody that’s got a potential claim.”

The action would also help address a problem that is widespread and reaches across city and county lines, Rice said. Providing assistance from a settlement to one county doesn’t help the people in a neighboring town, he said.

“These pills have wheels, they move around,” Rice said, citing the documented cases of pain pills obtained in Florida being taken to West Virginia.

The motion filed Friday requests the creation of a negotiating class “for the specific purpose of creating a unified body to enter into further negotiations with defendants,” according to the filing. “It is neither aimed at being the vehicle for litigation or settlement.”

Hundreds of local governments and other entities, such as hospitals, have accused pharmaceutical companies of downplaying the addictive nature of opioids and prescription painkillers largely blamed for one of the deadliest drug crises in U.S. history. Opioids include prescription and illicit drugs.

The complaints are being overseen by Cleveland-based U.S. District Judge Dan Polster. He previously ruled that lawsuits filed by the Ohio counties of Cuyahoga, which includes Cleveland, and Summit County, which includes Akron, will be heard first this October.

A trial on claims made by West Virginia’s Huntington and Cabell counties will be next, followed by Cleveland and Akron’s claims.

The Centers for Disease Control and Prevention says opioids are the main driver of drug overdose deaths. Opioids were involved in 47,600 overdose deaths in the U.S. in 2017, according to the agency.

Attorneys general fighting for compensation in separate legal actions are likely to have mixed reactions to the filing, said Paul Nolette, a Marquette University political scientist.

With the lone exception of Nebraska, every state has sued, filed administrative charges or promised to sue the companies blamed for the national crisis, which played a role in the deaths of more than 390,000 Americans from 2000 through 2017.

On one hand, the move could complicate things for the states, which see themselves as negotiating both on their behalf and communities within the state, said Nolette, who studies attorneys general. On the other, some may welcome the pressure that a giant class of communities puts on drug makers and distributors to settle.

Many municipalities felt left out of states’ 1998 $200 billion-plus settlement with tobacco companies, Nolette said, especially after some states diverted their share to fill budget holes instead of paying for anti-smoking programs.

"At least in this litigation, the municipalities are saying, 'No, that's not good enough.' We want our own voice," Nolette said.

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Every Friday, get an exclusive look at how one of the week's biggest news stories on "The Daily" podcast came together.

In Ohio, the state has sued drug makers and distributors in separate court actions. Attorney General David Yost on Friday called communities' request for their own negotiating class "an extraordinary process and a novel approach."

"We're examining it very closely to make sure it is fair and appropriate for Ohioans and complies with the law," Yost said in a statement.

By The Associated Press

June 14, 2019

Associated Press writer Geoff Mulvihill in New Jersey contributed to this report.

NFMA Newsletter.

The NFMA publishes a newsletter three times per year. To view the most recent newsletter, the Municipal Analysts Bulletin, Vol. 29, No. 2, click here.

- IRS Notice 2019-39: Corrected!
- Fitch U.S. College and University Rating Criteria Finalization.
- Fitch Ratings Updates Availability-Based Project Rating Criteria.
- CDFA to Host Webinar on Opportunity Zones and Affordable Housing with HUD, USDA.
- *Development Authority of Cobb County v. State* – Supreme Court of Georgia holds that statute defining projects that development authorities could fund permitted county development authority to issue bonds for the construction of a facility that would be leased to a grocery store, despite argument that grocery store, which would replace a nearby store, was not essential to the development of trade, commerce, industry, and employment opportunities.
- And finally, Unclear on the Concept is brought to us this week by *Garza v. Harrison*, in which an apartment complex hired a resident to work as a "Courtesy Patrol Officer." Ah, that's nice in a wholesome "Help you with your groceries, ma'am?" kinda way. That is until the officer pumped five rounds through the windshield of a visitor's vehicle. What's the exact opposite of "courteous?" "Discourteous." Right. That somehow doesn't *quite* seem to capture the nature of the encounter. "So rude of me to obliterate your chest cavity. Wherever are my manners?"

LIENS - CALIFORNIA

Kahan v. City of Richmond

Court of Appeal, First District, Division 1, California - May 23, 2019 - Cal.Rptr.3d - 2019 WL 2225041 - 19 Cal. Daily Op. Serv. 4759

Foreclosure sale purchaser of property brought putative class action against city, challenging city's practice of recording liens for unpaid garbage collection fees.

The Superior Court sustained general and special demurrers to each cause of action and granted city's motion to dismiss. Purchaser appealed.

The Court of Appeal held that:

- Provision of Government Code authorizing county board of supervisors to "establish a schedule of fees to be imposed on land…for financing waste collection…and disposal services" authorized city to charge delinquent garbage fees as a special assessment against parcel and as lien on property for amount of delinquent fees, rather than only to charge fees for acquisition and maintenance of landfills;
- Procedures of Revenue and Taxation Code for pursuing a refund of a tax or assessment applied to purchaser's action;
- Ordinance authorizing special assessment liens for delinquent garbage fees was not preempted by state lien priority law; and
- Purchaser's conclusory allegation that one or more mortgage interests existed on the property at some unspecified point before city recorded garbage lien was insufficient to plead that those mortgages were subsequent encumbrances placed after the garbage lien arose without notice of it, as would be required to invoke bona fide encumbrancer exception to garbage lien attachment.

INSURANCE - FLORIDA

Lee County School Board v. State Farm Mutual Automobile Insurance Company

District Court of Appeal of Florida, Second District - May 24, 2019 - So.3d - 2019 WL 2237346

After two insured passengers were injured on school bus, insurer brought action against school district's insurer seeking reimbursement for no-fault benefits paid to passengers.

The Circuit Court granted passengers' insurer's motion for summary judgment. School board and its insurer appealed.

The District Court of Appeal held that:

- Insurer's action was not barred by sovereign immunity;
- Provision of statute governing insurer's right of reimbursement did not conflict with the express inclusion of school buses in the definition of a "commercial motor vehicle" and provision that the owner of vehicle was subject to statute; and
- Statute required school board's insurer to reimburse passengers' insurer.

Legislature expressly waived sovereign immunity for owners of vehicles used for public school transportation in actions brought pursuant to the statute governing insurer's right of reimbursement of personal injury protection benefits on a private passenger motor vehicle and on vehicles used for public school transportation, which necessarily included public school buses, and thus insurer's action seeking reimbursement for personal injury protection (PIP) benefits paid to injured school bus passengers was not barred by sovereign immunity.

Provision of statute governing insurers' right of reimbursement for benefits paid to any person as a benefit arising out of private passenger motor vehicle insurance, providing for an express exemption of school buses from the requirement to maintain no-fault insurance and did not conflict with the express inclusion of school buses in the definition of a "commercial motor vehicle," and provision that the owner of vehicle was subject to statute.

Even though injured school bus passengers were not "insureds" under school board's insurance policy, statute providing for insurers' right of reimbursement for benefits paid to any person as a benefit arising out of private passenger motor vehicle insurance required school board's insurer to reimburse passengers' insurer for injuries sustained on school bus.

ANNEXATION - FLORIDA

Matlacha Civic Association, Inc. v. City of Cape Coral

District Court of Appeal of Florida, Second District- May 22, 2019 - So.3d - 2019 WL 2203179

Civic association of unincorporated community, residents of unincorporated community, and residents of city brought petition for writ of certiorari to review city ordinance annexing city-owned parcels of land in unincorporated community into city limits.

The Circuit Court dismissed petition for lack of standing. Civic association and residents brought second-tier petition for writ of certiorari.

The District Court of Appeal held that:

- City residents had statutory standing to seek certiorari review of annexation, but
- Circuit court's dismissal of petition by residents of unincorporated community did not deprive residents of common law right of certiorari.

Residents of city had standing to challenge city's annexation of land parcels under statute governing review of an annexation or contraction, even though they did not allege they had suffered a present "material injury" as direct result of the annexation; statutory standing provision did not require present material injury, but, rather, plainly conferred standing on "any party affected who believes that he or she will suffer material injury," and statute defined "parties affected" to include persons owning property or residing in a municipality proposing annexation.

Circuit court's dismissal on standing grounds of petition for writ of certiorari brought by residents of unincorporated community to challenge city's annexation of land parcels within community did not deprive residents of their common law right of certiorari, where petitioners did not bring certiorari petition pursuant to any common law right, but, rather, pursuant to statutory provision governing challenges by "parties affected" to annexation, and residents of unincorporated community were not "parties affected" as defined in statute.

BONDS - GEORGIA

Development Authority of Cobb County v. State

Supreme Court of Georgia - June 3, 2019 - S.E.2d - 2019 WL 2334171

Resident brought action against county development authority based on objection to validity of development bonds issued by authority for the construction of a facility that would be leased to a grocery store.

The Superior Court denied validation of the bonds. County and expected grocery store operator appealed.

The Supreme Court held that:

- Statute defining projects that development authorities could fund permitted development authority to issue the bonds, and
- Statute defining project that development authorities could fund did not violate state constitution's provision allowing the General Assembly to create development authorities.

Statute defining projects that development authorities could fund permitted county development authority to issue bonds for the construction of a facility that would be leased to a grocery store, despite argument that grocery store, which would replace a nearby store, was not essential to the development of trade, commerce, industry, and employment opportunities; that a project might be essential to the development of trade, commerce, industry, and employment opportunities did not render the project categorically ineligible for financing under the statute.

Statute defining projects that development authorities could fund did not violate state constitution's provision allowing the General Assembly to create development authorities under such uniform terms and conditions as it may deem necessary; provision's plain terms required the creation of development authorities under uniform terms and conditions, but provision said nothing at all about the uniformity of bonds issued by development authorities.

ENVIRONMENTAL - LOUISIANA

State v. Louisiana Land & Exploration Co.

Court of Appeal of Louisiana, Third Circuit - May 15, 2019 - So.3d - 2019 WL 2114863 - 2018-890 (La.App. 3 Cir. 5/15/19)

Parish school board, in its own right and on behalf of State, brought action to have oil company remediate oil-filed waste and contamination on land owned by State and managed by the school board.

After jury returned a multi-million dollar verdict awarding damages in addition to remediation, the Court of Appeal affirmed order that adopted the state Department of Natural Resources' remediation plan. State and school board thereafter sought attorney's fees and costs. The 15th Judicial District Court denied State and school board's motion to compel discovery. State and school board filed supervisory writs.

The Court of Appeal held that:

- State and school board were entitled to discovery to establish attorney's fees against oil company, and
- State and school board were not entitled to discovery to establish attorney's fees against second oil

company that was dismissed with prejudice.

Information regarding amount of money expended to date by oil company, scope of work performed, and identity of all persons associated with implementing remediation plan was relevant to determination of reasonableness of attorney's fees award for State and school board, after jury returned verdict in their favor in their action for damages and remediation, and thus state and school board were entitled to discovery of this information; much of the value of the actual amount recovered was concurrently occurring through remediation and would continue to occur until remediation was complete.

MUNICIPAL ORDINANCE - MARYLAND

Pizza di Joey, LLC v. Mayor and City Council of Baltimore

Court of Special Appeals of Maryland - May 30, 2019 - A.3d - 2019 WL 2296149

Food trucks brought action against city, seeking injunctive relief and a declaration that a city code provision limiting where trucks could operate violated the state constitution.

After the denial of a motion to dismiss and cross-motions for summary judgment, and after a bench trial, the Circuit Court concluded that the code provision did not violate due process or equal protection rights, but that the provision was unconstitutionally vague. Food trucks appealed and city cross-appealed.

The Court of Special Appeals held that:

- Food trucks alleged a ripe, justiciable controversy;
- Code provision was not per se unconstitutional under equal protection clause;
- Traditional rational basis review, rather than less deferential review, applied to claim;
- Code provision was rationally related to legitimate government interest;
- Food trucks waived potential claim that code provision was void for vagueness; and
- Food trucks could not bring claim that code provision was vague on its face.

POLITICAL SUBDIVISIONS - MISSOURI

State ex rel. Blue Springs School District v. Grate

Missouri Court of Appeals, Western District - May 21, 2019 - S.W.3d - 2019 WL 2178595

School district petitioned for writ of prohibition against circuit court judge who denied district's motion for summary judgment in action alleging sexual harassment action and assault of elementary school student.

The Court of Appeals quashed preliminary writ on issue of sovereign immunity for discrimination claim, and made writ permanent as to common law claims. Following transfer, the Supreme Court retransferred case to Court of Appeals for reconsideration.

The Court of Appeals held that:

- School district was a "person" under Missouri Human Rights Act (MHRA), and thus could be held liable for sex discrimination, and
- Purchase of liability insurance did not waive school district's sovereign immunity against common

law tort claims.

School district's purchase of liability insurance did not waive district's sovereign immunity against common law tort claims arising from alleged sexual harassment and assault of elementary school student, where policy provided coverage "for public officials and employees" but did not provide coverage for respondeat superior liability.

School district was a "person" under Missouri Human Rights Act (MHRA), and thus could be held liable for sex discrimination in violation of provision prohibiting "any person" from denying any other person public accommodation on basis of sex, in action by student who asserted that she was sexually harassed and assaulted by other students at her elementary school.

DEDICATION - NEW YORK

Coney Island Boardwalk Community Gardens v. City of New York

Supreme Court, Appellate Division, Second Department, New York - May 29, 2019 - N.Y.S.3d - 2019 WL 2274976 - 2019 N.Y. Slip Op. 04162

Petitioners commenced hybrid article 78 proceeding and action for declaratory relief, seeking an implied dedication of land to parkland, and challenging city's purported alienation of the land to build amphitheater.

The Supreme Court, Kings County, granted summary judgment in favor of respondents, and petitioners appealed.

The Supreme Court, Appellate Division, held that city's actions and declarations did not unequivocally manifest intent to dedicate parcel of land, which had been used as community garden, as parkland protected under public trust doctrine.

City's actions and declarations did not unequivocally manifest intent to dedicate parcel of land, which had been used as community garden, as parkland protected under public trust doctrine, where licenses were terminable at will by the city, it was otherwise clear that city permitted the community garden to exist on a temporary basis as the city moved forward with its plans to develop the parcel, and any management of the parcel by city department of parks and recreation was understood to be temporary and provisional.

EMINENT DOMAIN - NORTH DAKOTA

Montana-Dakota Utilities Co. v. Behm

Supreme Court of North Dakota - May 16, 2019 - N.W.2d - 2019 WL 2135825 - 2019 ND 139

Condemnor, a utility company, brought an eminent domain action against landowner to acquire an easement across landowner's property for a 3,000-foot natural gas pipeline to service a railroad switch which was required to be heated to keep it operable during winter months.

The District Court dismissed action. Parties cross-appealed.

The Supreme Court held that:

- Utility company’s proposed pipeline was for a public use under North Dakota law, and
- Proposed taking was necessary.

Utility company’s proposed taking to acquire an easement over landowner’s property to construct pipeline to supply natural gas to railroad company for the purpose of heating a railroad switch during the winter months was for a public use under North Dakota law, even though portion of pipeline was intended to serve only a single customer, the railroad company.

Utility company’s proposed taking to acquire an easement across landowner’s property for a natural gas pipeline to heat railroad company’s railroad switch was necessary for a public use under North Dakota law, rather than for mere convenience, absent evidence of bad faith, gross abuse of discretion, or fraud in determination of chosen pipeline route, where utility company did not own adjacent land on which it could construct pipeline, one alternative route would have added 18,000 feet of pipeline to project at additional cost of $ 1,200,000, and second alternative route would have resulted in utility company’s easement being subordinate to public’s section line right-of-way easement with utility company being forced to accommodate at its expense any conflicts that might arise.

IMPROVEMENT DISTRICTS - PENNSYLVANIA

Schock v. City of Lebanon

Supreme Court of Pennsylvania - May 31, 2019 - A.3d - 2019 WL 2306210

Objector brought declaratory judgment action against city, seeking to declare final plan for a neighborhood improvement district (NID) to be vetoed or dead.

The Common Pleas Court granted city’s motion for summary judgment, and dismissed objector’s complaint. Objector appealed. The Commonwealth Court affirmed. Objector petitioned for allowance of appeal.

The Supreme Court held that:

- “benefited properties” under the Neighborhood Improvement District Act (NIDA) are the assessed properties that are presumptively benefited, and
- “affected property owners,” for purposes of the final-plan-veto procedure for a proposed neighborhood improvement district (NID), would include only owners of assessed properties.

“Affected property owners,” for purposes of the final-plan-veto procedure for a proposed neighborhood improvement district (NID), would be the owners of “benefited properties” located within the NID, which, as referenced under the Neighborhood Improvement District Act, would only include assessed properties.

LIABILITY - TEXAS

Garza v. Harrison

Supreme Court of Texas - May 24, 2019 - S.W.3d - 2019 WL 2237875 - 62 Tex. Sup. Ct. J. 1149

Parents of suspect shot by off-duty municipal police officer brought cause of action against officer in his individual capacity, and officer filed motion to dismiss under election-of-remedies provision of the Texas Tort Claims Act.

The 80th District Court denied officer's dismissal motion, and officer filed interlocutory appeal. The Houston Court of Appeals affirmed. Officer petitioned for review.

The Supreme Court held that:

- Off-duty police officer was acting within scope of authority that he possessed as peace officer in attempting to make warrantless, extraterritorial arrest, and
- Trial court should have dismissed officer as party under election-of-remedies provision of the Texas Tort Claims Act.

Off-duty police officer, who was in plain clothes and at apartment complex where he lived outside territorial limits of city that employed him, was acting within scope of authority that he possessed as peace officer, and thus within scope of employment under election-of-remedies provision of the Texas Tort Claims Act, when, upon observing narcotics transaction in vehicle parked next to his in apartment complex parking lot, he attempted to make warrantless arrest, though such an arrest may have also benefited owner of apartment complex, for which he worked on part-time basis as courtesy patrol officer; regardless of propriety of officer's actions, in drawing his gun and allegedly firing into car as it attempted to back away with officer clinging to the open driver's door, officer was doing his job as peace officer in trying to make arrest and could not be sued individually in tort.

Trial court should have dismissed as party, under election-of-remedies provision of the Texas Tort Claims Act, a municipal police officer named as defendant in tort action arising from death of suspect whom officer was attempting to arrest, after officer had witnessed the suspect engage in drug transaction in parking lot of apartment complex where officer lived, when officer, in attempt to prevent suspect from driving away while officer was allegedly clinging to open door of suspect's vehicle, had discharged his firearm into vehicle and fatally injured suspect; the record conclusively established that, at time of shooting, officer was acting under valid grant of authority conferred by virtue of his status as peace officer and activated by commission of crime in his presence.

EMINENT DOMAIN - TEXAS

KMS Retail Rowlett, LP v. City of Rowlett

Supreme Court of Texas - May 17, 2019 - S.W.3d - 2019 WL 2147205 - 62 Tex. Sup. Ct. J. 1038

City filed petition to condemn property owner's private road easement to convert it to public road connecting several commercial retail and restaurant sites, awarding owner damages of $31,662, and owner objected, claiming that the taking was illegal.

The County Court at Law granted summary judgment to city. Owner appealed. The Dallas Court of Appeals affirmed. Owner filed petition for review.

The Supreme Court held that:

- City's condemnation of easement to convert it to public road was statutorily exempt from prohibitions on takings;
- Condemnation was necessary for a constitutional public use; and
- City's taking of easement for public use was not fraudulent.

Transportation Code section authorizing creation of regional mobility authorities for purpose of constructing, maintaining, and operating transportation projects did not concern similar subject matter and possess same general purpose, as would warrant using Transportation Code's definition of "transportation project" in interpreting Government Code's limitation on taking of private property through use of eminent domain for transportation projects, where Transportation Code defined "transportation project" for limited purpose of delineating types of projects it authorized regional mobility authorities to undertake, while Government Code addressed "transportation projects" only to define exception to statute's applicability.

City's condemnation of property owner's private road easement to convert it to public road connecting several commercial retail and restaurant sites was statutorily exempt from prohibitions on takings, even if public road to be constructed would not comply with standards imposed by city's master thoroughfare plan, where statutory exemption's definition of "public road" did not vary according to standards set by local government entities.

City's condemnation of property owner's private road easement to convert it to public road connecting several commercial retail and restaurant sites was necessary for a constitutional public use, even if it was motivated by request of private property owner to attain private benefit, where, regardless of any ulterior motive, taking was necessary for traffic circulation and cross-access between retail areas.

City's taking of property owner's private road easement for public use was not fraudulent, even if it also conferred private benefit upon owner of neighboring tract of land, where, even if city was motivated to confer private benefit, taking easement to convert it to public road connecting several commercial retail and restaurant sites plainly benefited public at large.

Why Public Finance?

By Rob Whiteman, CEO, Chartered Institute of Public Finance and Accountancy

A career in public finance is a fantastic way to make a real difference to people's lives. The careful management of public money is always essential but particularly in the current political and economic climate. Working in the public sector allows finance professionals to have a long-lasting and meaningful impact on local communities on a local, national and global level.

There are many different facets to working in the public sector. It could mean working to preserve vital services that are desperately needed by people who are vulnerable and disadvantaged, immeasurably improving their quality of life. It could mean working on measures to alleviate inequality, rethinking how social issues can be addressed through new initiatives at all levels of society. It could also mean advocating for prudent and transparent financial management practices at the very highest levels of government. This includes acting in accordance with stringent ethical standards in order to preserve and enhance public trust in civil institutions. Acting in the best interests of the general population is at the heart of public service, even when it means making the difficult choices.

Working in public finance demands high levels of creativity, finding innovative ways to use limited resources in order to best serve communities. In a continually evolving environment, there are rewarding opportunities to exercise ingenuity in the pursuit of new solutions where old strategies are no longer fit for purpose. Sustainability is also a key priority, with the best public finance initiatives building long-term thinking into the planning stage to ensure quality services are delivered to taxpayers in the years to come, as well as in the immediate future.

In an increasingly connected world, the international dimension of a public finance career is becoming ever more prominent. The profession as a whole is recognizing the importance of working and learning together. As we face up to global challenges such as a rapidly changing climate, the public sector has a unique role to play in exchanging ideas and sharing what works. The ability and willingness to operate internationally opens up the chance to collaborate and learn new ways of doing things, which in turn will drive improvements and transformation across the public sector around the world.

Flexibility and adaptability are vital qualities for the 21st Century public finance professional. Such qualities are key to working internationally. Those who are willing to reach across borders and cultural boundaries are best placed to question inherited practices in their own contexts and introduce new ideas, thereby ensuring the most effective stewardship of public resources.

The pathway offered by the Chartered Institute of Public Finance and Accountancy to a globally-recognized public finance qualification supports a modern public finance career. Developed with Rutgers to expand on their Master of Accountancy in Governmental Accounting Program, this pathway adds an additional dimension to the Rutgers education. It draws on CIPFA's unique expertise as the international leader on public sector finance, upholding professional standards and supporting individuals as they pursue excellence in financial management at all levels of government around the world. This new pathway will unlock opportunities to work internationally and develop skills that are urgently needed in the public sector.

CIPFA's training and resources have equipped generations of public sector finance professionals and will continue to support the next generation, leading us into a financially sustainable future for the greatest public good across the globe.

Rutgers

Wed, June 5, 2019

EPA Grants Augment Bond Financing.

The Environmental Protection Agency awarded 149 communities with Brownfields Program grants to clean up hazardous substances, and some municipalities are pairing those grants with municipal bonds.

A brownfield is a property that has been polluted by a hazardous substance, or contaminant. EPA estimated that there are 450,000 brownfields in the U.S. EPA's Brownfields Program started in 1995 and this year about 40% of the selected recipients received the grants for the first time, Andrew Wheeler, EPA administrator said in a press release.

The public safety center in Beaverton, Oregon was awarded $300,000 to assess sites in its downtown area.

Finance Director Patrick O'Claire said Beaverton is looking to eventually add more affordable housing and space for companies wanting to move in, adding that the grants will help achieve those goals.

Last year, Beaverton used $400,000 in brownfields grants to address a petroleum contamination that imposed health risks to groundwater and local streams from a nearby gas station. That site was designated for a future public safety center, an earthquake resistant police and emergency management building.

In 2016, Beaverton residents passed a $35 million bond resolution to fund the new center.

In the past, other projects have also used a combination of bond financing with brownfield grants. Riverfront Park in Spokane, Washington was in need of an upgrade and in 2014 it issued $64 million in bonds to fund improvements. The total cost of the project is expected to exceed $70 million and is located in a federal Opportunity Zone.

Opportunity Zones were authorized under the Tax Cuts and Jobs Act enacted by Congress in December 2017 to encourage investment and job creation in low-income urban and rural communities. OZs allow investors to defer and reduce capital gains and for investments held at five or seven years, and in the case of investments held at least 10 years, avert tax on any appreciation.

In 2014, Spokane was awarded $400,000 by EPA to assess vacant, underutilized and abandoned properties. In 2017, the city was awarded $600,000 in additional EPA brownfield funding to clean up and revitalize the 100-acre park.

“These grants fulfill several of President Trump?s top priorities simultaneously: helping communities in need transform contaminated sites into community assets that not only create jobs and jump start economic development but also improve public health and the environment,” Wheeler said.

Maine received more brownfields grant funding than any other state for the assessment and cleanup of 14 sites, with $6 million in EPA funding, according to a press release.

“The Brownfields Program has proven to be a major benefit to the overall health and vitality of Maine communities,” Maine Senators Susan Collins, a Republican and Angus King, an independent said in a joint statement. “In addition to cleaning up hazardous substances and improving our environment, this investment will help communities create new economic development opportunities to attract businesses that create good jobs for Mainers, particularly in rural areas.”

In 2016, both Collins and King called for the Department of Commerce to take immediate action to help Maine?s economy after several mill closures left it in an economic crisis.

In January 2017 an assessment from the U.S. Economic Development Assessment team highlighted the importance of EPA?s brownfields program and its potential to leverage federal resources to redevelop former industrial sites, support mill communities and grow Maine?s rural economy.

In fiscal year 2018, the EPA selected 144 communities for brownfields environmental assessments, and in 2017, 172 communities received the brownfields grants.

Clean up of brownfield properties led to residential property value increases of 5% to 15.2% within 1.29 miles of the sites, according to a 2017 study. The EPA also noted that near 48 of those brownfield sites, another study found an estimated $29 to $97 million in additional tax revenue for local governments in a single year after cleanup.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 06/06/19 02:51 PM EDT

[Open Spaces To Basis Points: An 'Open' Mind Frame Improves Muni Bond Credit]

Many years ago, I had the chance to be shown a real estate listing for a Park Avenue apartment in Manhattan. This was an apartment in name only. Replete with maid's quarters and a formal dining room with 11 foot ceilings and a working fireplace, not only did it overlook Park Avenue, but also, according to the listing, it had a "view of Central Park." Way out of my league. Just out of grad school, I was living in a 500 square foot studio apartment overlooking a parking lot. Didn't matter. You don't say no to this.

Darling I Love You, But Give Me Park Avenue

It was classic. A crisply uniformed doorman with white gloves opened the burnished oak door with gleaming brass handles to let me into this time-piece from the 1920s. As the real estate agent toured me through what seemed a maze of rooms, I was looking through every window for that Central Park view. Not seeing it, I finally asked, as delicately as I could, what room had the view of the park? She led me to a guest bathroom. If I lowered the single frosted glass window and looked through the space between two other buildings, I could see the park. Indeed, there was a sliver of green if you looked hard enough.

We love our parks, particularly those who are city dwellers. It's one of those funny contradictions. People move to population-dense cities for the social interaction, economic opportunity and cultural enrichment. But once there, one of the things people value highest is open space.

That value is quantifiable in the pricing of urban real estate, notes Tom Monti, a Corcoran Group Member and real estate professional in Manhattan. "Central Park is the focus in Manhattan," he observed, continuing "apartments on the park, namely Fifth Avenue, Central Park West and Central Park South, have greater value than those that are further from the park." He offered a specific example: a Fifth Avenue apartment with direct views of the park will command a 40% to 50% premium to a comparable unit, on the same floor, in the same building with no park view.

Keep Manhattan, Just Give Me That Countryside

It isn't just residences on the toniest of city avenues that gain additional value from open-space proximity. In bucolic Chester County, Pennsylvania (Moody's: Aaa; Standard & Poor's: AAA)—known as the mushroom capital of the nation—the county maintains an Open Space Preservation program. To quantify "proximity value," the county prepared a detailed report. Homes located within half of a mile of a park, preserved farmland or privately conserved lands saw values $11,000 higher than homes further away. Quarter mile access increased values $13,119. That boosted the county's coffers to the tune of $27.4 million in property tax revenues and transfer taxes.

Cities, towns and counties alike are aware of the value of open space and fund the purchase, improvement and care with municipal bonds. In 2018 there were 33 ballot measures to approve issuing municipal bonds to fund a variety of open-space measures. In a strong plurality, voters in 18 states, from Rhode Island to California, approved 31 of the measures, green-lighting an expected $7,973 million in bond issuance for open space initiatives.

Green Infrastructure

To make sure those initiates are having the intended positive impact in a community requires clearly defined and quantifiable metrics. The American Planning Association (APA) offers some insights.

Using Green Infrastructure as the broad rubric; the APA assigns specific categories and metrics to assess and measure green infrastructure in a community. This includes the percentage of tree canopy coverage, distance to park entrances, community gardens, and acres of park land per 1,000 population.

Open Space to Basis Points

It's well-established that open space adds value to homes. In turn, this adds credit value to bonds. Adding open-space metrics and measures as part of investment analysis can offer some further insight into both the stability of the existing residential tax base and the potential for those values increasing over time. And those municipal bonds funding those parks and open spaces? Those might provide a bit of green themselves to an investor's portfolio.

Forbes

by Barnet Sherman

Jun 3, 2019, 09:34am

Municipal Bonds Benefit From SALT Limitations And Congestion Pricing.

Summary

- **The U.S. municipal market is hitting on all cylinders – modest growth, reasonable inflation and solid fundamentals are all drivers.**
- **Congestion pricing is becoming a major force.**
- **New limitations on state and local tax deductions increase the value of tax-exempt income.**

The U.S. municipal fixed income market is hitting on all cylinders. Modest domestic economic growth, reasonable inflation, lackluster new issue supply and sound fundamentals continue to drive investors into the tax-exempt bond market.

This performance further stems from new limitations on state and local tax deductions (SALT), which increases the value of tax-exempt income. Also, tax-adjusted municipal yields are attractive for maturities beyond 10 years.

The muni market has distinct seasonal trends which can make investing timing important. Demand for tax-exempt income overwhelmed the usual selling in the secondary market during tax season, specifically in April, when flows into municipal bond funds and separately managed accounts surged.

Continue reading.

Seeking Alpha

By Rob Amodeo, Portfolio Manager, Western Asset

Jun. 3, 2019

MSRB Podcast: Dealer Concentration and Participation

The MSRB Podcast's new episode discusses two measures of market liquidity that provide insights into municipal securities trading activity.

Listen to learn more.

GFOA's New Code of Ethics.

Earlier this month, GFOA's Executive Board approved a new Code of Ethics. This new code represents the first update in more than 30 years.

Click here to view the new code.

GASB Invites Governments to Participate in New Process for Collecting Information About Implementation.

Read More.

06/03/19

Fitch U.S. College and University Rating Criteria Finalization.

PRIMARY CRITERIA CHANGES

- Introduction of individual assessments of three new key rating factors: revenue defensibility, operating risk and financial profile
- Explicit alignment of financial profile with business profile in rating assessment
- Introduction of the Fitch Analytical Stress Test (FAST), an issuer specific scenario analysis tool measuring the effect of demand stress on revenue, operating expenses, cash flow and rates
- New metrics to enhance our analysis, including cash flow margin, adjusted debt and price sensitivity

CHANGES BASED ON MARKET FEEDBACK

- Clarification of how FAST is constructed and used, and Fitch's decision to not publish specific out-year scenarios that could be misinterpreted as projections
- Revised nomenclature for our new 'cash flow margin and cash flow margin – adjusted' metrics
- Added clarity on Fitch's approach to FASB pension plans and other post-employment benefit (OPEB) liabilities

Read the Updated Criteria.

Fitch Ratings Updates Availability-Based Project Rating Criteria.

Link to Fitch Ratings' Report(s): Availability-Based Rating Criteria

Fitch Ratings-London-07 June 2019: Fitch Ratings has completed the annual update of its "Availability-Based Project Rating Criteria". The update included refining the Debt Structure key rating driver and removing the reference to counterparty ratings in the assessment of Revenue Risk. This may result in Revenue Risk assessment migrating from 'Midrange' to 'Stronger' in some projects, but will not have any rating impact as revenue counterparty credit quality is still considered as part of counterparty risk.

We do not anticipate any changes to ratings of availability-based transactions as a result of the new criteria.

The report 'Availability-Based Project Rating Criteria' replaces the previous version of the same name published on 23 August 2018 and is available at www.fitchratings.com or by clicking the link above.

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Additional information is available on www.fitchratings.com

Muni Market's $14 Billion Calendar Hints at Year's Busiest Month.

- **Calendar of new offerings jumps to highest since October**
- **Surge expected to come before market slowdown in July**

A week after Memorial Day and with the Fourth of July on the horizon, a summer haze is in full swing in New York as the temperature creeps up and city dwellers flock to the Hampton's on Friday afternoons. But municipal-bond traders shouldn't pack their bags just yet.

State and local governments are so far scheduled to issue about $14 billion in municipal bonds over the next 30-days, a metric that usually captures less than half of what is actually issued because many deals are scheduled with less than a month's notice. It's the busiest calendar since October.

Muni-bond issuance poised for busiest month since October

One reason for the uptick could be that its easier and cheaper for local governments to issue bonds around the end of the fiscal year, after they've wrapped up their new budgets, suggested Patrick Luby, a municipal strategist at CreditSights. June is typically among the busiest months for new debt sales, according to data compiled by Bloomberg.

"Issuers tend to get clumpy when they come to market at the end of the fiscal year or the end of the quarter when they're preparing their financial disclosures, it makes it less expensive to bring a new issue," he said.

This year, they can also seize on lower borrowing costs, which have tumbled among rising speculation that the Federal Reserve will cut interest rates this year. And over the summer months, the debt payments investors receive typically far exceed the volume of new securities sales, helping support the market as bondholders seek to reinvest the cash. Citigroup Inc.'s analysts estimate that investors will receive over $90 billion more than they'll be able to reinvest, which they said is a "bullish signal" for a market that's already rallied this year.

While June tends to be a busy time for new debt issues, the pace typically slows considerably in July.

"Even if we get a nice little pick in June, it's not going to last in July," Luby said. "There's definitely the underwriting slowdown as people pack up and head to the beach after the Fourth."

Bloomberg Markets

By Danielle Moran

June 4, 2019, 8:14 AM PDT

What it Costs to Die.

Funerals have become a luxury that many Americans can't afford. Local governments are paying the price.

Jimmy Pollard knew his state had a serious problem surrounding death. As the coroner for Henry County and a consultant for the Kentucky Coroners Association, Pollard had seen lots of instances in which family members couldn't afford to bury or cremate a loved one. But the problem of "funeral poverty" was getting worse.

Pollard realized just how bad things had gotten when, a few years ago, the county judge approached him and said, "I'm out of money for indigent burials this year, and I've got six months left to go."

Despite pleas from the judge and from Pollard, neither the state nor the county has invested more money for burials. "I tried to talk to the state judges' association," says Pollard, "but I could tell it didn't really soak in. More money would help, but right now is a bad time to ask for more money in Kentucky for anything, because it's just not there."

Continue reading.

GOVERNING.COM

BY LIZ FARMER, MATTIE QUINN | JUNE 2019

June 6, 2019

[CDFA to Host Webinar on Opportunity Zones and Affordable Housing with HUD, USDA.]

June 27 | 2:00 PM Eastern

Click here to learn more and to register.

[P3 Act Would Remove the Volume Cap for Green Infrastructure PABs.]

Congressional legislation that would expand the use of private activity bonds to include so-called green bonds has been introduced by two House Democrats from Washington state as lawmakers continue to offer proposals for infrastructure investment.

The Preventing Pollution through Partnerships Act or the P3 Act introduced by Rep. Derek Kilmer, D-Wash., and original cosponsor Rep. Denny Heck, earlier this month is the same bill Kilmer proposed in the last Congress with Heck and Rep. Marcy Kaptur, D-Ohio.

The legislation would allow state and local governments to issue tax-exempt PABs not subject to state volume caps if at least 95% or more of the net proceeds are used to develop, carry out, or certify approved green infrastructure projects.

Eligible projects would be certified by the state to construct, rehabilitate, maintain, or repair infrastructure that effectively addresses nonpoint source pollution by preserving, enhancing or mimics natural infiltration, evapotranspiration, or capture of storm water.

According to an infrastructure issue brief by the nonpartisan Congressional Research Service, "Green infrastructure encompasses a range of facilities that some consider environmentally friendly, such as wind and solar energy production. As applied to stormwater management, the term refers to facilities that deal with urban runoff at the source, such as rain gardens, bioswales, and permeable pavements."

Kilmer's office said the P3 Act would allow governments to use PABs to finance private-sector development projects that build green infrastructure.

"For example, under this bill, municipal governments could finance a project built with private sector money to retrofit an old strip mall parking lot with permeable pavement that absorbs water rather than letting it flow into the sewer system and ultimately Puget Sound," Kilmer's office said.

Kilmer, who represent the Puget Sound area, said at the time of the introduction of his earlier bill that stormwater is the biggest source of pollution in Puget Sound. "That's why we need to make it easier for communities to invest in green infrastructure for the benefit of all Washingtonians who call Puget Sound home," he said in a press statement.

Kimler linked the economic health of his state and its identity to the future of the orca population and salmon and shellfish industries.

A CRS report published in 2016 about urban stormwater said, “Municipal bonds are the most frequently used tool for water infrastructure financing at least 70% of U.S. water utilities rely on municipal bonds and other debt to some degree to finance capital investments.”

The CRS report also said, “The growing interest in green infrastructure practices is driven to a great extent by arguments that it is a cost-effective way to manage urban stormwater problems, particularly compared with costs of gray infrastructure _ cities with combined sewer systems have documented that the use of green infrastructure practices to reduce runoff volume is cost-competitive with conventional stormwater and CSO controls.”

“In general, recent examples indicate that properly scaled and sited green infrastructure can deliver equivalent hydrological management of runoff as conventional stormwater infrastructure at comparable or lower costs. It has been estimated that green infrastructure is 5%-30% less costly to construct and about 25% less costly over its life cycle than traditional infrastructure.”

The 2016 CRS report also described examples involving New York City, Cincinnati, Louisville, Chicago, Seattle, Milwaukee and Lancaster, Pennsylvania.

CRS said green infrastructure includes green roofs, downspout disconnection, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, vegetated median strips, curb extensions, permeable pavements, reforestation, and protection and enhancement of riparian buffers and floodplains.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 05/30/19 03:10 PM EDT

S&P Extra Credit Episode 30!

This week hear Lisa Schroeer talk with state analyst experts David Hitchcock and Sussan Corson about how “U.S. States Take Advantage Of A Prolonged Economic Expansion”.

Listen to audio.

Jun. 3, 2019

S&P Fiscal 2018 U.S. Charter School Sector Medians: Overall, Enrollment And Financial Performance Improved.

S&P Global Ratings maintains 280 bond ratings in the U.S. charter school space as of May 10, 2019. Given the proliferation of school networks in the sector, these ratings are affiliated with over 1,000 charter schools. Despite a minor uptick in the proportion of speculative-grade credits, most key financial performance and unrestricted cash median metrics improved modestly from fiscal 2017, reflect….

Continue Reading

Jun. 6, 2019

IRS Notice 2019-39: Corrected!

On May 22, 2019, the IRS issued IRS Notice 2019-39 (the "Original Notice"), which sought to bring efficiency and uniformity to guidance on the current refunding of certain bonds issued under current and future "targeted" tax-exempt bond programs. While the Original Notice set forth helpful guidance on the tax-exempt current refunding of bonds issued under a targeted bond program, it also created some confusion regarding the tax-exempt current refunding of build America bonds (which everyone was already doing), as Mike and Cindy noted last week.

The Original Notice included build America bonds within the scope of its guidance, which seemed odd because build America bonds were not subject to volume cap, although similar to the targeted bond programs, there was a deadline for issuing build America bonds on December 31, 2010. Additionally, because build America bonds already were required to satisfy the requirements for issuance of tax-exempt bonds, no ambiguity existed regarding the ability to currently refund build America bonds with tax-exempt bonds. This guidance seemed unnecessary and, if read in a certain light, could have led to absurd results.

After what the author suspects to be mild bond community uproar (comparatively mild, that is; even the most uproarious bond community uproar might seem tame to the layperson), the IRS went back, double-checked its answers, and corrected the Original Notice (as corrected, the "Corrected Notice") found here. The IRS revised the sentence that mentions build America bonds to include the bracketed phrase as follows:

> "In addition, the references in this notice to "original bonds" or "original Qualified Bonds" include [Tribal Economic Development Bonds[1] issued as] tax-advantaged build America bonds under former § 54AA."

This change makes it clear(er) that the reference to build America bonds in the Original Notice was not intended to refer to build America bonds generally, but rather to Tribal Economic Development Bonds that happened to have been issued under Section 7871(f) as build America bonds. You may recall that the American Recovery and Reinvestment Act (P.L. 111-5) created the Tribal Economic Development Bond as a type of bond that relaxed some of the restrictions that normally apply to Native American tribal governments when they want to issue tax-exempt bonds. Tribal Economic Development Bonds could also be issued as build America bonds as long as they met the additional requirements in Section 54AA. Tribal Economic Development Bonds issued as build America bonds were subject to volume cap and there was a deadline for this type of issuance (December 31, 2010), so the current refunding guidance in the Corrected Notice is helpful for these bonds.

Now that the IRS has corrected this notice, all can be right enough with the bond universe for the time being – although more guidance on spiking the subsidy on build America bonds and other direct pay bonds would always be welcome.

[1] It is interesting to note that in using initial capitals for "Tribal Economic Development Bonds" in the Notice the IRS did not hew to the capitalization convention in the statute, which they've religiously done in spelling out BABs as "build America bonds" and not "Build America Bonds."

By Taylor Klavan on June 3, 2019

The Public Finance Tax Blog

Squire Patton Boggs

An Overview of Green Finance.

Earlier this month, we introduced the concept of socially responsible investing ("SRI"), discussing both its genesis and modern-day appeal to investors and financial institutions. As a reminder, SRI usually falls into two categories: use-based, socially responsible investing and the more forward-thinking "environmental, social and governance" incorporated investing ("ESG"). Use-based, socially responsible investing is easy to visualize—just think of the investor who refuses to invest in a company that supports tobacco production. ESG, on the other hand, considers environmental, community, other societal and corporate governance criteria in investment analysis and underwriting decisions. Put another way, ESG looks beyond lending and investment standards by considering both the impact of environmental and social risk on the financial system, as well as the financial system's impact on environmental and social risks.

There is no doubt that our capital markets are going green. While the majority of ESG activity in this space has been on the equities side, debt markets have seen their share of growth in green and sustainable products. Annual reports and marketing materials published by some of the world's largest banks now include talking points about "green finance" and "green lending." Investors, customers, and communities are focusing their discussions on the availability of "green financing" and "green financial products", to the point where green finance now has its own vernacular. "Green bonds", "green loans", and "sustainability-linked loans", among others, have emerged as viable financing tools offered by lenders to companies focused on both the cost of capital and on social impact. "Greening the financial system" is a popular phrase used by professionals in this space.

While it is easy to throw around monikers and acronyms, generally speaking, there is a lack of understanding of green finance and green financing products. Ask someone to explain the difference between a green loan and a sustainability-linked loan and chances are you will get one of two reactions: a blank stare and corresponding lull in the conversation or a race to see whether Siri or Wikipedia provides the best answer in the shortest amount of time. In any case, the likelihood of you receiving a helpful answer from a reliable source is relatively small.

The purpose of this blog post is to clear up some of the more obvious confusion regarding green finance and green financing products. As an added bonus, we will introduce you to some of the more popular products emerging in this space. Thereafter, more detailed blog posts on these products will follow in the coming months.

Keeping in mind that no "green" dictionary currently exists and people often use terms interchangeably, sometimes with slightly different meanings, let us begin our walk through green lexicon:

"Green finance" refers to the financing (or refinancing) of new and existing public and private investments with sustainability objectives, as well as the related institutional and market arrangements that contribute to the achievement of these goals. Examples of sustainability objectives include renewable energy, conservation, and sustainable agriculture. Green finance can take many different forms, including green bonds and green loans which are discussed below. The terms "green lending" and "sustainable finance" are often synonymous with "green finance."

"Green bonds" (also referred to as "climate bonds") are bonds created to fund projects that have positive environmental and/or climate benefits. The majority of green bonds are “use of proceeds” bonds that earmark the proceeds of the bonds for specific projects that are designed to achieve these benefits, but are financially backed by the bond issuer’s entire balance sheet. There are several types of green bonds available, including revenue bonds and securitized bonds.

“Green Bond Principles” refer to a voluntary, high-level framework/methodology of market standards and guidelines promulgated by the International Capital Market Association that address the eligibility criteria for green projects and the monitoring and use of financing proceeds. The Green Bond Principles (“GBP”) do not require issuers to consider ESG generally or specify what constitutes a “green” project. Rather, the GBP leave the final determination as to what is “green” up to the market. A future blog post will discuss the main components of the GBP, as well as GLP and SLLP (which are discussed below).

“Green loans” are term loans that can be used to fund a range of environmental and sustainability projects, spanning areas including energy efficiency, waste and water management, green transport, sustainable farming and greenhouse gas emission reduction. Green loans may be structured as bilateral loans or syndicated loans. The hallmark of a green loan is that its proceeds are used solely to finance a pre-approved environmental or sustainability project. “Green project finance loans”(which are discussed below) fall within the ambit of green loans.

“Green Loan Principles” build off and refer to the GBP, but focus on bringing consistency to the green loan market (as opposed to the green bond market). Promulgated by the Loan Market Association and the Asia Pacific Loan Market Association, the Green Loan Principles (“GLP”) create a high-level framework of market standards and guidelines intended to provide a consistent methodology for originating, servicing and tracking green loans. The goal of the GLP is to preserve the integrity of the green loan market as it develops, while at the same time, allow the Green Loan product to retain its flexibility.

“Sustainability-linked loans” are loans designed to incentivize companies to meet their ESG targets. Unlike green loans, sustainability-linked loans do not require proceeds to be earmarked for specific purposes. In fact, the typical sustainability-linked loan is structured as a revolver for general working capital purposes. The attractiveness of sustainability-linked loans is their linkage between pricing (i.e., interest rate) and a borrower’s ESG performance. These loans are structured to offer a pricing discount (up to 5%) when a borrower meets or outperforms its ESG targets.

“Sustainability-Linked Loan Principles” build on and refer to the GBP and GLP. The first set of Sustainability-Linked Loan Principles (“SLLP”) was published earlier this year by the Loan Market Association, Loan Syndicated and Trading Association and the Asia Pacific Loan Market Association. The SLLP share the same goals as the GBP and GLP, but focus on the proliferation of sustainability-linked loans rather than green bonds or green loans. As mentioned above, a blog post regarding the SLLP (as well as the GBP and GLP) is forthcoming.

“Green banks” are banks, at both the community and national level, which specialize in financing sustainable or green projects. These banks have committed to promoting and supporting green initiatives by seeking out green projects and offering financial incentives to borrowers, including PACE loans, credit enhancement, co-investment opportunities and on-bill financing.

“Green asset finance” is a subset of asset financing that supports the financing of a variety of green assets through lease purchase, finance and operating leases. Qualifying green assets cover multiple thematic areas, such as energy efficiency, renewable energy, green transport, waste management and sustainable forestry. Green asset finance is more prevalent in Europe and Asia at this time.

“Green financial products” are financial products offered to consumers and businesses that either provide environmental benefits or reduce negative environmental impacts. Examples include green car loans, energy efficiency mortgages, green credit cards, and eco-savings deposits. Green financial products are provided by a variety of institutional lenders, including banks, credit unions and mortgage loan originators. They are available on a worldwide basis.

As you might imagine, the breadth of “green” vernacular is staggering. It would be fairly easy to put together an entire book on how to speak green as it relates to our financial system. Unfortunately, that would take more time and space than a series of blog post. Hopefully, though, this article has provided a sufficient basis for you to begin speaking green insofar as our debt markets are concerned, while at the same time given you a preview of some of the more popular green loan products that we will be highlighting in future posts. Stay tuned…

In case you missed the previous part of this series:
[Part 1: An Introduction to Sustainable Lending]

by Stacia Wells

Tuesday, June 4, 2019

Bilzin Sumberg

[5 Credits and Incentives That Can Boost the Value of Qualified Opportunity Zone Projects.]

Federal tax reform enacted in 2017 resulted in a program called qualified opportunity zones (QOZs) which enables tax savings through investment in distressed areas. But, did you know that projects and businesses receiving opportunity zone fund investment aren’t precluded from seeking other credits and incentives?

In fact, state and local economic development agencies may be more likely to direct public dollars toward QOZ projects or businesses in the form of income tax incentives, hiring incentives, non-tax incentives, or property tax reductions.

Here are a few state, local, and federal tax credits and incentives businesses should consider when investing in QOZs.

[Continue reading.]

Orlando Business Journal

By Rob Calafell, Principal Tax Services and Debbie Singer, Senior Manager – RSM

Jun 2, 2019

[Novogradac State Tax Credit News Briefs – June 2019]

Maryland Gov. Larry Hogan signed legislation April 2 that expanded state tax incentives to opportunity zones (OZs) and extends the state historic tax credit program through 2024. S.B. 581 makes qualifying businesses and property in OZs eligible for the More Jobs for Marylanders program and certain tax credits. The bill also allows local jurisdictions to offer property tax credits for vacant OZ properties that are put back into use and makes other credits available through the Department of Commerce.

***

A bill to conform Hawaii to the Internal Revenue Code for investments in federal OZs in the state was enrolled by Gov. David Ige April 18. S.B. 1130 would be effective for taxable years beginning Jan. 1, 2019, and the OZ provisions would apply only to investments in Hawaii's OZs.

***

Legislation in Texas to create a 25 percent tax credit for investments in OZs and rural areas passed the House and was read before the state Senate April 17. H.B. 1000 would allow up to $35 million annually in insurance tax credits–Texas has no state income tax–to qualified opportunity funds (QOFs) that are registered as rural and opportunity funds. To be registered, QOFs must have invested at least $100 million in nonpublic companies located in either OZs or rural cities and counties that have created or retained a certain number of jobs. The bill would be effective Sept. 1.

Novogradac Journal of Tax Credits Volume 10 Issue 6

Tuesday, June 4, 2019

What's in the Disaster Aid Package for States and Localities?

Congress passed a long-delayed bill to help places recover from past (and future) natural disasters. President Trump is expected to sign it.

After months of delay, Congress passed a $19 billion aid bill on Monday to help places recover from natural disasters that have struck over the last two years — and to help cover costs of the ones yet to come.

As the political infighting wore on this year, more natural disasters — such as flooding in the Midwest and tornadoes in the South — bumped up the price of the legislation by roughly $5 billion. It's now one of the most sweeping disaster aid packages ever passed and heads to President Trump for his expected signature.

Communities in California, Florida and Texas — which have been ravaged by wildfires, hurricanes and floods — will likely be among the biggest beneficiaries. U.S. Sen. Dianne Feinstein says her state of California is eligible for more than $12 billion. *The Texas Tribune* reports that the legislation includes a provision to force the federal government to release more than $4 billion to Texas that Congress already allocated to the state a year ago.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 4, 2019 AT 1:10 PM

IRS Says Special Program Bonds Including Tribal Development Bonds May Be Current Refunded.

While the advance refunding of tax-advantaged bonds remains a thing of the past, the Internal Revenue Service (IRS) issued guidance on May 22, Notice 2019-39, expanding the realm of current refundings to permit the current refunding of all existing and future tax-exempt bond programs that impose bond volume cap, issuance time deadlines, or both, for which the statute under which such programs operate does not address the permissibility of current refunding bonds.

Background

Over the years, Congress has enacted several targeted tax-exempt bond programs, often to provide disaster relief or promote economic development in underserved areas. Such bonds include "GO Zone Bonds" under former Section 1400N of the Internal Revenue Code of 1986, as amended (the Code), Midwest Disaster and Hurricane Ike Disaster Bonds under Code Sections 702(d)(1) and 704(a) of the Heartland Disaster Relief Act, Recovery Zone Facility Bonds under former Code Section 1400U-3, and Tribal Economic Development Bonds issued under Code Section 7871(f).

Unlike other tax-advantaged bonds, these targeted programs were authorized under statutory provisions that did not address whether an issuer could current refund such bonds. The Treasury and IRS have addressed on a piecemeal basis the ability to current refund certain of these programs. See, e.g., Notice 2012-3, 2012-3 I.R.B. 289 (GO Zone, Midwest, and Hurricane Ike Disaster Bonds); Notice 2014-39, 2014-5 I.R.B. 455 (Recovery Zone Facility Bonds); and Notice 2003-40, 2003-2 C.B. 20 (New York Liberty Bonds).

Notice 2019-39

Notice 2019-39 provides uniform guidance allowing the current refunding (directly or indirectly in a series of current refunding issues) of original bonds in existing and future tax-exempt bond programs that impose volume caps, issuance time deadlines, or both, on the original bonds and operate under statutory parameters that do not address the ability to current refund such bonds. The Notice uses the term "Qualified Bonds" to refer to bonds issued in these tax-exempt bond programs. The Notice, as corrected on May 31, provides that the phrase "original bonds" or "original Qualified Bonds" includes Tribal Economic Development Bonds issued as tax-advantaged build America bonds under former Code Section 54AA.

Notice 2019-39 permits current refunding (including indirect refunding in a series of current refunding issues) of the original Qualified Bonds without regard to bond volume cap or issuance time deadline requirements if the following conditions are met:

1. The original Qualified Bonds met any volume cap and deadline for issuance requirement;
2. The issue price of the current refunding issue is not greater than the outstanding stated principal amount of the original Qualified Bonds (with a special rule for refunded bonds issued with more than a de minimis amount of original issue discount or premium); and
3. The refunding bonds meet all applicable requirements for the Qualified Bonds.

Effective Date

Notice 2019-39 applies to current refunding issues issued on or after May 22, 2019, and may be applied to current refunding issues issued before that date.

by Rebecca L. Harrigal

Tuesday, June 4, 2019

US Economy Is At Risk of Losing $4T in GDP If We Don't Act on iInfrastructure: American Society of Civil Engineers

American Society of Civil Engineers' Casey Dinges predicts the U.S. economy could take a major hit if lawmakers do not pass new infrastructure legislation.

"There is a hidden tax being placed on the U.S. economy right now by our current under-investment in infrastructure, so our Failure to Act economic reports showed that by the year 2025, we're putting at risk $4 trillion in U.S. GDP, 2.5 million jobs, and $7 trillion in business sales," Dinges told FOX Business' Neil Cavuto on Thursday.

Dinges added that he doesn't see infrastructure as a partisan issue, but rather "an American issue."

"If you're a high-tech business and you're looking to invest in America, you're going to be looking at the infrastructure of the community or the region you're going to be investing in. So it's very important, if the U.S. is going to stay competitive with the rest of the world, that we make these infrastructure investments. And if the leaders in Congress and the President are looking for a legacy issue to put their arms around, this would be a good one for the nation," he said.

Dinges, a senior managing director, said there will be greater use of the traditional public model going forward to address infrastructure concerns, which would could equate to higher taxes on gasoline and other highway fees, as well as more public-private partnerships.

"Currently through public and private investment streams, we're already investing $2.5 trillion. With an economy over $21 trillion a year and given how critical these investments are to the quality of life, to business, to public safety, it's just going to become more of a challenge the longer we wait," he said.

Last month, President Trump said he is considering an infrastructure plan that would cost between $1 and $2 trillion. The Trump administration has also said the federal government would fund 20 percent of any infrastructure plan, and give private sectors incentives to fund 80 percent of it.

Fox Business

Elise Oggioni

June 6, 2019

TAX - COLORADO

City of Golden v. Sodexo America, LLC

Supreme Court of Colorado - May 20, 2019 - P.3d - 2019 WL 2167903 - 2019 CO 38

Taxpayer, a food service provider for a college, sought review of municipal finance department's issuance of sales and use tax assessment.

The District Court granted summary judgment to municipality. Taxpayer appealed. The Court of Appeals reversed and remanded. Municipality petitioned for certiorari review, which was granted.

The Supreme Court held that:

- Sale of meals from taxpayer to college students occurred when the students paid college for their meal plans, rather than when students swiped meal plan cards and physically obtained the meals, and
- College's payment of taxpayer was a wholesale sales transaction and thus exempt from sales tax under municipal code; overruling *City of Golden v. Aramark Educational Services*, LLC, 310 P.3d 262.

Sale of meals from food service provider to college students, as would constitute the taxable event in determining whether sales tax applied under municipal code, occurred when the students paid college for their meal plans as part of students' residence hall contracts, rather than when students swiped meal plan cards and physically obtained the meals; students did not provide any consideration to provider for the meals but rather promised to pay college for the meals through residence hall contracts' meal plans, and swipe of meal plan card functioned as nothing more than accounting mechanism that allowed college to track number of meals that a student had used.

College's payment of food service provider, which purchased, prepared, and served food to students, under monthly invoice was a wholesale sales transaction and thus exempt from sales tax under municipal code, where it was college that sold the prepared food to students pursuant to students' residence hall contracts and their incorporated meal plans, and college sold food to students at a higher price than what college paid to provider; overruling City of Golden v. Aramark Educational Services, LLC, 310 P.3d 262.

TAX - CONNECTICUT

Tuohy v. Town of Groton

Supreme Court of Connecticut - May 28, 2019 - A.3d - 331 Conn. 745 - 2019 WL 2203731

Taxpayers, who owned real, residential property in certain neighborhood, brought action against town and town assessor, challenging assessed value of their properties following revaluation conducted by town and seeking reduction of assessments.

Taxpayers moved for class certification. The Superior Court granted motion. Action was thereafter transferred, and following trial to the court, the Superior Court entered judgment for town and assessor. Taxpayers appealed.

The Supreme Court held that:

- Assessor's use of 1.35 adjustment factor to compensate for patterns of undervaluation of properties in neighborhood was not illegal, and
- Taxpayers failed to present any credible evidence of property values, as required to prove that valuation was manifestly excessive.

Town assessor's use, during mass-appraisal process for revaluation of real property, of 1.35

adjustment factor to compensate for patterns of undervaluation of properties in certain neighborhood relative to other neighborhoods in town was not illegal; use of ratio studies and direct equalization via application of adjustment factors was established component of mass-appraisal practice under uniform standards of professional appraisal practice and was specifically embraced by body that promulgated standards, and, further, assessor's methodology was consistent with regulations promulgated by Office of Policy and Management, and Office itself ultimately certified results of appraisal.

Taxpayers, who owned real property in certain neighborhood and who challenged property values assessed during town's revaluation, failed to present any credible evidence of property values, as required to prove that valuation was manifestly excessive for purposes of statute providing remedy when property was wrongfully assessed, although one taxpayer testified that neighborhood experienced 25% decrease in home-sale prices in two years prior to revaluation, where town assessor testified that application of 1.35 adjustment factor to properties in neighborhood was necessary to bring median assessment-to-sales ratio for neighborhood in line with other neighborhoods in town and to keep properties in neighborhood from being undervalued, and therefore undertaxed, relative to rest of town.

'Park' Your Investments In Municipal Bonds.

Parks make places nicer. Communities with parks have healthier environments for residents, with better air quality, more opportunities for active living and positive social engagement. They benefit the regional economy as well. Parks and open spaces improve real estate values to nearby residents as well as attract visitors, in turn helping local businesses.

The county and city of San Francisco understands both the social and economic benefits of parks. Using its gilt-edged general obligation pledge (the city is rated Aaa/AAA/AA+), San Francisco issued $629.06 million in bonds through five series since 2010 for its Clean and Safe Neighborhood Parks program. San Francisco Recreation and Parks Department (SFRPD) applied the proceeds to acquire, expand, and improve the parks, playgrounds and other open spaces in the city.

Continue reading.

Forbes

by Barnet Sherman

Jun 8, 2019

Enacting a Phased-in 50 Percent LIHTC Allocation Increase Could Create More Than 384,000 Affordable Rental Homes.

One of the most important provisions of the Affordable Housing Credit Improvement Act (AHCIA) of 2019 is the proposal to increase 9 percent allocations. This provision is justified by the tremendous unmet need for more affordable rental housing production. More than 11 million renter households pay more than 50 percent of their income on rent, according to Harvard's Joint Center on Housing Studies. This dramatically affects these households' ability to pay for other necessary expenses, such as transportation, health care, nutritious food, education, among others. The United States has a shortage of more than 7 million rental homes that are affordable and available to extremely low-income households, according to the National Low Income Housing Coalition.

The temporary 12.5 percent allocation increase was an important first step, bringing back approximately 28,000 more affordable rental homes over 10 years. But the temporary increase did not fully restore lost production from tax reform, nor did it increase production to significantly help close the gap in unmet need for affordable rental housing.

To that end, section 101 of AHCIA would increase the LIHTC by 50 percent from the post fiscal year 2018 omnibus appropriations baseline phased in from 2020 through 2024. Using recent data from the National Council of State Housing Agencies (NCSHA), Novogradac estimates this provision would create more than 384,000 additional affordable rental homes from 2020 through 2029.

Continue reading.

Published by Dirk Wallace, Michael Novogradac, Peter Lawrence on Wednesday, June 5, 2019 – 12:00am

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The Trump Administration Said These Tax breaks Would Help Distressed Neighborhoods. Who's Actually Benefiting?

Part of the Tax Cuts and Jobs Act of 2017 was a provision known as Opportunity Zones that was designed to significantly boost the fortunes of low-income communities. Like many previous government tax-incentive efforts to spark investment in distressed areas, the provision offers tax benefits to those who invest in these neighborhoods. Some experts say it will significantly boost their fortunes, but others aren't as enthusiastic.

Governors in all 50 states and five U.S. territories have designated opportunity zones — more than 8,700 in total. The size of the program has the potential to dwarf earlier attempts to encourage investment in poor neighborhoods, such as the enterprise zone programs begun in the 1980s.

"The sheer size of it is transformative," says John Bailey, a visiting fellow at the American Enterprise Institute.

Continue reading.

The Washington Post

By Dan Weil

June 6

Clint Myers: Rise of the Rest and OZ Office Real Estate (Podcast Episode #33)

Will office real estate be the driver for much of the economic growth across the nation's Opportunity Zones? Clint Myers…

[Read More »]

June 5, 2019

[California Blight-Fighting Agencies May Be Revived for Housing.]

- **Lawmaker is eying new bond vehicle for redevelopment agencies**
- **Districts were killed in 2012 to help ease budget shortfall**

California redevelopment agencies used to embark on some dubious ventures such as golf courses before the blight-fighting agencies were abolished by the state legislature in 2012. Now, an assemblyman determined to revive them may also create a new vehicle to allow them to sell pooled bonds for affordable housing.

David Chiu, a Democrat from San Francisco, is reworking his bill to bring back the agencies funded by the extra taxes generated by development. Among the ideas he's vetting is pooling the tax revenue from participating cities and counties and issuing a bond through the state treasurer's office. Municipalities would receive their share of the proceeds based on the corresponding revenue from their tax-increment districts. The structure, by reducing the cost of debt, could generate 20% to 30% more funding that could be spent on housing, Chiu said.

Chiu is also considering how the projects could meet the state's climate change goals, such as encouraging new homes along transit corridors.

Chiu initially wanted his bill to be considered this year, but Governor Gavin Newsom's administration preferred to focus on other initiatives to boost housing production, he said. The latest iteration of his bill may emerge later this year or early next, he said.

"I have full intent to move this forward," Chiu said. "This is a crucial element in addressing the affordable housing crisis."

Former Governor Jerry Brown pushed to eliminate redevelopment agencies in order to redirect property-tax revenue to schools and other purposes amid a budget crisis. Newsom during his campaign for governor last year expressed support for bringing them back for housing. His spokesman Nathan Click didn't return requests for comment.

Chui's plan will encompass "the best elements of redevelopment, with modern 21st century changes not revisiting the mistakes of the past," he said. "This is not trying to address blight or some antiquated notion of urban renewal."

Bloomberg Markets

By Romy Varghese

June 6, 2019, 8:00 AM PDT

[Connecticut Closes a $3.7 Billion Deficit Without an Income-Tax Hike.]

- **$43 billion budget gets mostly positive reviews from investors**
- **‘But the elephant in the room is still there,’ analyst says**

Connecticut’s $43 billion two-year budget, which spares residents an income-tax increase, is getting mostly positive reviews from investors.

The budget, approved by the Democratic-controlled House on Monday and by the Senate late Tuesday, closes a $3.7 billion gap. It maintains a hospital tax that generates $1 billion over two years, raises or expands the sales tax on everything from digital downloads to prepared foods and cuts employee healthcare cost by $185 million.

However, lawmakers largely avoided tackling the rising costs of debt service, pensions and healthcare that eat up more than 30% of state spending.

“‘It’s positive that they closed the gap and didn’t raise income taxes and increasingly push wealthier residents out of the state,” said Richard Schwam, a municipal credit analyst at AllianceBernstein LP. “But the elephant in the room is still there.”

Connecticut’s finances are on the mend as a surge in income-tax revenue boosts the rainy day fund to a projected $2.6 billion at the end of the fiscal year, providing a cushion for the next recession. Higher tax collections led S&P Global Ratings Inc. to raise its outlook on Connecticut’s debt and ease pressure on the state to demand big concessions from public employees unions or cut spending.

Connecticut’s borrowing costs relative to top-rated municipal debt has plunged by 0.4 percentage point since the beginning of the year as residents clamor for tax-exempt debt in the wake of the federal cap on state and local tax deductions.

Still, the fiscal stress that has pushed Connecticut’s rating to the third-lowest among U.S. states is likely to continue. Lawmakers rejected Democratic Governor Ned Lamont’s proposal to shift a quarter of teachers’ pension costs to municipalities and haven’t yet agreed to a ‘debt diet’ proposed by Lamont that would shrink state borrowing by 39% annually.

The state and public employee unions are still negotiating Lamont’s proposal to tie cost-of-living increases for retirees to pension performance. A proposal by Lamont to toll state’s major highways to pay for new roads, bridges and mass transit will be taken up in a special session of the Legislature.

The budget stretches repayment of the $14 billion shortfall of its teachers’ pension to 30 years instead of 12, while reducing the assumed rate of return on investments to 6.9% from 8%. The move will allow the state to avoid a 60% increase in annual pension payments by 2032, but will cost taxpayer an additional $17 billion over the 30 year period, according to Nuveen, the investment firm.

“It kicks the can down the road,” said Daniel Barton, co-manager of Mellon Investments Corp.’s Connecticut municipal bond fund. “While it helps the budget in the near term its now a long-term problem.”

Lamont promised not to raise income taxes during his gubernatorial campaign last year and he kept that promise in his first budget. To the relief of Connecticut’s wealthiest residents, a proposal by some Democrats to levy a 2% capital gains surtax wasn’t in the budget.

And while the spending plan didn’t increase the sales-tax rate, it extended the 6.35% tax to services like dry cleaning, interior design and parking. It also imposes a 1% tax on prepared foods and beverages, including restaurant meals, and increases taxes on partnerships and limited liability corporations.

“There is incremental improvement,” said Andrew Clinton, president of Stamford, Connecticut-based Clinton Investment Management, which manages more than $650 million municipal bonds. “They got a budget agreement in a fairly orderly fashion. They’re setting aside a significant sum for the rainy day fund.”

At this time last year, Clinton’s firm didn’t hold any debt issued by the state. Now, it’s one of its biggest holdings across client portfolios, evidence of his confidence Connecticut’s finances are turning around.

In order to restructure the teachers’ pension and comply with a covenant in a $2.1 billion pension bond issued in 2008, Lamont proposed establishing a special capital reserve fund using $381 million of the state’s surplus equal to the maximum annual debt service on the pension bond. The state will use another $160 million of the surplus to settle litigation with the state’s hospitals involving the state’s provider tax.

Bloomberg Markets

By Martin Z Braun

June 5, 2019, 6:31 AM PDT Updated on June 5, 2019, 8:00 AM PDT

Fitch: Evaluating KCI’s Airport Modernization Program.

Kansas City International Airport’s obligation bonds ‘A’, outlook stable. Fitch will discuss the key risks it evaluated in its analysis of KCI’s nearly $1 billion debt issuance.

Speakers:

Scott Zuchorski – Senior Director, Global Infrastructure and Project Finance

Seth Lehman – Senior Director, Global Infrastructure and Project Finance

Jeffrey Lack – Director, Global Infrastructure and Project Finance

Listen Now

Will Legalizing Marijuana and Sports Betting Solve Illinois' Budget Problems?

The state, which has worse credit than any other and has had chronic budget deficits, passed a fiscal plan this week that relies on new revenue sources to help pay down its massive debt.

After years of passing late budgets — or no budget at all — in the era of bitter partisanship under former Republican Gov. Bruce Rauner, Illinois this week finalized one of its most comprehensive spending plans in recent memory.

It's a nearly $40 billion, blockbuster budget that intends to raise revenue by legalizing recreational marijuana and sports betting, and places a constitutional amendment on the 2020 ballot to change the state's income tax structure. It represents a 2 percent spending increase, some of which will boost public education and child welfare funding. Lawmakers also passed an additional $45 billion infrastructure plan.

While signing the budget Wednesday, Democratic Gov. J.B. Pritzker, who took office in Janurary, said leaders had "achieved something that has eluded state government for decades — we passed a real balanced budget."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 6, 2019 AT 4:34 PM

New Report Highlights Acquisition Trends in the U.S. Water Market.

The U.S. municipal water landscape is undergoing a transformation as critical infrastructure services — water, gas, and electricity — converge under single investor-owned utility banners. This trend is highlighted by the growing roster of diversified infrastructure service providers owning water and wastewater utilities in the U.S., according to a new report from Bluefield Research.

The recent report, "U.S. Private Water Utilities: Drivers, Competitive Landscape and Acquisition Trends, 2019," provides in-depth analysis of investor-owned water utility strategies and of 517 water and wastewater system acquisitions from 2015 through 2018, including Eversource Energy's $1.68 million (USD) for Aquarion Water, NW Natural's roll-up of smaller systems in the Pacific Northwest, and Aqua America's $4.3 billion (USD) acquisition of People Gas.

Of the 517 transactions identified by Bluefield from 2015 to 2018, 366 of them were executed by private buyers. While ushering in new market entrants and reshaping the competitive landscape, regionally, these deals also reflect growing interest in private investment in the U.S. municipal water sector from water industry outsiders.

"The consolidation of critical infrastructure services is not a new phenomenon, and current market conditions are re-reinforcing this trend," said Reese Tisdale, president of Bluefield Research. "It wasn't all that long ago, in 2001, that German electric power company RWE acquired American Water for US$7.6 billion, only to spin it out in 2008. This most recent wave of M&A feels different in that municipalities and system owners are being forced to weigh the benefits of outsourcing against owning and operating a portfolio of aging assets."

These diversified service providers now active in water are poised to gain from their proven experience with utility commissions, rate cases, customer management, and infrastructure finance. They are also going head-to-head with well-established IOUs, demonstrated by Eversource's competing bid–against SJW Group–for northeast regional IOU, Connecticut Water. Given the mounting financial, regulatory, and environmental pressures on municipal water and wastewater systems–particularly for smaller, private system owners–the steady flow of M&A is expected to continue and open the door further to new entrants.

While the municipal market, as a whole, is highly fragmented, the private share of the market is more structured. The IOU landscape is segmented among well-established frontrunners (e.g. American Water, California Water Services, Suez), regional firms (e.g. Artesian Water, Central States Water), diversified service providers (e.g. Eversource Energy, American States), and a circling group of financial investors (e.g. PGGM, Ridgewood Infrastructure, Pacolet Milliken). Private ownership of U.S. municipal water systems currently stands at 15 percent, of which approximately half is held by these IOUs, according to Bluefield's analysis.

"The market is increasingly dynamic, particularly when considering new market entrants and a broader need for rehabilitation of U.S. infrastructure," says Tisdale. "Annual capital and operating expenditures for public systems are already approaching US$60 billion and US$90 billion by the end of the decade, respectively. What is more concerning is that this does not fully account for the looming external pressures on system operators, including larger, more frequent stormwater events, algae blooms, and PFAs remediation that will heighten needs for capital, operating experience, and advanced technologies."

Underpinning this scaling interest in municipal water infrastructure investments from outsiders and insiders is a more favorable policy environment enabling acquisitions of community water and wastewater systems. Fair Market Value (FMV) policies in nine states–and pending legislation in others–are incentivizing municipalities to sell utilities based on appraised value rather than book value. Still, more than 60 percent of acquisitions are for private systems, rather than those owned by municipalities.

"There is no one answer to addressing aging water infrastructure in the U.S., including ownership, private or public," adds Tisdale. "What we are seeing through M&A and evolving ownership structures, is an indication that municipalities, utility leaders, and regulators are beginning to change their thinking."

BY WFM STAFF

JUNE 10, 2019

Credit Analysts Cautious Over Illinois Budget, Infrastructure Plan.

CHICAGO (Reuters) – Some results from Illinois' action-packed spring legislation session that produced a budget and a variety of revenue-raising measures won initial praise on Monday from credit rating analysts, who cautioned that fiscal challenges remain.

Lawmakers wrapped up the session on Sunday, passing a $40.1 billion fiscal 2020 budget and a $45 billion infrastructure plan, along with a variety of tax and fee hikes and projected new revenue from a massive gambling expansion that includes sports betting, and from legalizing recreational marijuana.

Illinois has the lowest credit ratings among U.S. states at a notch or two above the junk level due to its huge $133.5 billion unfunded pension liability and chronic structural budget deficit.

Carol Spain, an S&P Global Ratings analyst, said the state's recently increased forecast for income tax collections along with revenue measures passed by the legislature resulted in a budget with "few one-time revenues."

"In S&P Global's view, the fiscal 2020 budget signals near-term credit stability and buys the state more time to address out-year gaps," she said in an email.

Spain added that to maintain an investment-grade rating, further progress is needed "toward sustainable structural balance, paying down its bill backlog, and addressing its pension liabilities."

Ted Hampton, a Moody's Investors Service analyst, said full payment of Illinois' fiscal 2020 pension contribution, which lawmakers said was in the budget, would be a positive move.

After an unexpected income tax revenue surge in April, Democratic Governor J.B. Pritzker dropped a proposal to extend the state's current 50-year pension payment plan and reduce the coming fiscal year's contribution.

Hampton said he will have to look at a provision in the budget that would restore a 6% cap on end-of-career teacher salary increases that had previously been lowered to 3% to cut pension costs.

Lawmakers also voted for a three-year extension of a bond-financed pension benefit buyback program also aimed at reducing costs.

A "Rebuild Illinois" capital plan passed by lawmakers is supported by higher taxes on gasoline, parking, and cigarettes, as well as money from a gambling expansion that adds casinos, including the first for Chicago.

"Generally, when we see states gathering the political courage to do things like raise gasoline taxes for an infrastructure plan that's also positive," Hampton said.

The $20.8 billion of bonds included in the plan would "substantially" increase Illinois' debt burden, according to Spain.

"The new revenues that will support increased debt service will relieve some state operating pressure, but Illinois' large liabilities will continue to weigh on its credit profile," she said.

Meanwhile, Illinois' yield penalty in the U.S. municipal bond market, the biggest among states, has shrunk to its lowest level since 2014 for 10-year bonds, according to Municipal Market Data (MMD). The state's bonds are yielding 139 basis points over MMD's benchmark triple-A yield scale, down from as much as 185 basis points earlier this year.

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

Monday, June 03, 2019 6:04 p.m. EDT

Baltimore Officials Estimate Damage From Ransomware Attack At Over $18 Million, Likely to Rise.

Early last month, hackers infected somewhere around 10,000 Baltimore, Maryland city computers with a "file-locking" ransomware variant called RobbinHood. Those hackers demanded a ransom of 13 bitcoin (at the time worth around $76,000, and today around $100,000) that would go up over time if it was not promptly paid out—and which the city refused to pay out.

According to a Wednesday report in Ars Technica, Baltimore Mayor Bernard "Jack" Young told reporters on Tuesday that crucial city services were now open for business, despite ongoing disruption. City Finance Director Henry Raymond added that some email accounts and phone lines had been restored, though many municipal payment and finance systems had to be operated in manual modes. Ars wrote that Young estimated the ongoing damage to be over $18 million, including “$8 million lost because of deferred or lost revenue while the city was unable to process payments.”

Notable concerns included problems with access to parking and traffic violation databases, which along with some other systems were for the time being dependent on “paper documents and manual workarounds,” Ars wrote. Additionally, a slow and labor-intensive process of authenticating and restoring login credentials for around 10,000 city employees is still ongoing and may not be complete until the end of the week:

Continue reading.

gizmodo.com

by Tom McKay

Wednesday 9:50pm

Moody’s Raises Concerns over R.I. Continuing-Contracts Law.

PROVIDENCE — A warning from one of the nation’s largest credit-rating agencies, Moody’s Investors Service, has revived the debate over the union-backed continuing-contract legislation that Governor Raimondo signed last month over the objections of city and town leaders.

The new continuing-contract law indefinitely locks in wages and benefits in expired public-employee contracts. The teacher union lobbyists who took the lead in pushing the bill said it was aimed at preventing cities and towns from unilaterally slashing pay or making employees pay more for their health insurance during deadlocked negotiations.

“The law has the potential to provide collective bargaining units with advantages in negotiations,″ Moody’s public-finance division wrote in a special report out Thursday that echoed one of the biggest concerns raised by Rhode Island mayors and town administrators.

Among the report’s observations: Impact can vary from one city and town to another. Those that “budget conservatively and plan for wage growth” are best positioned to get through a contract dispute. And the fact that the new law does not impede the ability of cities and towns to lay off employees during any such standoff gives them an option if locked-in wages and benefits put them in a financial bind.

If, however, “the law proves to be a significant impediment to local governments’ ability to negotiate labor contracts, therefore making expenditure management more difficult, it would be credit negative,″ the Moody’s report says.

The headline over an accompanying chart says: “Education and public safety costs drive expenditure growth for Rhode Island cities and towns. New legislation regarding collective bargaining has potential to limit expenditure management flexibility.”

“Rhode Island is not the only state with a version of continuing contract legislation,″ the report says.

New York has a similar law, and "we believe that the law generally limits New York local governments' expenditure flexibility," Moody's says.

There was no immediate response from Democrat Raimondo, who vetoed an earlier version of the continuing-contract legislation in 2017. She signed this year's version after winning an endorsement for her 2018 reelection bid from a former political antagonist, the National Education Association of Rhode Island, and other public employee unions.

Among the unanswered questions: Did state Treasurer Seth Magaziner seek advice from the credit-rating agencies as the high-profile legislation was moving through the General Assembly, and before Raimondo signed it?

In answer to that same question, Raimondo spokesman Josh Block said: "No. She spoke with a wide array of stakeholders, including municipal leaders, union leaders and members of the General Assembly. This bill preserves what has already been the status quo in most instances, is standard practice in the private sector, and is existing policy in our neighboring states."

Rhode Island is currently rated "Aa2" stable.

In her 2017 veto message, Raimondo said:

"Current Rhode Island law protects the taxpayers from being obligated indefinitely for contract provisions that, in the future, may not be affordable. … The proposed legislation before me extinguishes this existing protection, hurting the public's position in contract negotiations, and placing taxpayers at risk of being forever locked into contractual provisions they can no longer afford."

In a statement explaining her turnaround, Raimondo said the more recent bill differs from the one she vetoed, which "went too far in automatically extending all provisions in collective-bargaining agreements for municipal employees and teachers until a successor agreement has been reached."

This version only locks in wages and benefits, she said.

Brian Daniels, executive director of the R.I. League of Cities and Towns, and Thursday: "This Moody's report echoes the exact concerns that our municipal leaders made to the General Assembly and the Governor.

"With personnel the largest component of a municipal budget, the contract continuation law will make it much harder to negotiate labor contracts, balance competing local budget needs and control spending. Now Moody's is saying that it could also harm a community's bond rating, making it more expensive to borrow money for infrastructure and school improvements. It is unfortunate that the General Assembly and the Governor ignored local officials, and now property taxpayers will bear the burden of the new law."

newportri.com

By Katherine Gregg
Journal Political Writer

Jun 6, 2019 at 2:52 PM

- New GASB Standard Clarifies Conduit Debt Reporting.
- BDA Comment Letter: MSRB Request for Comment on Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive
- MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales: SIFMA Comment Letter
- Muni Market Torn On Revisiting Municipal Advisor CUSIP Requirements.
- Fitch Ratings Finalizes U.S. Public Power Rating Criteria
- Fitch Ratings: Updated U.S. Public Finance Tender Option Bond Criteria
- IRS Provides Guidance on Refinancings of Tribal Economic Development Bonds – Refinancings of TEDs and Other Targeted Bond Programs Allowed Without Additional Volume Cap Allocation: Holland & Knight
- BLX/Orrick Post-Issuance Compliance Webinar: 2019 Updates from the Front Line
- Opportunity Zones Give Big Law 'Pop-Up' Teams Plenty of Work.
- *Noteware v. Turner* – Court of Appeals holds that the "capable of repetition, yet evading review" exception to the mootness doctrine did not apply to plaintiff's election contest against city, challenging sufficiency of ballot language setting out a pension obligation bond measure (specifically, whether the city had adequately disclosed that the bond measure authorized the city to levy a tax in excess of the revenue cap in order to pay off the bonds), where plaintiff presented no evidence that a similar discrepancy between language of proposed proposition and the ballot language would occur in the future, or could not be challenged and litigated fully. Worth a read for those of you who might encounter an analogous scenario.
- And finally, Department of Public Works – Office of Mental Health is brought to us this week by *De Zapata v. City of New York*, in which the court referred to the sidewalk on which pedestrian tripped and fell as, "broken and depressed." We feel ya', sidewalk. We feel ya'.

EMINENT DOMAIN - ARIZONA

Arizona Electric Power Cooperative, Inc. v. DJL 2007 LLC

Court of Appeals of Arizona, Division 1 - May 9, 2019 - P.3d - 2019 WL 2052325

Electric power company brought actions to condemn rights of way for electric transmission lines after the expiration of its original right of way that it obtained from the Bureau of Land Management (BLM) before the BLM transferred the public land to private owners. A second power company intervened.

The Superior Court granted companies' motion for partial summary judgment. Landowners appealed and companies cross-appealed.

The Court of Appeals held that:

- Companies' mere occupation after expiration of original right of way was not a taking establishing valuation date for just compensation for new rights of way, and
- Value of companies' pre-taking improvements would not be included when calculating just compensation.

Electric power company, a private corporation with power of eminent domain, could not effect a taking by occupation after expiration of its right of way that Bureau of Land Management (BLM) had granted it for electric transmission lines, and therefore the valuation date for purposes of fixing just compensation to new private landowners, who were BLM's transferees, for company's new rights of way was not the date of expiration of original right of way but the date that the jury determined damages and company paid full compensation; company simply became a holdover tenant on date of expiration of original right of way, and company could not take landowners' property in a constitutional sense until after trial and payment.

Power companies retained ownership of electric transmission lines and structures after expiration of right of way from Bureau of Land Management (BLM), and therefore the value of companies' improvements would not be included when calculating just compensation to private landowners, which were BLM's transferees, for companies' condemnation of new rights of way for lines, even though companies failed to pay rent to landowners and promptly remove the improvements from the property, where landowners did not demand removal of the lines and structures after the grant expired, companies were holdover tenants between expiration of the grant and the date of the taking, and landowners were found entitled to rental damages.

PUBLIC UTILITIES - CALIFORNIA

Plantier v. Ramona Municipal Water District

Supreme Court of California - May 30, 2019 - P.3d - 2019 WL 2292829

Commercial property owners brought putative class action to invalidate a wastewater service charge imposed by municipal water district, seeking declaratory relief and refund of charges.

The Superior Court held bifurcated bench trial and ultimately dismissed for lack of exhaustion of administrative remedies. Property owners appealed. The Court of Appeal reversed and remanded. Review was granted.

The Supreme Court held that public hearing pursuant to Proposition 218, which placed restrictions on assessments and property-related fees and established majority protest remedy, to consider a rate increase was inadequate to resolve property owners' challenge, and thus even if hearing constituted an administrative remedy, property owners were not required to exhaust it.

Public hearing pursuant to Proposition 218, which placed restrictions on assessments and property-related fees and established majority protest remedy, to consider a rate increase was inadequate to resolve commercial property owners' challenge to method of calculating wastewater service charges, and thus even if hearing constituted an administrative remedy, property owners were not required to exhaust it prior to bringing action against municipal water district; as noticed, hearing would not have permitted agency to change method for calculating fee, since change in method was considered fee increase rather than rate increase, and Proposition 218 did not define what consideration was required to be given to protests.

ATTORNEYS' FEES - FEDERAL

McCarty v. United States

United States Court of Federal Claims - April 9, 2019 - 142 Fed.Cl. 616

Landowners brought rails-to-trails action against United States, alleging Fifth Amendment takings claims.

Parties settled. Landowners moved for attorney fees.

The Court of Federal Claims held that:

- Difference between St. Louis rates and forum rate was not very significant, and therefore application of locality-rate exception was not warranted;
- United States had to reimburse landowners' counsel based on historic, not current, hourly forum rates determined according to United States Attorney's Office (USAO) Matrix;
- Fees in excess of amount recovered could be awarded;
- Counsel's recovery of attorney fees for hours expended on issue of fee recovery, known as "fees on fees," had to be reduced by 50%;
- Hours expended on class certification and decertification were reimbursable;
- Hours that were devoted to "client development" were reimbursable;
- Counsel's hourly rates had to be reduced by 50% for billing entries that did not reflect case-related work performed simultaneously with travel; and
- Billing entries reflecting managing client data, preparing exhibits, preparing case law database, and compiling documents for oral argument had to be reimbursed at paralegal rates.

Difference between St. Louis rates and forum rate was not very significant, and therefore application of locality-rate exception was not warranted on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; highest number of hours expended in St. Louis were those of paralegal, who billed approximately 32 percent of claimed hours, and some of this paralegal's work was done in Indiana, where the takings occurred, and landowners were represented by national law firm and disparity between firm's District of Columbia rates and St. Louis rates was only 15%.

United States had to reimburse landowners' counsel based on historic, not current, hourly forum rates determined according to United States Attorney's Office (USAO) Matrix, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, since matrix was based on changes in prices for goods and services, including legal services in Washington, D.C. and court was applying that forum rate.

Attorney fees in excess of amount recovered could be awarded, on claim under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, due to unusually contentious fee dispute prompted in large part by tactical approach by United States and hours landowners' counsel were forced to expend litigating that aspect of case.

Landowners' counsel's recovery of attorney fees for hours expended on issue of fee recovery, known as "fees on fees," had to be reduced by 50%, on claim under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims, since work done in current case was duplicative of work performed in related cases.

Hours expended on class certification and decertification were reimbursable, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; case initially involving over 200 properties and 66 plaintiffs reasonably was treated as candidate for class action even though such procedure ultimately became untenable as litigation ran its course.

Hours that were devoted to “client development” were reimbursable, on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims, since tasks listed were all directly related to litigation and necessary for pursuing landowners’ claims.

Counsel’s hourly rates had to be reduced by 50% for billing entries that did not reflect case-related work performed simultaneously with travel, on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims.

Claimed hours that included both travel and reimbursable work, such as preparing for and attending meetings with landowners in Indiana, follow-up from client meetings, trail and property inspections, meeting with appraiser, and preparing for and conducting depositions could be reimbursed at timekeepers’ full hourly rates on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims.

Billing entries reflecting managing client data, preparing exhibits, preparing case law database, and compiling documents for oral argument had to be reimbursed at paralegal rates, on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims, since those hours constituted administrative work.

Claimed hours for team meetings, motions to strike and fee application, subpoena responses, expert work, and trial preparation could be reimbursed at each timekeeper’s regular rate, on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims.

Billing entries for compiling plaintiff data from geographic information system mapping, drafting “follow-up letters,” researching, drafting legal memoranda, conducting team meetings and strategy sessions, and reviewing pleadings were reimbursable at each timekeeper’s regular rate, on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims; those tasks, including mapping, were legal in nature because case involved properties whose boundaries had to be defined to establish liability and damages.

Recurring vague billing entries warranted 50% reduction, on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims.

Timekeeping entries that did not provide sufficient level of detail to allow court to effectively review reasonableness of claimed hours had to be reduced by 25% on grounds of “block billing,” on claim for attorneys’ fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners’ rails-to-trails action against United States alleging Fifth Amendment takings claims.

On a claim for attorneys’ fees under the Uniform Relocation Assistance and Real Property

Acquisition Policies Act (URA), block billing entails lumping tasks together in time entries rather than making such entries task-by-task; block billing poses the same difficulties as vague entries, in that it prevents a court from determining whether the claimed hours are reasonable due to the lack of detail.

Hours expended on unsuccessful claims were reimbursable, on claim for attorneys' fees under Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) in Indiana landowners' rails-to-trails action against United States alleging Fifth Amendment takings claims; although 102 of 219 claims were voluntarily dismissed via stipulation, research performed on all properties, even those resulting in unsuccessful claims, was useful in framing and ultimate resolution of case.

PUBLIC UTILITIES - INDIANA

Graham v. Town of Brownsburg

Court of Appeals of Indiana - May 21, 2019 - N.E.3d - 2019 WL 2181195

Homeowners brought action against municipality for declaratory and injunctive relief, regarding an ordinance which raised water utility rates.

The Circuit Court granted summary judgment in favor of municipality, based on failure to exhaust administrative remedies. Homeowners appealed.

The Court of Appeals held that administrative review would not have been futile.

Administrative review of homeowners' constitutional challenge against a municipal ordinance, which raised water utility rates for those dwelling outside of municipal boundaries, would not have been futile, and thus homeowners were required to exhaust administrative remedies prior to seeking judicial relief; upon conducting administrative review, municipality could have decided to change or repeal the ordinance on the basis of double-charging or harassment of annexation remonstrators.

LIABILITY - NEW YORK

De Zapata v. City of New York

Supreme Court, Appellate Division, Second Department, New York - May 29, 2019 - N.Y.S.3d - 2019 WL 2275251 - 2019 N.Y. Slip Op. 04132

Pedestrian brought action against city, seeking to recover damages for personal injuries sustained when she fell while walking on sidewalk.

The Supreme Court, Kings County, granted summary judgment in favor of city. Pedestrian appealed.

The Supreme Court, Appellate Division, held that city was not liable for pedestrian's injuries.

City was not liable for injuries pedestrian sustained when she fell while walking on sidewalk; city did not have prior written notice of alleged hole, ditch, or icy condition pedestrian claimed to have caused her fall.

EMINENT DOMAIN - NEW YORK

City of Long Beach v. Sun NLF Limited Partnership

Supreme Court, Appellate Division, Second Department, New York - May 15, 2019 - N.Y.S.3d - 2019 WL 2112808 - 2019 N.Y. Slip Op. 03784

In condemnation proceeding, the Supreme Court, Nassau County, awarded condemnee attorney fees in the sum of $831,303.22, expert fees in the sum of $65,100, and costs and disbursements in the sum of $2,133.90. Both parties appealed.

The Supreme Court, Appellate Division, held that contingency fee of $1,366,250 was a reasonable award of attorney fees to condemnee.

Contingency fee of $1,366,250 was a reasonable award of attorney fees to condemnee in condemnation action, even though retainer agreement executed by condemnee provided that condemnee's counsel would receive 20% of first $500,000 of excess over condemnor's initial offer and 15% of any further excess received by condemnee, where the retainer agreement was executed after condemnor's initial offer, condemnor's initial offer undervalued property worth $11.8 million at just $2,080,000, and a great deal of effort was required to establish the highest and best use of the properties.

ZONING & PLANNING - PENNSYLVANIA

Circleville Road Partners, L.P. v. Township of Ferguson

Commonwealth Court of Pennsylvania - May 15, 2019 - A.3d - 2019 WL 2111827

Landowner sought review of decision by township planning commission changing zoning ordinance.

The Common Pleas Court issued order in favor of commission, and landowner appealed.

The Commonwealth Court held that:

- Zoning ordinance change which permitted use "by one family or up to four unrelated persons" did not change definition of family;
- Permitted use "by one family or up to four unrelated persons" was in keeping with purpose of traditional town development (TTD) mixed use zoning district;
- Changes permitting drive-through services, did not create new land use category;
- New standards for board of supervisors to grant modifications from design elements did not constitute map change;
- Adjustments to existing design and dimension standards did not create new zoning scheme; and
- Changes were not so comprehensive as to result in substantial change to single tract of land as compared to other similarly situated properties in district.

LABOR & EMPLOYMENT - TEXAS

Houston Independent School District v. Texas Workforce Commission

Court of Appeals of Texas, Austin - April 26, 2019 - S.W.3d - 2019 WL 1890611

School district brought action against State Workforce Commission to recover allegedly overpaid unemployment taxes.

The District Court, Travis County granted Commission's motion for summary judgment and denied school district's motion for summary judgment. School district appealed.

The Court of Appeals held that:

- Statute governing collection of contribution from a successor employer applied to all employers, including non-profit organizations and governmental entities;
- Statute governing allocation of a school's indebtedness and personal property did not preclude State Workforce Commission from recovering disputed reimbursement for unemployment compensation benefits paid to former employees of school district that was annexed by another school district without first seeking approval from county commissioners; and
- Statute governing collection of contribution from a successor employer required school district that annexed another school district to reimburse State for unemployment benefits distributed to former employees of annexed school district.

BOND ELECTION - TEXAS

Noteware v. Turner

Court of Appeals of Texas, Houston (1st Dist.) - May 21, 2019 - S.W.3d - 2019 WL 2180635

Election contest was brought against city, challenging sufficiency of ballot language setting out a pension obligation bond measure.

The District Court granted city's plea to the jurisdiction and dismissed the action. Plaintiff appealed.

The Court of Appeals held that:

- Election contest was moot, and
- The "capable of repetition, yet evading review" exception to the mootness doctrine did not apply.

Election contest against city challenging ballot language setting out a bond measure was moot, where city followed statutory procedure for issuing bonds, bonds were approved by Attorney General and registered by Comptroller of Public Accounts, bonds were issued and sold based on city's ability to repay bonds without violating revenue cap in its charter, taxes to finance the bonds were levied, and sinking fund was created.

The "capable of repetition, yet evading review" exception to the mootness doctrine did not apply to plaintiff's election contest against city, challenging sufficiency of ballot language setting out a bond measure, where plaintiff presented no evidence that a similar discrepancy between language of proposed proposition and the ballot language would occur in the future, or could not be challenged and litigated fully.

IMMUNITY - TEXAS

[Tarrant County v. Bonner]

Supreme Court of Texas - May 24, 2019 - S.W.3d - 2019 WL 2256509 - 62 Tex. Sup. Ct. J. 1170

Inmate sued county for injuries allegedly sustained when chair he sat in at county jail collapsed.

The District Court granted county's motion for summary judgment. Inmate appealed. The Fort Worth Court of Appeals reversed. County filed petition for review.

The Supreme Court held that county was immune from liability for inmate's alleged injuries.

There was no evidence of conscious indifference or recklessness, and thus county was immune from liability for injuries allegedly suffered by inmate when allegedly defective chair, which had been stored in locked multipurpose room after it collapsed when officer sat on it, collapsed during inmate's treatment for diabetes, although officer was aware that multipurpose room was sometimes used by jail nurses for medical examinations; there was no evidence of frequency of those examinations, how likely chair was to be used in examinations, or other circumstances that might have made those using chair particularly vulnerable to extreme injury.

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

Link to Fitch Ratings' Report(s): U.S. Public Power Rating Criteria

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

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

PRIMARY CRITERIA CHANGES

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

RATINGS IMPACT

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

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

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

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

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

Link to Fitch Ratings' Report(s): U.S. Public Finance Tender Option Bond Rating Criteria

Fitch Ratings-New York-31 May 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Tender Option Bond Rating Criteria." This report updates the prior report published on March 22, 2019. The key elements of Fitch's tender option bond rating criteria remain consistent with those of its prior criteria report.

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Congress, It's Time to Bring Back Advance Refunding Bonds.

What can help local governments finance critical new infrastructure, help cities better-weather a recession and save local taxpayer money? It's not a miracle, nor is it a novel concept. Up until the passage of the Tax Cuts and Jobs Act in 2017, municipalities were able to use a tool known as advance refunding bonds to lower interest rates and achieve cost savings to spend on other local priorities.

Similar to a home mortgage refinancing, advance refunding bonds allowed a city, town or village to refinance outstanding bonds to take advantage of lower interest rates. Over the years, the tool helped save communities substantial amounts of local dollars. The Government Finance Officers Association (GFOA) estimates that advance refunding bonds saved state and local governments a minimum of $14.3 billion between 2012 and 2017.

In Houston, we used tax-exempt advance refunding bonds to save the city $186.6 million between 2016 and 2017 alone—the last two years the tool existed. These were useful savings — particularly in the wake of one of Houston's most devastating natural disasters — Hurricane Harvey. Not to mention unrealized savings could otherwise be used to fix deteriorating infrastructure, hire police officers or build a neighborhood park. Restoring the tax exempt status enables us to better prepare for the next disaster while meeting the growing demand for essential services in a growing city.

Advance refunding bonds also provided communities like Houston with a tool to better endure recessions. Interest rates tend to fall during economic downturns; at the same time, local property and sales tax revenues plummet for cities. These bonds would allow us to change an otherwise fixed cost when our residents and cities hit hard times.

And while we may be the fourth largest city in America, communities of all sizes—big and small—have used the tool to reach savings of at least three to five percent on their bonds. That's real savings for any community. And, that's real money for new bridges, better schools, safer communities, cleaner water and lower property taxes.

So, as Chair of NLC's Finance, Administration and Intergovernmental Relations (FAIR) Committee, I welcomed the introduction of the Investing in Our Communities Act (H.R. 2772), which would restore tax-exempt advance refunding bonds. I also applaud the Chairs of the House Municipal Finance Caucus—Congressmen Ruppersberger (D-MD-2) and Stivers (R-OH-15)—who introduced the bill earlier this month. More than ever, our communities need bipartisan, commonsense policy.

Now as local leaders, it's on us to build both awareness for this critical tool and support for H.R. 2772. Call on your members of Congress and make sure federal leaders in Washington know what bonds have built in your community.

National League of Cities

By NLC Staff

May 30, 2019

Municipal Bonds: When Full Faith And Credit Falls Flat.

Summary

- **With the proportion of retired pensioners and lifespans increasing across the globe, many governments face a challenging dilemma: how to raise enough tax revenues from the young to pay for the pensions promised to the retired?**
- **Pension liabilities didn't rattle US municipal bond markets much before the financial crisis a decade ago.**
- **Illinois bond ratings are already skating just one notch above "junk" status. If Illinois gets downgraded, the pain could be sharp.**

Once upon a time, US municipal bonds were generally considered less risky than corporate bonds. Backed by the full faith and credit of state governments, investors had confidence they would receive their principal plus interest without fail. Times have changed. For some states and local governments, decades of financial mismanagement and massive pension liabilities are threatening to upend the full faith and credit pledge. In this article, Franklin Templeton Fixed Income takes a look at the situation, with Illinois being an example of a particularly dire case.

As municipal bond analysts, assessing pension risks hinges partly on the willingness of elected officials to implement tangible pension reforms. Absent that, large pension obligations can significantly degrade budgets, credit quality, and eventually impair bondholders.

Continue reading.

Franklin Templeton Fixed Income Group

By Sheila Amoroso, Senior Vice President, Director, Municipal Bond Department; Daniel Workman, CFA, Vice President, Portfolio Manager; Jennifer Johnston, Vice President, Research Analyst; and John W. Wiley, Senior Vice President, Portfolio Manager, Franklin Templeton Fixed Income Group

May 30, 2019

Muni Market Torn On Revisiting Municipal Advisor CUSIP Requirements.

Market participants are torn on whether the Municipal Securities Rulemaking Board should eliminate a one year-old requirement that municipal advisors apply for CUSIP numbers when advising on competitive sales.

Some stakeholders said it should be an underwriter's job and that applying for the CUSIP is burdensome to MA's, while other market groups disagreed and said the rule did not need to be revisited. The debate stems from the MSRB's February decision to seek comment on whether it should do away with 2018 amendments to its Rule G-34 on CUSIP requirements. Those amendments said all municipal advisors, whether dealer or non-dealer, needed to apply for CUSIP numbers when advising on a competitive new issue.

CUSIP numbers are six and nine sets of numbers and letters that identify an issuer and each maturity of a municipal issuance. The board said in its notice that in light of the market's experience with the rule in operation after its effective date, along with additional stakeholder input and the burden on municipal advisors in practice that it determined a retrospective review of the CUSIP requirement was needed.

The National Association of Municipal Advisors said Tuesday that many of the issues the group raised in 2017 reflect its current comments and that there were no market problems relating to CUSIP numbers that necessitated the rule change last year.

"…Instead of taking the Rule that was developed prior to 2010 and applying it to all MAs, the MSRB should have – in light of a federal definition of municipal advisors coming into play – withdrawn CUSIP responsibilities for any municipal advisor," Susan Gaffney, NAMA executive director wrote in an email. "We believe that rules for MAs should – or should not – apply to all MAs in the same fashion; and that obtaining CUSIPs should be done by underwriters for both policy and practical reasons."

The Bond Dealers of America told the MSRB on Tuesday that the board did not need to revisit the CUSIP requirement so soon after it took effect and that applying for CUSIPs is not a burden to municipal advisors.

"The BDA does not believe that a retrospective evaluation of the CUSIP requirement is appropriate," BDA CEO Mike Nicholas wrote in the comment letter. "As a practical matter, the CUSIP requirement with respect to any municipal securities market participant does not impose significant burden on the participant and does not merit re-opening MSRB Rule G-34 so soon after it has been finalized."

Nicholas added that the original intent of the Rule G-34 amendments was to clarify when underwriters and municipal advisors were required to obtain CUSIP numbers in private transactions.

"If the MSRB deletes the CUSIP requirement for municipal advisors, then that will allow municipal advisors to engage in 'competitive sales' that are private in nature and do not have a dealer acting as a placement agent without obtaining a CUSIP number," Nicholas wrote. "As the MSRB believed in 2017, if municipal advisors engage in these kinds of transactions, the market needs to have the visibility into the existence of these transactions that a CUSIP number provides and deleting the requirement would be inappropriate."

Among the issues raised by comment letters to the MSRB and SEC in 2017 was an exception to the private placement requirement that said CUSIP numbers are not needed for direct purchases by banks, their non-dealer control affiliates and consortiums, where the dealer or municipal advisor reasonably believes the purchaser's intent is to hold the securities to maturity. Issuers and dealers alike had raised concerns that investors would be hesitant to certify that they planned to hold "to maturity," since muni bonds often have much earlier call dates.

Under the revision filed with the SEC, titled Amendment No. 1, that exception now reads that a dealer or MA ?may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes (e.g., by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.?

At a minimum, if the MSRB decides to get rid of the CUSIP requirement for municipal advisors, Nicholas wrote they should do so only with respect to "competitive sales" as to which there is no broker-dealer acting as an underwriter.

The Securities Industry and Financial Markets Association does not want any changes made to Rule G-34, said Leslie Norwood, SIFMA managing director and associate general counsel. However, if the MSRB does decide to reopen the issue, it should be mindful of private placements and Norwood said removing the requirement for municipal advisors to obtain CUSIP numbers runs counter to the intent for changes made in 2017.

"If CUSIPs are to be obtained in private placements, the MSRB should consider that the placement agents should obtain the CUSIPs once the investor has been determined though not when a request for bids is distributed," Norwood said.

The MSRB should consider, if the MSRB wants to make any changes, relief for municipal advisors with getting CUSIP numbers for competitive public offerings of notes and that underwriters should get those CUSIPs, Norwood said.

For competitive underwritings of securities, there is likely one underwriter and one coupon per maturity, Norwood said. Competitive notes transactions have multiple underwriters for the same maturity, resulting in multiple coupons, each with its own CUSIP numbers. So an underwriter should get the CUSIP for notes transactions, Norwood said.

Municipal advisors should not have to provide CUSIP numbers for competitive sales, wrote Dennis Dix Jr., founder of MA firm Dixworks LLC.

"I continue to be bewildered by the new imposition on municipal advisors to provide CUSIP numbers for competitively bid new issues," he wrote.

Dix added that broker-dealers have effectively applied for CUSIPs for decades. Shifting the CUSIP burden from underwriters to MA's isn?t useful, Dix wrote, and poses an undue burden on small shops like his.

"I urge in the strongest terms that the rule be revoked or revised to relieve MA's of the CUSIP obligation," Dix wrote. "If the intent of the current rule is to accelerate the obtaining of CUSIPs, I simply don?t see the need or market benefit under the current regulation."

Rule G-34 does not accomplish what the board set out to do, which is to improve the disclosures on bank direct purchases, wrote Robert Lamb, president of Lamont Financial Services Corporation. Instead, it places additional burdens on independent municipal advisors and makes the market less efficient, Lamb added.

Lamb took issue with the rule requiring that an independent municipal advisor seek and obtain CUSIP numbers before the award on a competitive sale.

He wrote that the par amount of the bonds may change as a result of the bid, needing changes and multiple communications with the CUSIP bureau. The bonds would also have to be made Depository Trust Co. eligible, so an underwriter would have to take the CUSIPS to DTC to make them eligible.

Lamb noted that the limitations with respect to DTC does not apply to broker dealer firms since they are already a member of DTC.

"Even if DTC changed its policies to allow non-broker dealers to become DTC participants, the cost would be significant, at over $8,000 per year," Lamb wrote. "However, it is not currently possible for an independent municipal advisor to become a DTC participant, so the threshold problem is more acute than the cost."

Any changes to the rule would need Securities and Exchange Commission approval before they could become effective.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 05/28/19 02:50 PM EDT

The Risky Business of Chasing High-Yield Muni Bonds.

Investors are hungry for yield, and they appear to be satisfying that hunger with risky, high-yield municipal bond funds.

In fact, investors have poured $8 billion into funds that deal in high-yield muni bonds – or junk munis – this year, according to Refinitiv data. That's the most in nearly three decades.

"I would be worried about this," Scott Clemons, chief investment strategist at Brown Brothers Harriman, said on Yahoo Finance's "The First Trade."

"We're advising our clients to not chase yield. The trade-off of risk and return is just unappealing," Clemons said.

Even the largest Wall Street firms are hedging their bets. Goldman Sachs' $7.3 billion High Yield Municipal Fund, had about 62% of its assets in investment-grade securities by the end of April.

Falling Treasury yields, coupled with expectations for a possible interest rate cut from the Federal Reserve, have investors chasing higher returns in the lowest-rated and riskiest muni-bonds.

Liquidity, stability, income

So far, that bet has been paying off. According to FactSet data, high-yield munis are up 5.5% this year after outperforming stocks,Treasuries and corporate bonds in 2018.

Municipal bonds are also historically attractive to investors because they are one of the few remaining tax-shelters left.

The downside, though, is that if enough of these risky municipal projects default, those attractive yields will quickly reverse.

About 2.5% of non-investment-grade munis are currently in default, according to Municipal Market

Analytics.

Clemons points out that fixed-income markets offer three main benefits to an investor's portfolio: liquidity, stability, and income.

"In this kind of interest-rate environment," Clemons said, "those benefits are fragmented. So you, as an investor, have to decide. If it's all about yield, you're going to have to give up some stability, maybe some liquidity. But if it's all about stability and liquidity, there's not a lot of yield attached to that."

Yahoo Finance

by Alexis Christoforous

May 28, 2019

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MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales: SIFMA Comment Letter

SUMMARY

SIFMA provides comments to the Municipal Securities Rulemaking Board (MSRB) regarding MSRB Notice 2019-08: Request for Comment on MSRB Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales.

The MSRB is seeking public comment on a provision of MSRB Rule G-34 that generally requires a municipal advisor advising an issuer with respect to a competitive sale of a new issue of municipal securities to apply for the assignment of a CUSIP number or numbers with respect to such issue within a specified time frame. In early 2018, the MSRB extended an existing requirement for dealers acting as financial advisors to apply for CUSIP numbers in competitive offerings to all municipal advisors advising on such offerings. However, based on the municipal securities market's experience with the provision, and stakeholder input regarding the utility and the burden of this requirement in practice, MSRB determined that a retrospective review of the operation of the CUSIP requirement was merited. MSRB notice can be found here.

Read the Comment Letter.

Place-Based Impact Investing Practitioner Briefs.

Abstract

Seeking ways to maximize the social and economic returns of their place-based impact investments, foundations, CDFIs, private investors, and others are turning to collaboration. To support these efforts and facilitate lesson sharing, the Urban Institute and Mission Investors Exchange have produced a set of three practitioner briefs designed to focus on elements of place-based impact

investing that research and conversations with practitioners have identified as opportunities for knowledge exchange. Each brief presents a concept, highlights practitioner examples, and elevates lessons from the field.

The briefs are:

- Mapping and Assessing Local Capacities and Opportunities for Place-Based Impact Investing
- Place-Based Impact Investing Ecosystems: Building a Collaboration to Boost Your Effectiveness
- Collaborative Place-Based Impact Investing Models: Deploying Capital on the Ground Together

The Urban Institute

by Erika C. Poethig, Matt Onek, John Balbach, Nhadine Leung, Shena Ashley, Melanie Audette, Brett Theodos & Matthew Eldridge

May 30, 2019

BDA Comment Letter: MSRB Request for Comment on Rule G-34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales

After consultation with various members and committees, the BDA has submitted a response to the recent the MSRB request for comment on MSRB Rule G-34, the "CUSIP Requirement", which requires a municipal advisor advising an issuer with respect to a competitive sale of a new issue of municipal securities to apply for the assignment of a CUSIP number or numbers with respect to such issue within a specified time frame, subject to exceptions. The notice can be viewed here.

The BDA comment letter can be viewed here.

Background

The CUSIP Requirement was approved by the U.S. Securities and Exchange Commission (SEC) in 2017, as part of a package of amendments to MSRB Rule G-34, on CUSIP numbers, new issue and market information requirements (the "2017 G-34 Amendments") and became effective June 14, 2018.

Prior to the effective date of the 2017 G-34 Amendments, brokers, dealers and municipal securities dealers (collectively, "dealers") acting as underwriters or as financial advisors to an issuer in competitive sales of new issue municipal securities were subject to the CUSIP Requirement, but non-dealer municipal advisors were not.

The 2017 G-34 Amendments extended the CUSIP Requirement to all municipal advisors, whether dealer or non-dealer.

Bond Dealers of America

May 28, 2019

Municipalities Are Not Rushing To The Market: Joe Mysak (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor Bloomberg Brief: Municipal Market, discusses how the bond rally and trade tensions are impacting the muni market. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 05:58

Play Episode

May 31, 2019

Muni Yield Curve Flattens to 2007 Low.

Eric Glass, portfolio manager at AllianceBernstein, discusses the factors behind the flattening of the municipal bond yield curve and looking for infrastructure and climate change investments. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets – Muni MomentTV Shows

May 29th, 2019, 9:20 AM PDT

Morningstar's Big Move in Credit Ratings Barely Moves Needle.

Fourth place is still way behind S&P, Moody's and Fitch.

Quick — name the world's fourth-largest credit ratings company.

Most fixed-income investors can easily rattle off the so-called Big Three — S&P Global Ratings, Moody's Investors Service and Fitch Ratings, which combined represented 95.8% of all outstanding U.S. ratings at the end of 2017, according to a Securities and Exchange Commission report. But after that, the remaining sliver of the market is something of a free-for-all, with firms like A.M. Best Co., DBRS Ltd., Kroll Bond Rating Agency and Morningstar Credit Ratings carving out niches where they can serve as alternatives to the top three.

But back to fourth place. Congratulations to those who knew DBRS, formerly known as the Dominion Bond Rating Service. The Toronto-based company, created in 1976 and acquired in 2014 by the Carlyle Group and Warburg Pincus, has a sizable footprint in Canada and, to a somewhat lesser extent, the European Union.

Continue reading.

Bloomberg Markets

By Brian Chappatta

May 31, 2019, 4:30 AM PDT

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

Revenue Forecasting and the Fragility of Traditional Wisdom.

The lesson for cities from the experiences of the past decade: Even revenue sources long considered reliable can be volatile.

One of the most significant managerial challenges for state and local budget officers is to accurately forecast revenues and expenditures in coming years. Errors are inevitable, of course, and yet many elected officials continue to live in the hazy delusion that once they've balanced a budget based on seemingly solid forecasts, it's going to stay balanced. This, as we know all too well in hindsight, is often not the case; forecasting is as much art as science, and predicting upcoming revenues precisely can be as much attributable to luck as to intellect.

Consider the National League of Cities' annual survey conducted at the start of the Great Recession. It asked a sample of city chief financial officers: "Overall, would you say that your city is better or less able to meet financial needs in the current fiscal year than last year? In the next fiscal year compared to this fiscal year?"

The response to the survey suggested that, overall, most CFOs and their staffs were blind to an upcoming fiscal disaster despite warning signs such as the unfolding subprime mortgage crash. Over half (55 percent) responded that they expected their city would be in a better position in 2008 to meet their financial needs than in 2007. When asked the question in 2008 about their fiscal position in 2009, that percentage plummeted to just over 20 percent. No great surprise there. It's much easier for fiscal managers to make an accurate prediction of hard fiscal times when they're already dealing with them.

One element of overoptimistic thinking among budget managers as the recession began was the notion that sales taxes would continue to provide a steady flow of revenues. Nearly one in four (24 percent) of cities that collected sales taxes were confident in 2008 that 2009 would be a healthy year for their economies. In fact, state and local general tax receipts fell by $16 billion in 2009 from their 2008 levels, a decline of 3.5 percent as the recession hiked unemployment and diminished consumer spending.

But although the recession's negative impact on sales taxes should not have been the surprise it was, it's perhaps easier to understand why the decline in property values and the tax revenues based on them was so largely unforeseen, given the traditional management wisdom among the men and women responsible for keeping programs intact without the need to raise taxes.

The widely held belief is that the property tax is reliable. That' s part of the reason why many cities have long been happy to depend so heavily on their property taxes, despite the fact that citizens tend not to like them very much for understandable reasons: For one thing, in most communities the bill arrives once a year, so its size is opulently evident. Additionally, it can be painful to accept the idea that an ostensibly good thing — rising property values — only pays off when the property is sold. Up until then it's increasingly difficult to pay ever-rising levies.

Still, the benefits of property taxes to cities have long made them an attractive source of revenue.

For one thing, when property values drop, tax receipts don't immediately plummet –they take some time to find a new equilibrium point. Further, property is immovable. When taxes on your home go up, you can't loft it into the air and move it to a lower-tax community. Unlike the volatile sales and wage taxes, the traditional thinking among budget forecasters is that the property tax can be counted on to moderate the ups and downs of other government revenues.

But logic to the contrary, it turns out that property taxes aren't necessarily and always an immutable source of revenue on which forecasters can count. Consider Albuquerque, a city that witnessed solid year-over-year increases in its property tax receipts between 2002 and 2010, from $72 million to $133.3 million — an average annual growth rate of 10 percent. Then the effects of the Great Recession on property values hit in 2011, and the year-over-year growth rate between fiscal years 2011 and 2018 didn't even keep up with inflation, averaging 1.3 percent per year.

Although the impact on Albuquerque's total budget was modest due to the city's heavier reliance on other taxes, the less-than-robust growth in the real-estate market contributed to the city's forecasts of drawing down reserves in the near term and projecting deficits for next year. As painful as that may be, Albuquerque has fared better than some cities with its property taxes: Miami also expected a typical bump in property tax revenues in 2010, but instead experienced a nearly $20 million downturn from the previous year, followed by a $37 million decline in 2011.

The lesson in all this is that elected officials and financial managers must be prepared for the notion that traditional wisdom is not immutable and that counter-cyclical devices — a robust rainy day fund remains a terrific tool — are critical parts of a well managed city.

governing.com

By Michael A. Pagano | Contributor

Dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago and director of UIC's Government Finance Research Center

MAY 29, 2019 AT 4:00 AM

IRS Provides Guidance on Refinancings of Tribal Economic Development Bonds - Refinancings of TEDs and Other Targeted Bond Programs Allowed Without Additional Volume Cap Allocation: Holland & Knight

The Internal Revenue Service (IRS) on May 22, 2019, issued much awaited guidance in Notice 2019-39. This Notice allows for refinancings or refundings by Native American tribal governments of Tribal Economic Development bonds and loans (TEDs) without needing to obtain additional allocation of TED volume cap. The new Notice represents an important step in allowing tribes to currently refinance or refund outstanding TEDs without using any of the dwindling amount of TED volume cap from the U.S. Department of Treasury and IRS.

The Notice also applies similar rules to other targeted bond programs such as Gulf Opportunity Zone (GO Zone), Midwestern Disaster Area, Hurricane Ike Disaster Area and Recovery Zone Facility bonds. The Notice was issued in part to eliminate the need for separate program-by-program guidance regarding the volume cap exception for certain current refunding bonds (bonds issued to refund or refinance bonds of a prior issue not more than 90 days before the last expenditure of any proceeds of the refunding issue to pay principal or interest on the prior issue).

Purpose of Tribal Economic Development Bonds

In 2009, Congress enacted a special tax code provision for Tribal Economic Development Bonds – Code Section 7871(f) – to give Native American tribal governments "greater flexibility" to finance economic development projects. The only other opportunity for tribes to seek tax-exempt financing was, and continues to be, Code Section 7871(c), which imposes a restrictive "essential governmental function" test on tribal debt financing. Under the TED program, tribal governments may apply with the Treasury Department and IRS for a TED volume cap allocation to finance on-reservation, nongaming economic development projects with tax-exempt debt. Many tribes have used TEDs to finance such projects and have achieved a lower cost of borrowing since interest on TEDs is federally tax-exempt for the holder of such debt.

Congress limited TEDs to $2 billion worth of debt and gave the Treasury Department the authority to allocate the $2 billion volume cap among Native American tribal governments as deemed appropriate by Treasury in consultation with the U.S. Department of the Interior. As of April 1, 2019, no tribe may receive more than $100 million of TED volume cap, i.e., the greater of 1) 20 percent of the amount of available volume cap of $182,605,445.95 determined as described in IRS Notice 2012-48, or 2) $100 million. Tribal governments have been concerned for several years as the available volume cap of TEDs has dwindled with no Congressional relief in sight.

Why the Notice Was Issued

The IRS acknowledged that previously issued guidance for targeted bond programs, such as TEDs and disaster relief bond programs, with volume cap limitations and time restraints, did not address how refundings and refinancings fit within those programs' limitations. Prior notices relating to TEDs did not address the permissibility of issuing new TEDs in current refunding issues to refund or refinance outstanding TEDs.

As a result, questions have arisen regarding whether original TEDs may be refinanced in current refunding issues without the tribal government seeking additional TED allocation. Under Section 146(i) of the Code, the general rule for tax-exempt private activity bonds subject to volume cap is that current refundings of such bonds are exempt from volume cap to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds. Because no such exception is specifically provided for TEDs, this created an ambiguity that prevented many bond lawyers from opining that TEDs could be refinanced on a tax-exempt basis without a new allocation of volume cap. Further, since TED volume cap is now very limited, many outstanding TEDs would have had to been paid at maturity or refinanced on a taxable basis.

What Does the Notice Say?

Specifically, Notice 2019-39 states that any current refunding issue the proceeds of which are used (directly or indirectly in a series of current refunding issues) to refund original TEDs qualifies for issuance as an issue of tax-exempt TEDs without regard to any bond volume cap or issuance time deadline for the original TEDs if all of the following requirements are met:

1. the original TEDs were issued with any required bond volume cap allocation and before any applicable time deadline for issuance of the original TEDs
2. the issue price of the new TEDs is no greater than the outstanding stated principal amount of the outstanding TEDs (with certain exceptions for existing TEDs previously issued with more than a de

3. minimus amount of original issue discount or premium)
   the current refunding issue meets all applicable requirements for the issuance of TEDs

Considerations for Tribal Governments

In summary, Notice 2019-39 clarifies that tribal governments need not seek an additional TED allocation to refinance or refund existing TEDs on a tax-exempt basis. The new Notice is welcome in light of the dwindling amount of nationwide TED bond allocation remaining. Native American tribes should review the Notice carefully as it represents an important opportunity for Native American tribal governments.

May 24, 2019

Holland & Knight LLP

New GASB Standard Clarifies Conduit Debt Reporting.

The Governmental Accounting Standards Board has issued new guidance that provides a single method for government issuers to report conduit debt obligations and related commitments.

GASB Statement No. 91, Conduit Debt Obligations, calls for conduit issuers to stop reporting conduit debt in their financial statements and to report all of it in their accompanying notes starting Dec. 15, 2020.

"It's not their liability," said Dean Mead, senior research manager for GASB. "And so this note is actually about something that does not appear in the financial statements which makes it a little unusual. But it's fairly clear that financial statement users need information about conduit debt obligations." The notes will help users know the total amount of debt a conduit issuer has authorized.

In addition, Mead said, "The information that bond analysts get from the disclosure should be more useful to them after the implementation of Statement 91."

The primary benefit is that the notes on outstanding conduit debt will be organized into three types of commitments that the government may have made with respect to that debt.

The first type is a limited commitment, which is traditionally the way most conduit debt is authorized, with the issuer not making any commitment to make payments on the third party's bonds.

The second type is where there is an additional commitment by the conduit issuer to make a debt service payment if it is necessary.

The third type is a voluntary commitment that occurs when the conduit issuer hasn't made a promise to make a debt service payment, but could do so in the future.

The new standard also will require the disclosure of cumulative payments by the conduit issuer and how they have changed over the course of the past year, including any provisions that allow the conduit issuer to eventually recover those payments.

Most conduit issuers already do not report conduit debt on their financial statements, but according to GASB an unspecified minority do report it.

“It was something you would often see among financing authorities that don’t have much in assets and liabilities apart from the conduit debt they issue, so some of them chose to report the conduit debt in their financial statements as liabilities even though they are not obligated to repay that debt,” said Mead.

Mead said the bigger issue was ending “the diversity in practice and the confusion that existed about what conduit debt arrangements needed to be reported in their financial report.”

When the prior standards were issued, GASB had no conceptual standard for what a liability meant. Conduit debt does not meet the definition that now exists.

Michele Mark Levine of the Government Finance Officers Association Technical Services Center said in an email that the new guidance “clarifies that issuers continue to be required only to provide disclosures on their conduit debt, if they have not made any commitments to pay, or request appropriations to pay, debt service in the event the obligor is unable to do so.”

“If they have made other commitments, they must report a liability when they determine there is a greater than 50% chance they will actually pay,” Levine wrote. “They will, however, have to track the amount of their conduit debt that remains outstanding in order to make the required disclosures, which also include information about all of their conduit-debt associated commitments, recognized liabilities, and the amount of debt service payments they have made on conduit debt. They will also be required each year to assess the likelihood of their making payments to support debt service on an annual basis if they have made commitments to do so, or if something happens that makes them consider
voluntarily paying debt service.”

The Bond Buyer

By Brian Tumulty

May 29 2019, 2:47pm EDT

Hackers Hold Baltimore Hostage.

Ransomware has shut down the city’s computers for three weeks, as officials play the blame game.

Discontent in Baltimore is usually high at this time of the spring as Orioles fans already watch their playoff hopes fade. But this year local residents have more to be angry about. For more than three weeks the city government’s computers have been offline. That means no emails have been going in or out of city hall, and the systems used to settle parking fines, pay water bills, property taxes and more are out of commission. These are online systems that most of us take for granted—until they stop working.

Baltimore’s IT infrastructure is being held hostage by ransomware, the malicious code used to hijack online systems and extort users for payment. The hackers’ ransom note demanded their payment in cryptocurrency: 13 bitcoins (worth about $100,000) in exchange for total control, or an à la carte option of 3 bitcoins per computer system. Mayor Jack Young has rightly refused to pay these nameless and faceless criminals. But pressure is mounting to find a solution.

Failing that, some city officials thought they'd at least found an excuse when the New York Times reported over the weekend that a "cyber weapon" stolen from the National Security Agency in 2017 had "boomeranged back" against Baltimore. City Council President Brandon Scott is now pointing his finger at the neighboring spy agency and petitioning the federal government for reparations in the form of emergency funds to cover most of the estimated $18.2 million in damages.

Nice try, Mr. Scott. Baltimore faces an emergency, but it's not of the NSA's doing. It's true that the city government's vulnerability resides in old Microsoft software that, according to former NSA employees, the NSA had been lawfully exploiting for years to gather intelligence. The NSA disclosed the bug to Microsoft in 2017 after the spy agency reportedly learned that its tool had been stolen by a hacking group called the Shadow Brokers. Microsoft promptly released a "patch," an update that would render the hacking tool useless. But two years later, Baltimore still hasn't implemented the fixes across its vulnerable infrastructure.

These troubles are not unique to Baltimore; the same malware has been reported in Texas and Pennsylvania. Last year the U.S. attorney's office in New Jersey unsealed an indictment against two Iranians who, beginning in 2015, allegedly unleashed ransomware on more than 200 victims, including municipal governments, state agencies and hospital networks in 43 states. That two hackers can wreak havoc with tens of thousands of systems, causing $30 million in damages, should trouble all Americans who entrust state and local governments with personal information and rely on them for critical, sometimes lifesaving, services.

So who's at fault? It would be easy to blame Baltimore's elected officials and their technology staff for not fixing their systems. I might do so myself if not for my experience maintaining a vast and federated array of legacy infrastructure during my tenure in state government. Updating and repairing a network of old servers comes at a massive cost, with significant human-capital requirements that place governments at a unique disadvantage relative to industry, which has far more access to funding and talent. I also spent countless hours on the phone with municipal ransomware victims as they weighed two bad options: Give in to the hackers' demands and hope for the best, or refuse to pay and deprive constituents of services.

These attacks will continue and intensify unless two things happen. First, software and hardware manufacturers must begin to cater to the lowest common denominator when building hacking-mitigation techniques into their products. Governments and companies should be able to easily patch their computers the way ordinary consumers update their iPhones. Only then can we reasonably transfer more liability from the technology's makers to its users and elevate barriers to entry for hackers. For now, more liability should reside with the makers.

Second, the federal government must find and bring to justice bad actors in cyberspace. Someone, somewhere is responsible for waging a digital assault on an American city. Instead of blaming the NSA, Baltimore's officials should ask for its help in tracking down these criminals. Perhaps the NSA can also lend Baltimore a hand in getting back online.

In addition, members of Congress and executive-branch officials should debate when and how the NSA discloses software bugs to U.S. and foreign companies. The public deserves greater assurances that NSA tools won't fall into the wrong hands.

The Trump administration has done more than any previous administration to address this problem. In November 2017 it spelled out a transparent and fair process to "disseminate vulnerability information to the vendor/supplier in the expectation that it will be patched, or to temporarily restrict the knowledge of the vulnerability" to the U.S. government for national-security purposes. The man behind this transparency, former White House cyber czar Rob Joyce, also led the NSA unit that reportedly built the since-stolen tool.

The need to balance security and privacy is greater in the digital age than ever before. Let's not forget that Baltimore is a victim. It's time for governments and agencies to stop blaming each other and unite against the attackers.

WSJ Opinion

By Dave Weinstein

May 30, 2019 6:52 p.m. ET

Mr. Weinstein is chief security officer at Claroty and a former chief technology officer of New Jersey. He also served at U.S. Cyber Command.

Add Cyberattacks to the List of Municipal Bond Credit Risks.

- **Baltimore ransomware attacks underscore threat: Breckinridge**
- **More than 20 ransonware attacks on municipalities this year**

Huge pension debt. Crumbling infrastructure. Climate change. Now add cyberattacks to the list of things that municipal bond investors should worry about.

The recent ransomware attack that shut down some of Baltimore's computers, the second in 15 months, underscores the growing credit risk that cyberattacks pose to states and cities, according to Breckinridge Capital Advisors. The May 7 attack on Baltimore has hobbled the city's ability to collect water bills, property taxes, and parking revenue. It also shut down the city's system to process home sales. Baltimore's general obligation bonds, like much local debt, is payable by property taxes, which makes up about half of the city's revenue.

Cyberattacks also threaten to erode public confidence in government and can suggest weak governance, wrote Alriona Costigan, a vice president at Breckinridge and Jesse Starks, the firm's chief technology officer.

"Cyberattacks can hurt issuers' reputations, evidenced by the fact that many cities and states avoid reporting them," they wrote. "However, the lack of consistent reporting of cyberattacks could leave many issuers complacent about the risks or unaware of some of their own vulnerabilities."

This month's cyberattack in Baltimore follows last year's high profile ransomware attack in Atlanta, which cost the city an estimated $17 million to fix, about 2.6% of the city's budget, according to Boston-based Breckinridge, which oversees more than $37 billion in high-grade fixed income assets. There have been at least 24 reported ransomware attacks on municipalities this year, including Greenville, North Carolina, and 46 last year, according to Moody's Investors Service.

Smaller Targets

A study by the Massachusetts legislature reported 26 million attempts to access the state's computers in a one-hour period between 1 a.m. and 2 a.m. on Sept. 13, Breckinridge said.

In a ransomware attack, hackers infiltrate a computer system and deploy malicious software that locks a victim's data until the owner pays a ransom. Baltimore has refused to pay a ransom of around $100,000 worth of Bitcoins. The event is unlikely to have a material effect on the city's finances and Baltimore hasn't missed a debt service payment, Moody's said May 27.

Cyberattacks could have even more harmful affects on smaller state and local governments, which have less funding for cybersecurity and may see themselves as less of a target that big cities or states.

"Ransomware criminals may see smaller school districts or towns as easier targets, as their focus on cybersecurity is less than that of larger cities such as Los Angeles, which has a cybersecurity working group in place," Costigan and Starks wrote.

Investors need to determine whether states and local governments take cybersecurity seriously as a risk and issuers need to assess and share information about the defenses in place against cyberattacks, according to Breckinridge. Investors should also evaluate a municipality's preparedness for a cyberattack by evaluating whether they have a written response plan, the size of the cybersecurity budget and the presence of cyberinsurance.

"Even the most ironclad technological and physical defenses can be breached, so preparedness for cyberattacks is important to assess as a credit issue," Costigan and Starks wrote.

Bloomberg Cybersecurity

By Martin Z Braun

May 29, 2019, 10:29 AM PDT

The Baltimore Cyberattack Highlights Hackers' New Tactics.

Ransomware attacks are becoming more sophisticated and taking longer for governments to recover from. Some of Baltimore's services have been down for nearly a month.

SPEED READ:

- Baltimore suffered a ransomware attack nearly a month ago and has yet to restore critical networks.
- The city refuses to pay the hackers and is asking the federal government for financial aid.
- Ransomware attacks on governments are on the rise — and becoming more sophisticated.

Cyberattacks on local governments are on the rise — and they're becoming more sophisticated. The latest case in Baltimore, where the city is still struggling to restore critical networks more than three weeks after being hacked, could be a harbinger of things to come.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MAY 30, 2019 AT 5:21 PM

National P3 Update: Higher Education and Social Infrastructure

We have written about how the public-private partnership (P3) project delivery model can and should be used to meet infrastructure needs. Because P3s are constantly being considered and tested all over the country, we wanted to provide an update on the status of these projects so that interested stakeholders can easily keep an eye on the market overall. Our first installment of the National P3 Update will focus on higher education and social infrastructure P3s. We will issue more updates on these projects, as well as updates on projects in other industry sectors.

Travis County Civil and Family Courts Facility P3: The Travis County Courthouse P3 reached financial close on May 9, 2019. The facility, located in Austin, Texas, is a 430,000 square foot civil and family court facility that is set to be complete in 2022.

Santa Rosa Junior College Student Housing P3: Santa Rosa Junior College selected Servitas as its preferred bidder for its student housing P3. The project is to design, build, finance, operate, and maintain a 360-student housing facility. The other shortlisted developers were Greystar and the Michaels Organization.

Vanderbilt University Student Housing: Vanderbilt selected Lendlease as its preferred bidder to design, built, operate, and maintain a graduate and professional student housing village.

Miami-Dade County Courthouse P3: Miami-Dade County shortlisted three respondents for its Civil and Probate Courthouse P3—teams led by Meridiam/EllisDon, Plenary, and Sacyr. The County will issue a RFP in the coming weeks, with responses due by the end of July.

California State University, Fresno Central Heating and Cooling Plant Modernization P3: Fresno State shortlisted four respondents for its Central Heating and Cooling Plant Modernization P3 in April 2019. The shortlisted teams include Bulldog Energy Alliance, Bulldog Infrastructure Group, Plenary Utilities Fresno, and Victor E. Energy Partners. The project is for the design, build, finance, and maintenance of a central utility plant, ancillary infrastructure, and implementation of energy efficiency upgrades all over campus. A RFP is to be issued this fall.

Alabama Department of Corrections P3: The Alabama Department of Corrections is analyzing five responses to its Request for Expressions of Interest for the construction of three new prison facilities. The respondents were tasked with identifying the scope of the agreement. A RFQ will be issued this quarter, with a RFP to be issued in the fall.

Dartmouth Heating P3: Dartmouth College received responses to the Request for Qualifications for its Heating Plant and Distribution System project in late April. Three of the teams that submitted were Fengate/Ameresco/WorleyParsons, Kiewit/Enwave, and Merdiiam/ENGIE North America. The project is to design, build, finance, operate and maintain a thermal generation facility that will be powered by a renewable fuel source, as well as a new hot water distribution system. The shortlist is expected to come out in June, with issuance of a RFP in September and selection in 2020.

City of Los Angeles Civic Center P3: The City of Los Angeles issued a Request for Qualifications for the Los Angeles Civic Center P3 on April 2, 2019. Responses are due on May 28, 2019. The project is a design, build, finance, operate, and maintain that will include a government office facility, childcare center, and conference center. The city expects to issue a RFP at the end of 2019, with responses due in the beginning of 2020 and award and execution of a project agreement at the end of 2020.

by Elise Holtzman

Friday, May 24, 2019

P3 Trends: Rise in Private Placement Financing of Mid-Size P3s

In the last twelve months, four national public-private partnerships ("P3s") have been financed in the U.S. private placement market, accounting for over $800 million in project cost financing. While there has been a shift towards private placement investors as a P3 financing source, the market activity in the last year has confirmed investor appetite in P3s, particularly those with availability payment-based compensation structures.

Private placements are securities offerings to limited numbers of sophisticated investors. These offerings are exempt from registration under the U.S. Securities Act of 1933. Conservative, long-term investors, such as insurance companies and pension funds, tend to dominate the U.S. market. While private activity bonds and TIFIA loans present cheaper financing options, they are not available as financing sources across certain asset classes, including social infrastructure and smart city initiatives. Many features of the traditional private placement market align with financing features of the P3 market. For example, private placement investors favor long-term debt, with tenors of 30 years or more depending on the project, far exceeding the short tenors available in the bank finance market. In addition, as private placements in the P3 context are typically closed with a small number of investors, the project benefits from more flexibility in financing terms and, if needed, a simplified process for amendments and waivers over the life of the project, as compared to similarly-tenored bond financings. Finally, because of their long tenors and fixed credit spreads, private placements minimize project refinancing risk.

In addition, private placements offer significant benefits during the proposal phase for both the public and the private sectors. With credit spreads typically fixed at the time of the financial proposal, private placement financings are beneficial from a grantor's perspective as credit spread risk protection between the time of proposal and financial close is not necessary. In addition, bid costs, particularly as compared to bond financing solutions, tend to be lower with private placement financing solutions, and there are no public rating requirements (even though a least one public rating is customary.)

The rise in P3 private placement offerings is a particularly strong trend when considered in the context activity in the U.S. private placement market. In the first quarter of 2019, the dollar volume of private placements has fallen by 30% as compared to the same period last year. With more infrastructure projects on the horizon that do not benefit from federal financing alternatives, such as Dartmouth's proposed biomass energy heating facility and student housing project, as well as Fresno State's proposed heating and cooling plant.

by Andrej Micovic & Albert E. Dotson, Jr.

Thursday, May 30, 2019

Final Rule Makes Munis High-Quality Liquid Assets.

Municipal bonds will soon qualify as high-quality liquid assets under Federal banking regulations, a designation market participants expect to provide banks a greater incentive hold their debt.

The Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corp. said Thursday they were adopting, without change, the August 2018 interim rule to allow investment-grade munis that are "liquid and readily marketable" to qualify as level 2B HQLA. The rule will take effect 30 days after publication in the Federal Register, which usually takes about three business days.

"The efforts of issuers over the past few years has helped establish what we all know to be true: municipal securities are both high quality and liquid assets," said Emily Brock, director of the Government Finance Officers Association?s federal liaison center. "We look forward to seeing the benefits of the final rulemaking for issuers and the market as a whole."

The rule change was required by the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, which President Donald Trump signed into law in May 2018. The issue is important to the muni market because banks would have had less incentive to hold muni debt had it lacked the HQLA designation.

The rule change followed a struggle that began in 2014, when the regulators adopted Liquidity Coverage Ratio rules to require banks with at least $250 billion of total assets or consolidated on-balance-sheet foreign exposures of at least $10 billion to have a high enough liquidity coverage ratio ? the amount of HQLA to total net cash outflows ? to deal with periods of financial stress.

All of the bank regulators initially excluded munis as HQLA in the LCR rules because they believed they were not liquid. Muni market groups protested.

The Fed later revised its rules, but its muni HQLA provisions were seen by many in the market as too restrictive. Specifically, they allowed only general obligation bonds to count as HQLA and limited the amount of securities issued by a single issuer that a bank could include as eligible HQLA to two times the average daily trading volume of that issuer. In addition, munis could comprise no more than 5% of a bank?s overall HQLA.

The final rule will now allow many revenue bonds, including private activity bonds in some cases, to qualify as Level 2B HQLA. That will put these munis on a par with mortgage-backed securities. Muni market groups have said they believe the long track record of munis as a stable investment warrants them being classified as level 2A assets, the same as foreign sovereign debt. The level matters because regulators apply a larger discount to level 2B assets when calculating rick-based capital than to level 2A assets: 25% instead of 15%.

"We look forward to assessing future opportunities that may afford further enhancements to the final rulemaking," said Brock.

Bank holdings of munis had grown steadily for years excepting a dip during the recession 10 years ago, but the federal tax law passed in 2017 slashing the corporate tax rate to 21% from 35% has made munis less appetizing for banks and their holdings have dropped.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 05/31/19 12:10 PM EDT

Is Anyone Actually Investing in Opportunity Zone Funds?

"Opportunity zones are like high school sex," said Brett Messing, president of Skybridge Capital, by phone. "Everyone is talking about it, but nobody is doing it."

Whether the Tax Cuts & Jobs Act would close the so-called carried interest loophole when it passed in the fall of 2017, few seemed to notice back then that the law also created a new measure — one that has since become the financial buzzword du jour.

Investment firms are scrambling to take advantage of that program, which offers tax incentives to encourage investment in what the law calls opportunity zones, or low-income areas. But whether these investments offer more than tax incentives to allocators is up for debate.

David Schawel — chief investment officer of Family Management Corp., a registered investment adviser and broker-dealer serving wealthy individuals — offered his opinion on the structure on Twitter on Monday.

Continue reading.

Institutional Investor

By Alicia McElhaney

May 23, 2019

Advisors Must Weigh Benefits and Real Dangers Before Offering This Hot New Tax Play.

KEY POINTS

- The Tax Cuts and Jobs Act of 2017 introduced opportunity funds. They invest in economically distressed areas and offer a tax break for participants.
- Invest capital gains into a qualified opportunity zone fund and hold it for at least five years to get a tax advantage.
- Robert W. Baird & Co. will soon offer access to such a fund on its platform, but investors must be qualified purchasers with at least $5 million in investible net worth.

Continue reading.

CNBC

by Darla Mercado

MAY 28 2019 8:44 AM EDT

Opportunity Zones Give Big Law ‘Pop-Up’ Teams Plenty of Work.

- **2017 tax law provides tax incentives for investors in designated low-income zones**
- **Law firms use multidisciplinary teams to help current clients, and woo new ones**

The 2017 tax law created tax incentives for investors in certain economically distressed communities in the U.S., and it’s keeping more than just tax lawyers busy.

A number of Big Law firms have created “pop up” working groups of tax, real estate, and private funds lawyers to advise clients looking to jump in on the investment action.

The law set 8,764 opportunity zones in mostly low-income tracts designated for tax breaks. The law allows investors, including banks and real estate developers, to delay or even reduce their taxes on profits from stocks and other assets if they invest in those areas.

As it turns out, these opportunity zones can be a boon for Big Law firms and smaller firms with a strong emphasis on multidisciplinary practices.

The opportunity zone teams are intended to exist only for limited time because investors must act by Dec. 31, 2026, and the pop-up teams tackle thorny issues relating to the new law, which attorneys call unusually broad.

For instance, there’s no limitation on the amount of gain an investor can shelter, and there are very few restrictions on types of businesses that can operate in an opportunity zone, said Mark S. Edelstein, the chair of Morrison Foerster’s global real estate group in New York. Edelstein is part of the firm’s informal opportunity zone team of about 25 attorneys from their tax, real estate, and private funds practices that is trying to spin its varied expertise into new work and new clients.

The only businesses not allowed are “sin” businesses, he said, which traditionally include casinos, liquor stores, and massage parlors.

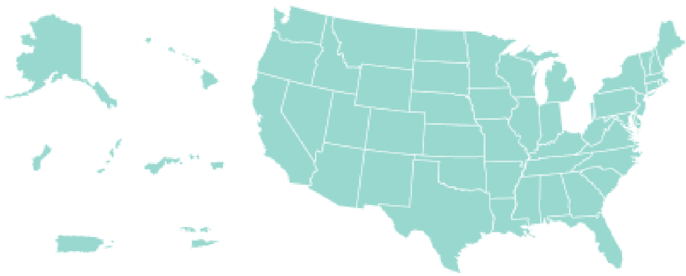
The teams are trying to capitalize on this new client service by figuring out how to advise clients on it and how to get hired, Edelstein said.

Clients include investors in opportunity zone funds, banks, real estate developers, business owners, and those who want to structure the funds.

“That’s what law firms do. We provide services and get paid,” he said.

Opportunity Zones

8,764 opportunity zones across U.S.
(50 states, D.C., five U.S. territories)



Big Law firms with opportunity zone teams include

- Ballard Spahr LLP
- K&L Gates
- McGuireWoods
- Duane Morris
- Katten (Katten Muchin Rosenman LLP)
- Morgan Lewis
- Nixon Peabody
- Polsinelli
- Seyfarth Shaw
- Morrison Foerster

Key opportunity zone events

- **12/22/17** Tax Cuts and Jobs Act of 2017 signed into law
- **4/9/18** First set of opportunity zones designated in 18 states
- **10/29/18** IRS releases 1st tranche of opportunity zones guidance
- **4/17/19** IRS releases 2nd tranche of guidance
- **12/31/19** Last day to invest in opportunity zones fund to exclude 15% of gain invested from capital gains tax
- **12/31/26** Opportunity zones fund investment deadline

New Frontier

But opportunity zone teams aren't for every firm. The tax provisions are "broad," "complicated," and, of course, new. Firms need that tax expertise but also a broad bench of attorneys in other areas.

Those with strong real estate and capital markets groups with a "talented and entrepreneurial" tax group are "very-well positioned" to effectively guide their clients in navigating the opportunity zone rules, Seyfarth Shaw's Steven R. Meier said. Meier, who's located in Chicago, is chair of Seyfarth's corporate department and co-chair of the firm's tax practice, as well a member of the firm's opportunity zones team.

It's still a "new frontier" in investment, said Jay Blaivas, a partner with Morrison & Foerster's tax group in New York and Edelstein's colleague on the opportunity zone team.

Lawyers can add a lot of value because these aren't necessarily deals where investors have "tried and true" experience, like an M&A sponsor who's done 100 such deals before, said Adam J. Tejeda, a partner in K&L Gates' New York office and a member of its opportunity zones team.

"It's a new product and we need to be proactive, ahead of the curve," Morrison & Foerster's Edelstein said.

And for a number of firms with opportunity zone teams, the approach—using an ad hoc, multidisciplinary group to tackle an issue—is familiar territory.

McGuire Woods has groups working on projects like public private partnerships, new markets, and energy project development, said Douglas E. Lamb, a partner in the firm's Richmond office and a member of its opportunity zones team.

Seyfarth's multidisciplinary teams also work on EB-5 immigration issues for foreign investors, fintech, and cannabis challenges, Meier said.

Work Is Coming

Opportunity zone work has been steady since the IRS released its first set of clarifying regulations in October. Big Law partners who spoke with Bloomberg Law business has increased since the second set was released in mid-April and will continue to pick up steam until the end of the year.

"We see more activity starting to happen," Edelstein said. And with the newest set of regulations, there will be more deals, he said. The pop-up team will have to identify for clients the risks and benefits and how to navigate between them, he said.

As for investors, the moment is now, said Gregory A. Riegle, a partner with McGuire Woods' real estate practice in Tyson's Corner, Va., and a member of its opportunity zones team.

Those who invest any profits made on stocks or other assets in an opportunity zone fund within 180 days of the sale of the assets and before Dec. 31, 2019, can cut the profit subject to tax by 15 percent if they keep their money in that fund for seven years.

The percentage drops to 10 for investments made after 2019 and that are kept in the fund for at least five years. A qualified opportunity fund is an investment vehicle for investing in eligible property located in a qualified opportunity zone.

Although clients will get the maximum benefit by investing by the end of this year, opportunity zone work for law firms has a “longer shelf life than you’d think,” said Mary Burke Baker, a government affairs counselor with K&L Gates in Washington and a member of the firm’s opportunity zones team.

Investors can sink money into a fund until the end of 2026 and still get the biggest benefit: the tax-free treatment of capital gains that they have when they sell their interest in the opportunity fund, she said. To take advantage of this benefit, the money must remain in the fund for at least 10 years.

And while law firms anticipate an increase in work as deals accelerate, there’s the potential for even more down the road—and it’s work with which they’re quite familiar.

“We suspect there are going to be a lot of lawsuits coming out of this,” Edelstein said.

Bloomberg Tax

by Melissa Heelan Stanzione

Posted May 28, 2019, 1:50 AM

– With assistance from Lydia O’Neal

Opportunity Zones' Biggest Myths.

America’s corporate tax rate is no longer the most controversial part of the Tax Cuts and Jobs Act of 2017. A then-little-known provision establishing tax incentives for investment in Opportunity Zones – legally designated, economically-distressed census tracts – has generated debate nationwide. Within many of the designated areas, the prospect of fresh capital has been greeted with enthusiasm. Opportunity Alabama CEO and Founder Alex Flachsbart, for example, attests that “this small part of a bipartisan tax act has done more in the last 15 months to mobilize investors and communities across the state than any other federal tax incentive in the last 15 years.”

Opponents of the legislation, however, argue that Opportunity Zones will benefit investors more than communities and pour fuel on to the flames of gentrification. To resolve some of this discrepancy between local excitement and national concern, let’s address some of the most common misconceptions about Opportunity Zones.

Continue reading.

Forbes

by Sorenson Impact
Contributor

May 29, 2019, 10:11am

Scott Turner: The White House’s Vision for Opportunity Zones (Podcast Episode #31)

How can the resources of the Federal government be leveraged to help deliver generational impact to Opportunity Zone communities? Scott…

Read More »

May 29, 2019

Chris Loeffler: The OZ Fund that Raised $40 Million in 5 Months (Podcast Episode #32)

Are Opportunity Zone Funds actually raising any money yet? Chris Loeffler is co-founder and CEO of Caliber, an Arizona-based alternatives…

Read More »

June 3, 2019

TAX - NEW YORK

VCP One Park REIT LLC v. New York City Tax Appeals Tribunal

Supreme Court, Appellate Division, First Department, New York - April 25, 2019 - N.Y.S.3d - 171 A.D.3d 632 - 2019 WL 1798261 - 2019 N.Y. Slip Op. 03149

Article 78 proceeding was brought to review determination of the New York City Tax Appeals Tribunal that transfer of economic interest in real property was not entitled to the reduced New York City Real Property Transfer Tax (RPTT) rate applicable to real estate investment trust (REIT) transfers.

The Supreme Court, Appellate Division, held that Administrative Code provision making taxable consideration equal to estimated market value as determined for property tax purposes did not apply.

In determining whether transfer of an economic interest in real property was entitled to the reduced New York City Real Property Transfer Tax (RPTT) rate applicable to real estate investment trust (REIT) transfers, Administrative Code provision making taxable consideration equal to estimated market value as determined for property tax purposes did not supersede Code's 40% test, requiring that the value of the ownership interests in the REIT received by the grantor as consideration for the transfer be at least 40% of the value of the equity interest in the real property or economic interest therein.

CDFA Illinois Roundtable - Opportunity Zones & Development Finance

July 25, 2019 | Chicago, IL

Register Now

TAX - OHIO

City of Upper Arlington v. McClain

Supreme Court of Ohio - May 9, 2019 - N.E.3d - 2019 WL 2034681 - 2019 -Ohio- 1726

Taxpayer appealed from decision of the Board of Tax Appeals denying its claim for property-tax exemption for several properties. City and city board of education moved to dismiss for lack of jurisdiction.

The Supreme Court held that taxpayer was not required to initiate certified-mail service of notice of appeal within 30-day period for filing notice of appeal, and thus dismissal on that ground was not warranted.

Taxpayer was not required to initiate certified-mail service of notice of appeal within 30-day period for filing notice of appeal of decision by Board of Tax Appeals that denied its property-tax exemption for several properties, under statute requiring notice of appeal to be served upon all appellees by certified mail, and thus city and school board were not entitled to have appeal dismissed for lack of jurisdiction based on failure to timely perfect appeal; statute did not state timeline for certified-mail service of notice of appeal, and taxpayer served notice of appeal on city and school board by certified mail.

DEDICATION - LOUISIANA

Jefferson Parish School Board v. TimBrian LLC

Court of Appeal of Louisiana, Fifth Circuit - May 9, 2019 - So.3d - 2019 WL 2052336 - 18-349 (La.App. 5 Cir. 5/9/19)

School board filed action against business owner, seeking to annul tax sale of property business owner had acquired in tax sale, and filed supplemental and amending petition adding parish as defendant.

The District Court granted summary judgment to parish and denied business owner's motion for summary judgment. Following dismissal of initial appeal, business owner appealed.

The Court of Appeal held that:

- School board sufficiently alleged cause of action, and
- Genuine issues of material fact precluded summary judgment.

School board sufficiently alleged cause of action against business owners who purchased property adjacent to school in tax sale; although school board acknowledged it was not owner of property, it asserted various property interests including servitudes of use, passage, right of way and usufruct resulting from its actual possession of the property, and thus had a legal interest in the subject matter of the litigation.

Genuine issues of material fact as to whether property the school used as a playground had been donated for public use as "then North Metairie Road" by the original owner in 1837 precluded summary judgment in action brought by school district to invalidate purchase of property by business owners at tax sale; expert reports differed on whether "North Metairie Road" existed, or whether the 1837 Act of Deposit was a formal, statutory or implied dedication.

BLX/Orrick Post-Issuance Compliance Webinar: 2019 Updates from the Front Line

Orrick and BLX hosted a webinar on recent post-issuance compliance topics, including new rules and regulations, and audits relating to tax-exempt debt from experts who regularly interact with Treasury department officials and the IRS.

Watch Webinar.

PDF of this presentation is available here: Post-Issuance Compliance: 2019 Updates From the Frontline

For additional information on the webinar or the services BLX Group offers to assist you with your post-issuance compliance needs, please contact:

Cynthia Sixtos
csixtos@blxgroup.com
213 612 2207

Drinking Water Is Staying in Pipes Longer, and That's a Problem.

Shrinking cities can have their drinking water sit in pipes longer than desired, leading to high levels of metals, bacterial growth, and other problems.

The geographic locations where Americans live are shifting in ways that can negatively affect the quality of their drinking water.

Cities that experience long-term, persistent population decline are called shrinking cities. Although shrinking cities exist across the United States, they are concentrated in the American Rust Belt and Northeast. Urban shrinkage can be bad for drinking water in two ways: through aging infrastructure and reduced water demand.

Continue reading.

CITY LAB

MAY 31, 2019

The Danger of a $2 Trillion Infrastructure Promise.

Another Infrastructure Week (the real one) just wrapped up, and after seven years many of the core themes remain the same. Crumbling roads and bridges. Desperate calls for new investment. A high national price tag for repair and revitalization. Little progress.

What makes this year different is a $2 trillion announcement and the continued drama of White House and Congressional meetings to motivate action. But are major media announcements what the country needs to reform how we invest in infrastructure?

The answer is no. Federal leaders need to recognize and reward places that take the initiative on infrastructure investment. Otherwise, there will be a continued lack of action. Instead of big dollar announcements, setting expectations that proactive state and local investments will be rewarded—for example, with matching funds—can have far more immediate value.

Continue reading.

The Brookings Institute

by Shalini Vajjhala

Tuesday, May 28, 2019

Los Angeles County Voters Passed a Parcel Tax to Fund Water Capture Projects - What You Should Know.

This past November, residents of the County of Los Angeles passed Measure W, a parcel tax of 2.5 cents per square foot of impermeable land meant to fund projects to improve stormwater capture, flood control, and prevent ocean pollution associated with large rain events in the Los Angeles River basin.

Measure W earned 69.45% of votes on November 6, needing 66.7% to pass. The tax will be assessed annually on all property owners throughout the Los Angeles Flood Control District, which includes most of the County of Los Angeles, with the exception of Catalina Island, Lancaster, and parts of Palmdale. The median annual tax will be approximately $83, for a homeowner with a 2100 square foot house on a 7500 square foot lot, and up to tens and perhaps hundreds of thousands of dollars for commercial and industrial landowners. Residents and businesses can calculate their proposed annual tax on the County's GIS tool, although users have reported that the tool is often unreliable for larger land areas. The tax will be imposed beginning in the County's next fiscal year, which starts July 1, 2019.

The debate over this parcel tax was not new in Los Angeles. The County had been considering such a levy since 2013 but had been faced with vocal opposition from school districts and business communities. Since then, however, serious droughts have exacerbated Los Angeles' water situation and dependency on imported water, which provided the County with further arguments for the measure. The County depends on imported water from the Eastern Sierra and the Colorado River for the majority of its water supply, costing residents and businesses three times as much as harvesting water from a local groundwater source. Only one-third of Los Angeles' water comes from within the County.

The stated purpose of the parcel tax is to clean stormwater falling on and passing through Los Angeles and inject it back underground, allowing the County to later rely on it for its water supply. This will be done through extensive new stormwater projects, from street medians and permeable pavement to a network of water storage catacombs located under local parks. There are large areas of the County covered with asphalt and concrete that could be redeveloped for better rainwater capture, such as parking lots, school yards, and sidewalks.

In a watershed where only 15% of the stormwater is captured, cleaned, and placed back into the water supply, County officials argue that improving groundwater retention and also preventing ocean pollution are key goals. When stormwater drains off of Los Angeles' impermeable landscape and gutters into the Pacific Ocean, it carries with it trash, bacteria, toxins, and harmful pollutants, to the tune of 100 billion gallons.

The County estimates that it will raise approximately $300 million annually through the imposition of the parcel tax, which will be reevaluated after 30 years. Though the tax will affect all County landowners, bills are likely to be largest for major landowners with land covered with impermeable surfacing, such as big box stores and manufacturing facilities. The owner of a commercial building with a large paved area will likely pay tens of thousands of dollars under the proposed parcel tax. Landlords and tenants will need to consult their leases to determine whether the parcel tax will passed through to the tenant or absorbed by the landlord.

Of the parcel tax's revenue, half will go to funding regional watershed projects, 40% to municipal and local priority projects, and 10% to the Los Angeles Flood Control District for administration and educational programs.

Landowners may either pay the cost of the parcel tax or replace their impermeable land with a permeable surface.

by Michael Jacob Steel, Justin Fisch and Adam N. Hopkins

May 28 2019

Morrison & Foerster LLP

[Ambac Announces The Wisconsin Office of the Commissioner of Insurance Did Not Approve The Surplus Note Interest Payment Due on June 7, 2019.]

NEW YORK, May 31, 2019 (GLOBE NEWSWIRE) — Ambac Financial Group, Inc. (AMBC) ("Ambac"), a holding company whose subsidiaries, including Ambac Assurance Corporation ("AAC"), provide financial guarantees, announced today that the Wisconsin Office of the Commissioner of Insurance did not approve AAC's request to pay surplus note accrued and unpaid interest on the next scheduled interest payment date of June 7, 2019.

About Ambac
Ambac Financial Group, Inc. ("Ambac" or "AFG"), headquartered in New York City, is a holding company whose subsidiaries, including its principal operating subsidiaries, Ambac Assurance Corporation ("Ambac Assurance" or "AAC"), Everspan Financial Guarantee Corp. and Ambac Assurance UK Limited ("Ambac UK"), provide financial guarantees of obligations in both the public and private sectors globally. AAC is a guarantor of public finance and structured finance obligations. Ambac's common stock trades on the NASDAQ Global Select Market under the symbol "AMBC". The Amended and Restated Certificate of Incorporation of Ambac contains substantial restrictions on the ability to transfer Ambac's common stock. Subject to limited exceptions, any attempted transfer of common stock shall be prohibited and void to the extent that, as a result of such transfer (or any series of transfers of which such transfer is a part), any person or group of persons shall become a holder of 5% or more of Ambac's common stock or a holder of 5% or more of Ambac's common stock increases its ownership interest. Ambac is committed to providing timely and accurate information to the investing public, consistent with our legal and regulatory obligations. To that end, we use our

website to convey information about our businesses, including the anticipated release of quarterly financial results, quarterly financial, statistical and business-related information, and the posting of updates to the status of certain residential mortgage backed securities litigations. For more information, please go to www.ambac.com.

Contact

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Managing Director, Investor Relations
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[Bond Titan Spurns Illinois Rally Over ‘Pension Beasts’]

- **Big investor won’t buy uninsured bonds from state, Chicago**
- **‘More likely than not’ bondholders would be hurt, firm says**

The municipal-bond market has shown some optimism recently that Illinois and Chicago will ultimately tackle their huge pension burdens. But one of the biggest buyers of state and local government debt isn’t so sure.

Franklin Templeton Investments, which manages more than $60 billion in municipal securities, said it won’t buy uninsured general-obligation bonds from Illinois and any debt from Chicago and the city’s public school system, citing the threat from “pension beasts.”

“Will Illinois’ governor and Chicago’s mayor eventually impair bondholders rather than push for sensible pension reforms? We think it’s more likely than not, unfortunately,” Franklin analysts led by Sheila Amoroso wrote in a blog post.

The comments buck the broader sentiment in the market, where Illinois bonds have rallied this year on optimism about Governor J.B. Pritzker’s plans to mend the state’s finances, in part by scrapping the flat income tax to raise more revenue.

But state and local politicians’ focus on levying new taxes or selling assets such as land won’t make the math work to solve a pension problem that for Illinois is a “fire-breathing monster that dwarfs Illinois’ revenue-generating capacity,” the Franklin analysts wrote.

When it comes to investing in Illinois, the firm favors so-called essential-service revenue bonds, such as toll roads, because the dedicated stream of income provides more security than debt backed only by a government’s promise to repay.

The analysts said they may change their minds if they see “a willingness of elected politicians to educate the public on the true scope of the situation and enact sensible pension reforms.”

States can’t go bankrupt, nor can Chicago under Illinois law, and no state has defaulted since the Great Depression. But investors would have reason to be wary: In the handful of municipal bankruptcies, bondholders have fared worse than pensioners.

Franklin has experience with such risks. The firm was one of the biggest investors in Puerto Rico, which was allowed to go bankrupt after Congress changed the law to rescue it from a worsening debt crisis. Franklin held about $2.3 billion of the territory's bonds when the island first began defaulting in 2015. Franklin in 2016 closed its Double Tax-Free Income Fund, which directed almost half of its investments to Puerto Rico, as prices on the securities tumbled and investors pulled money from the fund.

Bloomberg Markets

By Romy Varghese

May 30, 2019, 10:52 AM PDT

— With assistance by Michelle Kaske

Mayors Appear Increasingly Concerned About Infrastructure.

More than half of mayors discussed it during their annual State of the City addresses this year — double the number four years ago.

SPEED READ:

- Infrastructure was the second-most popular topic in mayors' annual addresses this year.
- Twice as many talked about infrastructure than in 2016.
- On the federal level, prospects for an infrastructure package have dimmed.

As the prospects for a federal infrastructure package this year become vanishingly thin, mayors are becoming more concerned about infrastructure in their own cities.

More than half of mayors (57 percent) discussed infrastructure at length during their annual State of the City addresses this year, according to a new report by the National League of Cities (NLC). That made it the second-most popular topic for the second year in a row, trailing only economic development.

It's no surprise that infrastructure ranks high among mayors' concerns. After all, there aren't many problems more commonly associated with local government than potholes and leaky pipes. But mayors are talking about it more often than in recent years. Only 31 percent of mayors discussed infrastructure in their annual speeches in 2016, climbing to 48 percent in 2017 and reaching roughly 60 percent in the last two years, the NLC noted.
"Infrastructure improvements are often not all that visible to the general public. They don't typically garner a great deal of attention — though their failure certainly does," Mayor Patrick Madden of Troy, N.Y., told residents. "Nonetheless, they are essential to preserve our assets and ensure the continued reliability of services and quality of life to our residents."

More Than Roads

The most popular infrastructure topics in the mayoral addresses were roads, streets and signs. But mayors also highlighted their work in other areas.

Roughly a third of them mentioned water infrastructure, pedestrian facilities or infrastructure spending. Nearly a quarter mentioned public transit.

Topics that are closely related to infrastructure were popular, too: 63 percent of mayors mentioned parks and recreation, while 41 percent discussed energy and the environment, according to the report.

In Niagara Falls, N.Y., for example, Mayor Paul Dyster pushed for streetscapes that accommodate all kinds of users — not just auto traffic.

“Having a Complete Streets plan recognizes that our streets belong to everyone — pedestrians and cyclists as well as motorists — and so [it] enhances safety and improves aesthetic appeal and the quality of life in our neighborhoods,” he said in his annual address.

Infrastructure Problems

Mayors gathered in Washington, D.C., last week to discuss the report and how they’re handling infrastructure in their cities.

Mayor Lily Mei of Fremont, Calif., said her town is trying to prepare for the arrival of a new Facebook campus and the strain it will put on local roads. At the same time, the city is working with the school district to encourage students to walk and take alternative modes of transportation to school.

“If you want the students to be able to take public transportation, it requires conscientious programs, such as giving them bus passes [and] teaching them how to ride,” she said.

For Mayor Karen Freeman-Wilson of Gary, Ind., one of the biggest infrastructure challenges is the “transformation of public housing.” The housing authority there tore down 500 units in the last six months, as demand for them waned and the apartments fell into disrepair. But the condition of the remaining units is still a concern, she says. When she gets complaints, she not only visits the units herself, she insists that the director of the housing authority join her.

“I want him to see — I want his managers to understand — that it’s important that people not only have a roof over their heads, but they have a place that they can call home,” she said.

In the suburban Florida community of Miramar, near Miami, Mayor Wayne Messam said he is concerned about the impacts of climate change and sea level rise.

“Many South Florida communities have to elevate the streets. We have to fortify our utility systems. Currently right now in Miramar, we’re spending over a hundred million dollars in our infrastructure to improve our water distribution systems,” he said.

That White House Meeting

The mayors shared their infrastructure concerns a day after a White House meeting on infrastructure ended abruptly. President Donald Trump left the room after just a few minutes of meeting with House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer, both Democrats.

The trio had planned to talk about how to pay for a $2 trillion infrastructure plan, but the prospects of that happening during Trump’s first term have now all but evaporated.

The mayors said their work would have to continue, despite the federal inaction.

“While some people are taking a pause,” said Mei, the Fremont mayor, “we can’t just sit there and wait for the action to happen.”

GOVERNING.COM

BY DANIEL C. VOCK | MAY 28, 2019 AT 9:46 AM

2019 GFOA Awards for Excellence Winners Announced.

The GFOA's Awards for Excellence in Government Finance recognize innovative programs and contributions to the practice of government finance that…

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GFOA 2020 Call for Topics.

We're already planning GFOA's 114th Annual Conference in New Orleans. Help us by submitting session ideas.

More

- IRS Notice 2019-39: Perpetuating the Gift of Targeted Bond Programs, but Creating Confusion about the Tax-Exempt Current Refunding of Build America Bonds.
- GASB Proposes Guidance on Cloud Computing and Similar Subscription-Based IT Arrangements.
- MSRB Seeks Comment on Rule G-23 on Activities of Financial Advisors.
- ARRC Releases Recommended Fallback Language for Floating Rate Notes and Syndicated Loans. ['Bout as wonky as it gets.]
- Hawkins Advisory: New Current Refunding Guidelines for Bonds Issued Pursuant to Special Authorizations.
- And finally, Why Don't They Let the Grandkids Visit No More? is brought to us this week by *Estate of Guyaux v. Township of North Fayette*, in which the court ordered the Sheriff's Office to remove all firearms from a dilapidated dwelling. Walk in and grab a few guns, right? So, so wrong. The department "worked for three days, from 7:00 a.m. or 8:00 a.m. to 11:00 p.m. each day. The removal operation required approximately 10 officers, some of whom worked overtime." "After the firearms were recovered they were inspected and unloaded. The weapons were found to be in poor condition with corroded metal, and most were loaded with live ammunition. The deputies responsible for removing the ammunition spent considerable time doing so." Indeed. "From there, the weapons were logged, photographed, tagged, and placed in a pile for transport. In total, 586 weapons, including a grenade launcher, were found and tagged." Golly, wish we could analogize to a country. You know, one with crumbling infrastructure and stockpiles of loaded weapons. Nope. Sorry. Got nothing.

EMINENT DOMAIN - CONNECTICUT

[Commissioner of Transportation v. Lagosz]

Appellate Court of Connecticut - May 14, 2019 - A.3d - 189 Conn.App. 828 - 2019 WL 2082763

Property owner appealed from Commissioner of Transportation's assessment of damages in connection with condemnation of real property for purpose of improving rail corridor.

Following mediation and hearing to determine whether enforceable settlement agreement had been reached, the Superior Court entered judgment enforcing oral settlement agreement for reassessment of $600,000 as just compensation for taking of defendant's property. Property owner appealed.

The Appellate Court held that:

- Settlement agreement was not unenforceable for failing to address expenses incurred by property owner's husband in relocating his business, and
- Trial court did not clearly err in finding that legally enforceable settlement agreement existed, under which Commissioner was to pay property owner $600,000 in damages.

Issue of expenses incurred by property owner's husband in relocating his business was outside scope of eminent domain proceeding, and thus oral settlement agreement between property owner and Commissioner of Transportation was not unenforceable for failing to address such issue, in property owner's appeal from Commissioner's assessment of damages in connection with taking; only essential term of settlement agreement was amount of compensation to be paid to property owner for taking of her real property.

Trial court did not clearly err in finding that legally enforceable settlement agreement existed, under which Commissioner of Transportation was to pay property owner $600,000 in damages in connection with taking of her home and real property, in property owner's appeal from Commissioner's initial assessment of damages, where property owner's former attorneys, Commissioner's representatives, and property owner's husband, all testified that parties had agreed to sum of $600,000 in mediation proceedings.

IMMUNITY - KENTUCKY

[Energy and Environment Cabinet, Department for Natural Resources v. Harmon]

Court of Appeals of Kentucky - May 10, 2019 - S.W.3d - 2019 WL 2063702

Residents of community who suffered property damage from torrential rainfall and flooding filed action for review of decision by Kentucky Board of Claims, dismissing residents' negligence claims against Energy and Environment Cabinet, Department of Natural Resources, which claims were based on Cabinet's alleged failed to enforce mining laws at nearby surface mine.

The Circuit Court reversed and remanded. Cabinet appealed.

The Court of Appeals held that:

- Negligence claims were barred by governmental immunity, and
- The savings statute does not constitute an implied waiver of sovereign immunity.

One-year period for residents to assert negligence claims against Energy and Environment Cabinet, Department of Natural Resources, accrued on date residents suffered property damage from torrential rainfall and flooding, which was nearly two years before residents asserted claims, and thus claims were barred by governmental immunity, in residents' action seeking review of decision by Kentucky Board of Claims, dismissing their negligence claims against Cabinet.

The savings statute, which allows the commencement of a new action in the proper court within 90 days of a judgment that the court in which the action was filed did not have jurisdiction, does not constitute an implied waiver of sovereign immunity.

ZONING & PLANNING - NEBRASKA

[Bruning v. City of Omaha Zoning Board of Appeals]

Supreme Court of Nebraska - May 17, 2019 - N.W.2d - 303 Neb. 146 - 2019 WL 2150381

Landowners sought review of city zoning board of appeals' denial of variance for their agricultural-zoned land that they had been leasing for use as automobile storage and landscaping and boiler repair businesses.

The District Court affirmed. Landowners appealed.

The Supreme Court held that:

- Substantial evidence supported denial of a variance based on unnecessary hardship, and
- Landowners were not deprived of all beneficial or reasonable use of their property.

Substantial evidence supported city zoning board of appeals' denial of a variance, on the basis of unnecessary hardship, from requirements regarding maximum building coverage, maximum impervious surface coverage, landscaping, and the required number of parking stalls, for agricultural-zoned land that landowners had been leasing for use as automobile storage and landscaping and boiler repair businesses, even if landowners had made investments and some neighbors supported landowners; record included recommendations from city, numerous exhibits, input from stakeholders, and testimony offered at four hearings, and evidence showed that landowners unilaterally altered the permissible use of property by leasing portions of buildings to several commercial entities and others.

City zoning board of appeals' denial of variance to landowners who had been leasing buildings in their agricultural-zoned property for use as automobile storage and landscaping and boiler repair businesses did not deprive landowners of all beneficial or reasonable use of their property such as would constitute a legally cognizable hardship, where the agricultural district allowed uses of horticulture, single family residential, park and recreation services, kennels, and stables, and also allowed, subject to approval of a conditional or special use permit, campgrounds, religious assembly, agricultural sales and service, sports and recreation, and veterinary services.

LIENS - PENNSYLVANIA

[Estate of Guyaux v. Township of North Fayette]

Commonwealth Court of Pennsylvania - May 6, 2019 - A.3d - 2019 WL 1983164

Township filed complaint in equity against estate and heir of estate, alleging violations of township's property maintenance code in connection with condemned house inherited by heir.

The Common Pleas Court entered order granting township authority to assert lien against heir for costs associated with removal of firearm collection from house, and ordering sale of firearms to satisfy such costs. Heir appealed.

The Commonwealth Court held that:

- Order was binding upon heir, and
- Trial court had legal and equitable authority to enter order.

Order stating that township could lien for costs if, after six months, it had to clear condemned property inherited by heirs, was binding upon heir, in action by township against estate and heir, alleging violations of township's property maintenance code, where heir consented to order in writing.

Trial court had legal and equitable authority to grant township authority to assert lien against heir for costs associated with clearing inherited property of firearms, to determine who would remove firearms, and to order sale of firearms to satisfy such costs, in action by township against estate and heir of estate, alleging violations of township's property maintenance code; trial court had broad authority to address public nuisance of dilapidated house, in which total of 586 weapons were stored, which required special handlers to remove, and firearms were inextricably connected to such public nuisance.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States District Court, D. Puerto Rico - May 10, 2019 - B.R. - 2019 WL 2070891

In the jointly administered restructuring cases of the Commonwealth of Puerto Rico and various governmental entities pursuant to Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the Financial Oversight and Management Board for Puerto Rico and the Official Committee of Unsecured Creditors brought adversary proceeding against the Puerto Rico Public Buildings Authority (PBA) in connection with purported PBA lease agreements, and subsequently filed omnibus objection to claims filed or asserted by holders of certain Commonwealth general obligation bonds, seeking to invalidate all such claims.

Ad hoc group of general obligation bondholders then filed conditional objection to claims filed or asserted by PBA bondholders, as well as motion for entry of order establishing conditional omnibus claims-objection procedures. Several parties in interest objected to motion.

The District Court held that the requested motion and related conditional claim objection impermissibly presented a hypothetical request for relief instead of an actual case or controversy.

In adversary proceeding against Puerto Rico Public Buildings Authority (PBA), brought in jointly administered restructuring cases of Commonwealth of Puerto Rico and various governmental entities under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the district court lacked jurisdiction to implement conditional omnibus claims-objection procedures requested by ad hoc group of general obligation bondholders in conjunction with its conditional objection to claims filed by PBA bondholders; by means of its objection, group sought to present legal disputes for adjudication that were expressly conditioned on future events that may or may not occur, such that motion and related objection presented hypothetical request for relief instead of actual case or controversy, and sought impermissible advisory opinion.

TAX - TENNESSEE

Coffee County Board of Education v. City of Tullahoma

Supreme Court of Tennessee, at Nashville - May 8, 2019 - S.W.3d - 2019 WL 2022363

County brought action against city, claiming that city was statutorily required to distribute liquor-b--the-drink tax proceeds pro rata among all schools in the county based on average daily attendance.

The Chancery Court granted summary judgment in favor of city. County appealed. The Court of Appeals reversed. City was granted permission to appeal, and the case was consolidated with four similar cases for oral argument only.

The Supreme Court held that city was not required to share its liquor-by-the-drink tax proceeds with county.

City, which had approved liquor-by-the-drink sales, was not required to share its liquor-by-the-drink tax proceeds with county, which had not approved such sales, despite contention that statute required city to distribute tax proceeds pro rata among all schools in county based on average daily attendance; statute required distribution of proceeds in “same manner as the county property tax for schools is expended and distributed,” and city had its own school system separate from county school system.

EMINENT DOMAIN - TEXAS

KMS Retail Rowlett, LP v. City of Rowlett

Supreme Court of Texas - May 17, 2019 - S.W.3d - 2019 WL 2147205

City filed petition to condemn property owner’s private road easement to convert it to public road connecting several commercial retail and restaurant sites, awarding owner damages of $31,662, and owner objected, claiming that the taking was illegal.

The County Court at Law granted summary judgment to city. Owner appealed. The Dallas Court of Appeals affirmed. Owner filed petition for review.

The Supreme Court held that:

- City’s condemnation of easement to convert it to public road was statutorily exempt from prohibitions on takings;
- Condemnation was necessary for a constitutional public use; and
- City’s taking of easement for public use was not fraudulent.

Transportation Code section authorizing creation of regional mobility authorities for purpose of constructing, maintaining, and operating transportation projects did not concern similar subject matter and possess same general purpose, as would warrant using Transportation Code’s definition of “transportation project” in interpreting Government Code’s limitation on taking of private property through use of eminent domain for transportation projects, where Transportation Code defined “transportation project” for limited purpose of delineating types of projects it authorized regional mobility authorities to undertake, while Government Code addressed “transportation projects” only to define exception to statute’s applicability.

City’s condemnation of property owner’s private road easement to convert it to public road connecting several commercial retail and restaurant sites was statutorily exempt from prohibitions on takings, even if public road to be constructed would not comply with standards imposed by city’s master thoroughfare plan, where statutory exemption’s definition of “public road” did not vary according to standards set by local government entities.

City’s condemnation of property owner’s private road easement to convert it to public road connecting several commercial retail and restaurant sites was necessary for a constitutional public use, even if it was motivated by request of private property owner to attain private benefit, where, regardless of any ulterior motive, taking was necessary for traffic circulation and cross-access between retail areas.

City’s taking of property owner’s private road easement for public use was not fraudulent, even if it also conferred private benefit upon owner of neighboring tract of land, where, even if city was motivated to confer private benefit, taking easement to convert it to public road connecting several commercial retail and restaurant sites plainly benefited public at large.

IMMUNITY - TEXAS

Dallas/Fort Worth International Airport Board v. Vizant Technologies, LLC

Supreme Court of Texas - May 17, 2019 - S.W.3d - 2019 WL 2147262

Consultant for analyzing airport board’s credit-card processing costs filed suit against board for breach of contract, fraudulent inducement, fraud in the performance, promissory estoppel, and attorney fees after board denied request to seek authorization for higher fee.

The District Court denied board’s plea to the jurisdiction. Board filed interlocutory appeal. The Dallas Court of Appeals affirmed in part and reversed and rendered in part. Board’s petition for review was granted.

The Supreme Court held that:

- Board was acting in governmental, rather than proprietary, capacity when it entered into contract, and, thus, governmental immunity applied;
- Agreement was not subject to subchapter on waiver of sovereign immunity since contract did not state essential terms of a legally enforceable agreement; and
- Any recovery would be “consequential damages,” other than delay damages, for which immunity was not waived.

Airport board was acting in governmental, rather than proprietary, capacity when it entered into contract with consultant to analyze and reduce airport expenses for payment processing, and, thus, governmental immunity applied to consultant’s claim for breach of contract by failing to seek authorization to increase payment to consultant; contract was for analyzing and reducing airport’s expenses.

Airport board consultant’s failure to file cross-petition seeking Supreme Court review did not result in waiver of challenge to Court of Appeals' holding on immunity that board was acting in governmental, rather than proprietary, capacity in connection with contract, where consultant did not challenge Court of Appeals' decision to reverse trial court judgment for consultant on fraud and estoppel claims, Court of Appeals affirmed trial court's refusal to dismiss contract claim, and consultant did not seek to alter affirmance, but raised proprietary-function argument as alternative basis to support judgment.

Consultant's contract requiring airport board to make good faith effort to authorize higher payment than $50,000 did not state essential terms of a legally enforceable agreement, and, thus, the agreement was not subject to subchapter on waiver of sovereign immunity for breach of contract claims.

Any amounts that consultant could recover from airport board for breach of agreement to make good faith effort to authorize higher payment above $50,000 were "consequential damages" other than delay damages, and, thus, board's sovereign immunity was not waived on consultant's claim for breach of contract by failing to make good faith effort to authorize higher payment under contract with formula tied to board's savings in payment processing expenses; board could have refused to approve failure to pay any or all of amount based on formula for any number of reasons, and its failure to pay higher amount was not a necessary or usual result of its alleged failure to make good faith effort.

TAX - TENNESSEE

Washington County School System v. City of Johnson City

Supreme Court of Tennessee, at Knoxville - May 8, 2019 - S.W.3d - 2019 WL 2022368

County school district brought action against city alleging that county did not receive its allocated share of the tax revenue designated for education that was generated by liquor-by-the-drink (LBD) sales in the city. County intervened.

The Chancery Court granted summary judgment in favor of plaintiffs. City filed interlocutory appeal. The Court of Appeals reversed and granted summary judgment in favor of city. Plaintiffs appealed.

The Supreme Court held that local education provision of LBD sales tax distribution statute did not require city to share half of its LBD tax proceeds with the county pro rata.

Local education provision of liquor-by-the-drink (LBD) sales tax distribution statute, requiring municipalities to expend and distribute one-half of their LBD tax proceeds in the same manner as the county property tax for schools was expended and distributed by the county, did not require city to share half of its LBD tax proceeds with the county and other school systems in the county pro rata; rather, the provision directed city to expend and distribute the education portion of its LBD tax proceeds in support of its own municipal school system.

MSRB Seeks Comment on Rule G-23 on Activities of Financial Advisors.

Washington, DC – In connection with its ongoing retrospective review of its rules and guidance, the Municipal Securities Rulemaking Board (MSRB) is seeking comment on MSRB Rule G-23 and related MSRB interpretive guidance. MSRB Notice 2019-13 solicits input on whether Rule G-23's requirements for brokers, dealer and municipal securities dealers (collectively, “dealers”) acting in a financial advisor capacity remain appropriate in light of the regulatory framework implemented for municipal advisors and other changes in the municipal securities market since Rule G-23 was last amended in 2011.

Rule G-23 establishes ethical standards and disclosure requirements for dealers who act as financial advisors to issuers with respect to the issuance of municipal securities, and importantly, prohibits such a dealer from underwriting the same issuance. The rule predates the implementation of rules for municipal advisors established by the MSRB and the U.S. Securities and Exchange Commission (SEC).

“As part of our retrospective rule review this year, we are evaluating Rule G-23 to determine whether changes may be necessary in light of the new regulatory framework for municipal advisors,” said MSRB President and Chief Executive Officer Lynnette Kelly. “Because Rule G-23’s obligations for dealer-financial advisors predates obligations for municipal advisors that include a fiduciary duty to issuers, we are seeking broad public comment on new considerations and market practices that will inform any possible changes to the rule.”

Since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, the MSRB adopted rules for municipal advisors, including MSRB Rule G-42, which establishes conduct standards and other requirements for municipal advisors. The MSRB also adopted an interpretive notice under Rule G-17, on fair dealing, which provides requirements for dealers serving as underwriters of municipal securities. Because of the interrelationship between these requirements and Rule G-23, the MSRB seeks input on whether these requirements are appropriately aligned and to ensure that there are no inconsistencies or unwarranted burdens associated with them.

The MSRB began a formal retrospective rule review in 2012 to help ensure MSRB rules and interpretive guidance are effective in their principal goal of protecting investors, issuers and the public interest. The retrospective review also seeks to ensure that MSRB rules are not overly burdensome, are clear and harmonized with the rules of other regulators, as appropriate, and are reflective of current market practices. In October 2018, the Board identified the continuation of its ongoing retrospective rule review as a strategic priority for its current fiscal year and subsequently developed criteria to help identify priority rules or rule areas for review.

Date: May 20, 2019

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

Where’s the Greenium?

This study investigates whether investors are willing to trade-off wealth for societal benefits. We take advantage of unique institutional features of the municipal securities market to provide insight into this question. Since 2013, over $23 billion Green Bonds have been issued to fund eco-friendly projects. Comparing Green securities to nearly identical securities issued for non-Green purposes by the same issuers on the same day, we observe economically identical pricing for Green and non-Green issues. In contrast to a number of recent theoretical and experimental studies, we find that in real market settings investors appear entirely unwilling to forgo wealth to invest in environmentally sustainable projects. When risk and payoffs are held constant, municipal investors view Green and non-Green securities by the same issuer as almost exact substitutes. Thus, the "greenium" is essentially zero.

Download the Study.

Stanford Graduate School of Business

By David F. Larcker, Edward M. Watts

February 22,2019

Working Paper No. 3766

GASB Proposes Guidance on Cloud Computing and Similar Subscription-Based IT Arrangements.

Norwalk, CT, May 21, 2019 — The Governmental Accounting Standards Board (GASB) has proposed new guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs), which have become increasingly prevalent among state and local governments over the past several years.

The Exposure Draft, *Subscription-Based Information Technology Arrangements*, effectively would apply many of the provisions of Statement No. 87, Leases, to subscription-based transactions. The Exposure Draft proposes:

- Defining a SBITA as a contract that conveys control of the right to use a SBITA vendor's hardware, software, or both, including IT infrastructure, for a period of time in an exchange or exchange-like transaction
- Governments with SBITAs would recognize a right-to-use subscription asset and a corresponding subscription liability (with an exception for short-term SBITAs with a maximum term of 12 months).In addition, the Exposure Draft includes proposals related to outlays other than subscription payments, including implementation costs and note disclosures related to a SBITA.

Although existing GASB literature addresses on-premise computer software—either internally developed or acquired through perpetual licensing agreements—stakeholders have raised questions regarding the proper accounting for and reporting of cloud computing and other remote-access forms of software applications and data storage, which are subscription based. The lack of guidance caused inconsistency in accounting and financial reporting for SBITAs.

The proposed Statement would be effective for fiscal years beginning after June 15, 2021, and all reporting periods thereafter. Early application would be encouraged.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by August 23, 2019.

[Cyberattack Hobbles Baltimore for Two Weeks and Counting.]

City faces second ransomware attack in 15 months; water bills, home sales face delays

BALTIMORE—About 10,000 city government computers here remain frozen two weeks after a disruptive cyberattack that has delayed home sales and halted water bills.

Baltimore was hit May 7 by hackers demanding an undisclosed sum to unlock computers. The city hasn't paid, and the Federal Bureau of Investigation is probing the incident. Mayor Bernard C. "Jack" Young has warned it could take months to recover some systems.

"It's extremely alarming," said City Council President Brandon Scott.

This is Baltimore's second cyberattack in 15 months. In March 2018, a short-lived ransomware attack on the city's 911 system forced dispatchers to temporarily relay addresses and other information to first-responders by phone rather than electronically.

City officials emphasized that key services such as 911 emergency dispatch haven't been affected by the current cyberattack.

Ransomware attacks are common in both the public and private sectors, and attackers are generally looking to exploit any vulnerability they can turn into extortion for money. After accessing systems through methods like malicious emails, hackers can encrypt files and then demand payment in bitcoin to unlock them.

Local governments are often more vulnerable than private companies, said Bill Siegel, chief executive at Coveware, a Connecticut-based firm that helps entities victimized by cyberattacks. "I think broadly they are not prepared for these sorts of things, they do not have the budget," he said.

For Baltimore, "I think it's pretty obvious that they have not been able to stay ahead of it," said Mr. Siegel, who hasn't worked with the city on this problem.

Frank Johnson, Baltimore's chief information officer, didn't respond to a request to comment Tuesday.

Mr. Scott said he will form a special committee to investigate the episode and city officials' handling of it, "but most importantly, how they're going to work to have this not happen in the future."

While the city and outside contractors continued working Monday to restore the municipal computer system, officials began implementing a workaround to allow home sales to proceed.

Between 200 and 300 closings have been hung up because the city couldn't tell title insurers whether the seller had any unpaid liens, said Alan Ingraham, chief executive of the Greater Baltimore Board of Realtors.

Starting Monday, sellers were able to sign an affidavit promising to pay any liens, such as unpaid water bills, that are discovered once the computers come back online. Mr. Young's office said the city processed 42 applications for property deeds on the first day of the workaround.

Mark Glazer, executive director of the Maryland Land Title Association, a trade group for title insurers and agents, said this helps but he hopes the city resumes full operations quickly. May and June are busy months for deal closings, he said.

Meanwhile, the problems continue for some city agencies. Epidemiologists in Baltimore's health department can't access the state network that helps them warn the public when bad batches of street drugs trigger overdoses. And the city's public-works department can't generate new water bills for customers, which could mean residents will get unusually high bills once the problem is fixed.

"We can't see the consumption data that our meters are collecting and sending to us," said Jeff Raymond, a spokesman for the public-works department.

Greenville, N.C., was attacked last month by the same type of ransomware afflicting Baltimore, dubbed Robbinhood. The attackers demanded 13 bitcoins—worth roughly $69,000 at that point—to unlock the city's files. The city didn't pay, spokesman Brock Letchworth said in an email.

"While not 100% restored, all of our major technology needs are now being met," he said.

Atlanta last year endured one of the highest-profile ransomware attacks on a major city. The city also refused to pay the ransom demand—$51,000 in that case—and has faced millions of dollars in costs to rebuild and bolster defenses.

In Baltimore, Mr. Scott said he pushed city officials to strengthen cyber defenses after last year's 911 hack but that they "decided not to invest in this area."

A spokesman for Mr. Young, who became mayor May 2 upon the resignation of Catherine Pugh, said Mr. Young has directed officials to obtain cybersecurity insurance, which would help offset the cost of any future hacks.

The Wall Street Journal

By Scott Calvert and Jon Kamp

Updated May 21, 2019 4:48 p.m. ET

Legislation to Restore Tax-Exempt Advance Refundings Introduced.

The House Municipal Finance Caucus Co-Chairs Rep. Steve Stivers (R-OH) and Rep. Dutch Ruppersberger (D-MD) have introduced legislation with 10 co-sponsors, that would fully reinstate tax-exempt advance refundings. Since their elimination in the 2017 *Tax Cuts and Jobs Act*, reinstatement of tax-exempt advance refundings has been a top priority of the BDA. Working with our partners on Capitol Hill and within the issuer community, the BDA has been raising awareness and interest in the legislation, including assisting in the drafting of similar legislation in 2018. **The BDA is currently working with the House Municipal Finance Caucus to identify Senate offices to draft a companion bill, while also identifying House Members for co-sponsorship.** Building off the recent success of the "Dear Colleague," the group hopes to dramatically increase the number of co-sponsors from the previous high of 20.

Upcoming Events

- Advance Refunding Call – The BDA plans to hold a conference call in the coming weeks to brief members on BDA activity regarding the legislation and steps that members can take to help promote the bill.

- Municipal Bonds for America (MBFA) Coalition Fly-In: On June 13th – 14th, the MBFA Coalition will host its annual fly-in and municipal bonds seminar. During the fly-in, the MBFA Executive Committee and Coalition members will advocate for the tax-exemption, advance refundings, and bank-qualified bonds.
- If you are interested in participating in these events, please contact Justin Underwood at justin@munibondsforamerica.org.

Bond Dealers of America

May 20, 2019

Fitch Rtgs: April Revenue Positive for US States; Sustainability Unclear

Fitch Ratings-New York-23 May 2019: US states' revenue data through the key tax collection month of April indicate generally positive results for widely varying reasons, but continued revenue volatility brings into question the sustainability of the positive trend, says Fitch Ratings. The December 2017 federal Tax Cuts and Jobs Act (TCJA) contributed to observed volatility, but other federal actions, namely the US Supreme Court's Wayfair decision, likely played a role as well. Revenue volatility will not generally affect ratings in the short term but it does make revenue forecasting more complex and challenges states' ability to manage their budgets.

April 15 is the tax filing deadline for nearly all states. Of the 32 states reporting monthly revenues through April and reviewed by Fitch, 31 indicate yoy growth. The median growth rate is 6.3%, consistent with last year's trend. Personal income tax (PIT) results remain a key driver. State PIT collections rebounded in April from January's weakness. The median change in PIT revenue accelerated from a 1% yoy decline through January, with 34 states reporting, to 5.7% growth through April, with 28 states reporting.

While very few states reported details, Fitch believes non-withholding PIT collections are a key driver in the stronger April performance. Connecticut, Massachusetts, Montana and Virginia reported withholding versus non-withholding results and, in all four, trends in withholding collections were relatively consistent between January and April but the pace for non-withholding collections improved sharply in April.

Continue reading.

23 MAY 2019 02:04 PM ET

Fitch Webinar: U.S. State & Local Pension Investments - Concerns Grow with Riskier Allocations, Lower Returns

Now Available On-Demand

Fitch's webinar discusses our recent report on U.S. state and local pension investment portfolios. We discuss the trend of public pension plans increasing their investment allocations in riskier asset classes over the past two economic cycles, raising their potential volatility and exposing participating governments to higher funding risks, including potentially higher contributions.

[Register for the Webinar.]

[Why Patient Consumerism Will Further Define U.S. Not-For-Profit Healthcare.]

The metamorphosis of U.S. not-for-profit healthcare into a more consumer-driven and population-health focused model will continue. No one knows for sure what change or challenges lie ahead, but as Heraclitus said around 500 BC, '*Change is the Only Constant*'.

Non-Traditional Entrants

Non-traditional competitive entrants aiming to design healthcare around the consumer began in earnest two decades with the arrival of WebMD, though it has reached a crescendo of late with Amazon, Apple and Haven now leaving their mark. "Consumerism" is no longer a new buzzword for not-for-profit healthcare but rather a concept that will radically overhaul healthcare delivery over the longer term.

The inexorable rise of consumerism will result in a more competitive operating environment across the acuity spectrum, particularly on the front-end where non-traditional competitors will get between more traditional providers and their patient at the earliest possible stage. A successful response to this will either require significant rethinking of the entire patient experience and care re-design around the consumer versus "the system", or at the very least, some level of partnership that might reduce capital and technological spending, but which has the impact of resulting in a "half a loaf is better than none" strategy.

Legislative Changes

The legislative environment has also changed immeasurably for not-for-profit healthcare. The political debate that led to the passage of the Affordable Care Act (ACA) a few years ago has come full circle, with many prominent Democratic presidential hopefuls now espousing a "Medicare-fo--All" approach. While "Medicare-for-All" has a very low likelihood of happening, it would be a significant net negative for rated not-for-profit hospitals. Realistically, 'a "repair and replace" of the ACA is more likely with public option really dictating how it is ultimately designed.

If constructed as an independent quasi-governmental authority where hospitals could negotiate rates and terms, this could expand coverage considerably to many patients who would then have insurance that pays at something close to commercial rates. Conversely, if public option prefers an add-on to Medicare, this could have the possibility of being a "back door" to Medicare-for-all.

Conclusion

Change and challenge lie ahead for not-for-profit hospitals and health systems. Despite recent heavy headwinds, the non-profit healthcare sector has historically been successful over an extended period of time—through ups, downs, and through constant change. Here's to the next twenty years!

whyforum.com

by Kevin Holloran

May 21, 2019

Fitch Ratings: Strong Economy Continues to Propel California's Budget

Fitch Ratings-New York-20 May 2019: The updated budget proposal for fiscal 2020, released by Governor Newsom in his “May Revise,” continues to build budgetary resilience, while also increasing spending on education and social welfare programs, says Fitch Ratings. The budget revision takes advantage of strong revenue collections in the current fiscal 2019 and a $1.7 billion increase in the forecast for fiscal 2020, as compared to the January budget proposal, propelled by continued strength in the California economy that is driving higher personal and corporate income tax collections. The budget focuses on sustainability of program expansions through use of one-time spending, continues to pay down long-term liabilities, and funds the rainy day fund. The approach taken in the revised budget appears prudent, in Fitch’s view, and an enacted budget with similar priorities would bode well for continued fiscal stability in light of the state’s volatile tax structure and the inevitability of a future economic downturn.

Fitch’s assessment of the state’s credit quality assumes a continuation of the strong budget management the state has demonstrated through this extended period of economic recovery and expansion; the governor’s proposed budget is consistent with this assumption. California’s ‘AA-‘ Issuer Default Rating also recognizes its large and diverse economy, solid ability to manage expenses through the economic cycle and moderate level of liabilities; although California’s flexibility is somewhat more restricted than most states due to its constitutional requirement for funding education and voter initiatives that limit policymakers’ discretion.

Reasonable Assumptions for Revenue Growth

The governor’s budget proposal is based on a revenue forecast of modest growth that reflects the continued expansion of the California economy tempered by the risk that the current economic expansion has passed its peak. It also accommodates the expectation of slower out-year revenue growth by allowing certain program expansions to sunset; this should help to maintain structural budgetary balance.

The proposed general fund budget assumes 3.4% growth in revenues over the current fiscal year to $147.8 billion and estimates that current year revenues will exceed the forecast upon which the fiscal 2019 budget was enacted by $34.6 billion (3.3%) and total $142.9 billion, driven by strong capital gains and corporate income tax collections. The 3.4% growth rate for fiscal 2020 is below the average growth rate experienced by the state since emerging from the recession, taking into account various changes in tax law related to personal income and sales taxes. Much of the increase in revenue will be automatically allocated to K-14 education under Proposition 98, but will also support increased spending for Medi-Cal (California’s Medicaid program), higher education, programs that counteract poverty and homelessness, climate change, infrastructure, and paying down liabilities.

Building Budget Resiliency

The governor’s revised budget proposal allocates $15 billion to building budgetary resiliency by adding to reserves and paying down unfunded pension liabilities, debt, and deferrals, an increase of $1.4 billion over the January proposal. The governor is proposing to set aside $2.2 billion from fiscal 2020 revenues in the state’s rainy day fund (the Budget Stabilization Account), $1.2 billion more than initially proposed in January. This would bring the balance to $16.5 billion, reaching 100% of the target of 10% of tax revenues as originally detailed in Proposition 2, which established the fund. The governor has offered a new interpretation of Proposition 2 that does not count previous supplemental contributions toward the required funding level, potentially raising the deposits to the rainy day fund. A fully funded rainy day fund supports the state's very strong gap-closing capacity and would help it to weather a downturn in the economy, while maintaining financial flexibility, in contrast to prior economic downturns.

In addition to the rainy day fund, the governor continues to propose adding $700 million to the Safety Net Reserve that was initially funded at $200 million in the fiscal 2019 budget, but lowering the balance in the Special Fund for Economic Uncertainties to $1.645 billion from just under $2 billion, for a net increase of $537 million in discretionary reserves. The revised budget proposal makes the first ever deposit ($389 million) into the Public School System Stabilization Account, as required by Proposition 2. This reserve is intended to offset volatility in school funding in the event of a downturn.

Governor Newsom's application of excess revenues to one-time supplemental spending in fiscal 2019 to pay down long-term liabilities and eliminate remaining budgetary deferrals bodes well for a continued balanced approach to budgeting under the new administration. This practice also provides flexibility to maintain balanced operations if revenue growth expectations are not realized. At its peak, the state's budgetary borrowing totalled approximately $35 billion, including outstanding debt in the form of the Economic Recovery Bonds, payment deferrals to schools and local governments, payroll shifts between fiscal years and interfund borrowing. The governor's budget proposal for fiscal 2020 eliminates the final pieces of budgetary borrowing, allowing the state to direct revenues generated from Proposition 2 to other long-term liabilities, including for pensions and other post-employment benefits.

Longer term budget sustainability also is provided by the application of surplus revenues to one-time spending, including supplemental contributions to the retirement funds: $3 billion for CalPERS and $2.3 billion to CalSTRS as supplemental appropriations in the current year plus $1.1 billion for CalSTRS proposed for fiscal 2020. These are intended both to reduce employer contribution rates and to provide savings over time. Other one-time spending focuses primarily on education and housing, with facilities for all-day kindergarten, expanded childcare facilities, and a variety of grants and incentives designed to address housing production and homelessness.

The revised budget would increase ongoing spending by $3.4 billion, approximately $500 million more than proposed in January and higher than in recent budgets. However, as the out-year revenue forecast is slightly more pessimistic than was the case in January, the governor is proposing sunsets to several categories of program expenditures in order to avoid emergence of a structural deficit.

Adjustments to Spending Proposals

The governor is not making major changes to the spending proposed in the January budget, although there are several adjustments. Of note is an increase in state support for programs to address homelessness, with the governor proposing $1 billion in spending, including $650 million allocated to local governments for emergency aid. The revision also increases the health and human services budget request by $1.1 billion over the January proposal. Other more modest changes include, slowing the creation of additional pre-school slots, a priority highlighted in the budget, recognizing both longer implementation time and the possibility of slower revenue growth.

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Muni-Junk Titan Nuveen Starts Fund to Take Advantage of Defaults.

- **Nuveen is among the biggest investors in high-yield muni bonds**
- **Closed-end fund prospectus registered Thursday with the SEC**

Nuveen, a perennial bull on risky municipal debt, is planning a new fund to invest in state and local government bonds in distress, default or in bankruptcy, according to a securities filing.

Nuveen's Municipal High Yield & Special Situations Fund, a closed-end fund, will also invest in securities with complex structures that would render them unsuitable for certain investors, according to a preliminary prospectus filed Thursday with the U.S. Securities and Exchange Commission.

"Special situations municipal securities, in particular, offer complexity risk premiums (stemming from the work-out expertise required to negotiate security improvements, including rate covenants, reserve funds and other security structure enhancements), which in turn may create significant investment opportunity for the Fund," Nuveen said in the filing.

Nuveen's move comes as investors including Goldman Sachs Group Inc. and Knighthead Capital Management are wagering there's a coming wave of defaults in the municipal-bond market as the economic cycle turns and distressed cities and speculative projects have trouble paying back loans.

Nuveen has led a charge of investors into riskier municipal bonds to finance shopping malls, refineries, charter schools, assisted living centers and waste-to-energy facilities. Nuveen, which runs a $19.5 billion high-yield municipal bond fund, is the largest investor in Virgin Trains USA — a new privately-operated railroad that runs from Miami to West Palm Beach and is expanding to Orlando. It also owns debt sold for the American Dream shopping mall and indoor amusement park in New Jersey's Meadowlands.

Demand for high-yield muni debt, coupled with a lack of new supply, has driven the sector to a 5.5% return this year, according to the Bloomberg Barclays index.

Nuveen spokeswoman Kristyna Munoz declined to comment, citing a quiet period between the filing of the registration and the initial public offering of the shares.

The fund will invest 65% of assets in unrated bonds or those with grades of BBB or lower and will use borrowed money to buy bonds. The fund will be operated as an "interval fund," a type of investment company that periodically offers to repurchase its shares from shareholders rather than trading in the secondary market.

Still, it may be hard for the fund to put money to work as default rates are much lower than the corporate or sovereign bond markets. From 2007 through 2016, a key default rate on municipal bonds graded by Moody's Investors Service was 0.15%, compared with 6.92% for corporate debt.

Bloomberg

By Martin Z Braun

May 24, 2019, 9:53 AM PDT

— With assistance by Amanda Albright

High-Yield Munis Outperform Fixed Income in 2019.

John Carney, head of municipal strategy at BlackRock, discusses the factors behind the strength of the high-yield municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets – Muni MomentTV Shows

May 22nd, 2019, 9:43 AM PDT

Wall Street Bankers, Muni Buyers Welcome Airport Building Boom.

- **Dallas Fort Worth is latest to unveil big expansion plan**
- **Airport revenue bond sales total $3.8 billion this year so far**

Flyers aren't the only ones benefiting from efforts at U.S. airports to make themselves bigger and better. The $3.8 trillion municipal-bond market, desperate for new bond deals, is reaping gains from the billion-dollar revamps.

The Dallas Fort Worth International Airport, the nation's fourth busiest, is the latest to announce an expansion, saying it intends to spend as much as $3.5 billion for a new terminal and other projects. Kansas City International and Chicago O'Hare International Airports have also kicked off big construction plans to keep up with the growing volume of passengers.

Continue reading.

Bloomberg Markets

By Amanda Albright

May 21, 2019, 10:37 AM PDT

Health-Care Munis Gobbled Up in Yield-Starved ‘Feeding Frenzy’

- **Oversubscribed sales help lower issuers’ borrowing costs**
- **Muni market has seen just $7 billion in health-care bonds**

Tom Casey, senior portfolio manager at Mellon Investments Corp., likes health-care bonds. The problem is that everyone else in the $3.8 trillion municipal-bond market does too.

That’s because the hospital and health-care sector often features mid- to lower-rated deals that can offer investors some additional yield — something that is in high demand amid an era of low interest rates. The billions of dollars that have flooded the state and local debt market in 2019 have only heightened that craving.

“The inability to access deals which are, in theory, attractive is extraordinarily difficult,” said Casey, who helps manage $25 billion in municipals at Mellon. “That’s a trend that has been frustrating as an investor.”

While the dynamic may irk buyers, health-care and hospital borrowers have scored lower costs thanks to the strong demand for their debt. Atrius Health, a nonprofit medical group in Massachusetts, borrowed $137 million in tax-exempt municipal bonds for the first time this month and didn’t have to make any concessions on the deal, said Brian Wynne, head of public finance at Morgan Stanley, the underwriter on the deal.

Wynne said bankers met with more than 40 investors to discuss the offering. It ended up “significantly” oversubscribed, helping to lower yields by about 25 basis points by the time it priced, he said.

The securities also gained in the secondary market, a signal of strong demand. Debt maturing in 2049 traded at 104 cents on the dollar on May 16, higher than its initial price of 101.2 cents on the dollar.

Also adding to the “food fight” for health-care bonds is the changing capital needs of the industry, said Karleen Strayer, head of municipal research at Wilmington Trust. Health-care companies have become more focused on providing outpatient care and are reluctant to sell debt to build inpatient facilities. That’s made new securities even more scarce, she said.

Hospital revenue bond issuance of about $7 billion this year is on pace to fall short of last year’s $20.7 billion of total sales, according to data compiled by Bloomberg.

“Because the supply is so tight, every time a health-care deal comes to market, there seems to be a whole lot of interest in it,” Strayer said.

The “feeding frenzy” for health-care debt isn’t likely to ease anytime soon, given the amount of cash pouring into municipal-bond mutual funds, especially those focused on high-yield debt, Casey said. Such funds notched their 19th straight week of inflows last week, according to Refinitiv’s Lipper US Fund Flows data.

“It doesn’t appear, based on what we’ve seen, that those flows will abate anytime in the near future,” he said.

Bloomberg Markets

By Amanda Albright

May 20, 2019, 10:30 AM PDT

— With assistance by Sowjana Sivaloganathan

Biggest Muni Junk-Bond Fund Plows In as Puerto Rico Debt Rallies.

- **Nuveen's fund held $824 million of island debt in April**
- **Firm buys Puerto Rico debt as island bonds gain 9% this year**

The biggest buyer of muni junk bonds is big on Puerto Rico.

Nuveen's $19.5 billion High Yield Municipal Bond Fund, the largest focused on riskier state and local government securities, boosted its stake in debt sold by the bankrupt U.S. territory to $824 million as of April 30, up from $456 million at the end of March and zero in July, according to data compiled by Bloomberg. The company's Short Duration High Yield Municipal Bond Fund also increased its holdings.

Continue reading.

Bloomberg Markets

By Michelle Kaske

May 22, 2019, 6:41 AM PDT

Rockefeller Foundation Aims to Make Trump Tax Perk Work for Poor.

- **Charity promotes 'responsible' investment in opportunity zones**
- **Newark Mayor Baraka says it'll help guide where investments go**

Wall Street's obsession with a new tax break that rewards investment in low-income areas has raised doubts that the poor will benefit. Can a modest philanthropic effort change that?

The Rockefeller Foundation is set to announce Tuesday that it will hand out $5.5 million to help six U.S. cities promote "responsible" investment in areas designated as opportunity zones.

Prudential Financial Inc. is contributing to the first award, which will provide $920,000 to Newark, New Jersey. The money will allow a local nonprofit, the Newark Alliance, to hire a chief opportunity zone officer who will be embedded with the city, and two "community engagement specialists." The grant also comes with two years of technical assistance to help structure deals.

Opportunity zones have set off a fierce debate since they were tucked into President Donald Trump's 2017 federal tax overhaul. Backers say they'll draw investment to struggling communities. Critics argue the incentives may end up a handout to the wealthy or mainly benefit areas already on the upswing, potentially making it even costlier for poor people to live there. The law doesn't require investors to promote social good with their dollars.

“We should have more public and philanthropic guardrails” to ensure the law helps low-income families and workers, said Rajiv J. Shah, president of the Rockefeller Foundation. “We know making grants in six cities is not going to change the trajectory of the law right away,” he said, but ultimately it’s possible to “avoid some of the concerns that have been raised.”

Read a QuickTake on the opportunity zone debate

Rockefeller’s grants are part of a broader effort by philanthropies, public officials and others to make sure the tax break has positive outcomes. The Kresge Foundation pledged $22 million this year to support fund managers who agree to report on their investments in opportunity zones. Jim Sorenson, a prominent impact investor, said this week he’s seeding a $150 million fund that will use a framework designed by U.S. Impact Investing Alliance and the Beeck Center at Georgetown University to measure the good it does in distressed areas.

Still, such endeavors may end up being the exception. Large asset managers like CIM Group and Starwood Capital Group have set out to raise hundreds of millions of dollars to deploy in the zones. Few have formally committed to measuring their impact. In fact, there’s no requirement for investors to publicly divulge whether they’re using the break.

“It’s difficult for municipalities to identify readily the kinds of funds that are coming in,” Newark Mayor Ras Baraka said in an interview. “We really need to figure out how to do that and direct the money in a very deliberate way so it’s not arbitrarily spread in places we don’t want it.”

Bloomberg Markets

By Noah Buhayar

May 21, 2019, 5:30 AM PDT

Blue States Warned of a SALT Apocalypse. It Hasn't Happened.

- **California, New York, Illinois income tax revenue rebounds**
- **Softer housing market in New York City suburbs may be warning**

To listen to New York Governor Andrew Cuomo, the 2017 Republican tax overhaul that limited state and local deductions to $10,000 was a devastating blow. The rich would flee, the middle class would suffer and blue state budgets would bleed.

Perhaps this will come to pass over time, but so far, there are almost no signs of it.

New York, in fact, saw revenue rise $3.7 billion in April from a year earlier, thanks to a shift in timing of taxpayer payments, a stock market that rallied through much of 2018 and a decade-long economic expansion that’s pushed national unemployment to a 50-year low. Similar windfalls arrived in New Jersey, California and Illinois — states that, like New York, had warned of dire consequences from the law.

And it turns out that tax refunds across the U.S. in 2019 — those once-a-year checks from Uncle Sam that people use to pay credit card debt from Christmas or buy a washing machine — were roughly the same size as a year earlier. In all, about 64% of American households paid less in individual income tax for 2018 than they would have had the Tax Cut and Jobs Act not become law, according to the Urban-Brookings Tax Policy Center.

“Any comment that says this is an economic civil war that would gut the middle class is overblown,” said Kim Rueben, the director of the State and Local Finance Initiative at the Tax Policy Center. “If there’s going to be any effect of the SALT limit on the ability of some states to have progressive taxes it’s too early to know that yet.”

Read more: SALT Cap Will Leave About 10.9 Million People Feeling Tax Pain

Taxable Income

In some ways, the $10,000 limit on state and local tax deductions — SALT — is saving states money by lowering their borrowing costs. That’s because investors seeking to reduce their tax bill are plowing a record-setting amount of cash into municipal bonds, driving interest rates lower. The extra yield that investors demand to compensate for the risk of holding Illinois general-obligation bonds, for instance, has fallen to the lowest since May 2015, according to data compiled by Bloomberg.

States are also benefiting from a broader tax base because the law eliminated some exemptions and limited deductions, like mortgage interest. Since states that levy income taxes use federal adjusted gross income or taxable income as the base, they have more income to tax.

Still, the nerves of Democratic governors and their budget officers frayed in December when income tax collections plunged by more than 30 percent from the prior December. Cuomo was quick to call the tax law “politically diabolical” and an act of “economic civil war” against the middle class.

Then April came.

New York collected $3.4 billion more in personal income tax revenue last month than a year earlier, a 57% increase, according to Comptroller Thomas DiNapoli. California took in $19.2 billion in April, exceeding Governor Gavin Newsom’s estimate by $4 billion.

New Jersey had a record April with tax collections up 57%, allowing it to boost forecasts for the year by $377 million and triggering a political battle over how to spend the windfall. Illinois individual and corporate tax revenue was $1.5 billion more than projected, allowing Governor J.B. Pritzker to scrap a plan to put off pension payments.

Timing Change

April personal income tax collections in 28 states and Washington increased by $16.3 billion, or 36.2% year-over-year to $61.4 billion, Bank of America Corp. said.

“SALT caps do not appear to be a broad system risk to state credit quality at this point,” S&P Global Ratings said recently.

A big reason for the sharp bounce-back after December’s deep revenue declines in New York and other high-tax states: The SALT limits caused some people to change when they paid their taxes. Wealthy taxpayers in December 2017 accelerated big tax payments to take advantage of the unlimited state and local tax deduction before it expired. Then, with the SALT deduction capped, that incentive evaporated and taxpayers waited until this April to pay their 2018 taxes.

Also, some individuals failed to adjust their W-4s after the passage of the tax law. So people who underwithheld received more in their paychecks since then but had to pay more tax in April or received lower refunds.

Trending Inline

Still, there are some indications that residents in high-tax states are fretting about the law. Thirteen percent of house-hunters in both New York and California said they have started looking for homes in states with lower taxes, according to a recent survey by brokerage Redfin Corp.

In Westchester County, where a typical property tax bill for a single family home is more than $17,000, the average sales price declined 7.6% between the first quarter of 2018 and the same quarter this year. Sales prices for luxury homes (average price $2 million) plummeted 22% during the same period, according to appraiser Miller Samuel Inc. and brokerage Douglas Elliman Real Estate.

Almost half of income taxes paid to California, New York and New Jersey are from the wealthiest 1% of earners. If they were to move in large enough numbers, those states could be in trouble. New York, New Jersey, Connecticut and Maryland sued the Trump administration last year to invalidate the $10,000 cap, saying that it unfairly targets them. States have sought to pass loopholes around the limit and there's a push in Congress to reverse it.

But migration rates in high tax states most affected by SALT are below pre-recession levels, and generally in-line with U.S trends, Moody's Investors Service said in April. Jobs, housing and the weather influence migration more than taxes, according to Moody's analyst Marcia Van Wagner.

"Armageddon hasn't resulted from the changes to SALT, but it still may be too early to measure its impact," said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments, which manages $9 billion of municipal bonds. "You see more mansions listed in New York. Manhattan real estate sales just had their worst quarter in a decade."

Read more: Trump SALT Change Isn't Causing People to Flee New York: Moody's

Bloomberg Politics

By Martin Z Braun

May 21, 2019, 3:00 AM PDT

— With assistance by Patrick Clark

The Only 2 States That Can't Afford a Recession.

SPEED READ:

- **Moody's Investors Service concludes that Illinois and New Jersey are least-prepared to weather the next recession.**
- **The report is based on savings, pension risks and state revenues.**
- **Illinois has enough savings to cover a few months; New Jersey even less.**

The chronic budget-balancing struggles of Illinois and New Jersey since the Great Recession have earned them a dubious distinction this week: They are the only two states not prepared to weather the next recession.

That was the assessment from Moody's Investors Service, which measured how drastically each state's revenue was likely to drop during a mild recession and whether the state had budget reserves or other funds available to help cover the gap. The analysis also evaluated what would happen to public pension funds if a recession leads to a loss of the investment assets that pay benefits.

When it comes to pension debt, Illinois has more than six times the size of its annual revenue, while New Jersey's is more than triple, according to Moody's. Illinois has enough savings to cover a few months of revenue declines, but New Jersey's would cover even less. (Louisiana, New York and Pennsylvania also have slim-to-no reserves.)

Illinois Gov. J.B. Pritzker is under pressure to close a billion-dollar budget gap and address $133.5 billion in unfunded pension liabilities. While his plan to eliminate the state's flat income tax in favor of a progressive structure is aimed at addressing these two problems, it would also make the state's tax revenue more volatile and susceptible to declines during a recession.

New Jersey Gov. Phil Murphy is advocating a so-called millionaire's tax to help his state's chronic budget woes. But legislative leaders say it won't pass. State Treasurer Elizabeth Maher Muoio, who has advocated for the millionaire's tax, issued a statement in response to the Moody's report and called on the legislature to stop "punting on its responsibilities" to bolster budget reserves.

"While our projected surplus is certainly better than the far-too-risky position New Jersey had become accustomed to in recent years," she said, "we are still far behind most states when it comes to being adequately positioned to weather a future economic downturn."

The findings are an update from the first report of this kind that Moody's conducted three years ago. That report, which did not include pension risk and only studied the 20 most populous states, found that California and Illinois were the least-prepared.

California has since added to its savings and is now rated by Moody's as moderately prepared, meaning it has enough in reserves and other financial flexibility to weather a recession with mild adjustments, such as spending cuts.

GOVERNING.COM

BY LIZ FARMER | MAY 24, 2019 AT 4:00 AM

Opportunity Zones Skip Over Hard-Hit Rural Places.

Shelterforce is right on the money in their article, "Pushing Opportunity Zones to Fulfill Their Promise." The piece urges urban leaders across the country to set guiding principles to make sure this new tax incentive, called the "most significant community development program to pass in a generation," leads to equitable development and not displacement of low-income residents and people of color.

Opportunity Zones were created by the federal tax overhaul in 2017 to entice private investors to underserved areas by eliminating capital gains taxes owed on prior investments if reinvested in Opportunity Zone communities for at least a decade. The new program has already attracted $28 billion in investment capacity.

Continue reading.

Nonprofit Quarterly

by Debby Warren

May 17, 2019

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5 Questions Colleges Should Ask Before Engaging in a Public-Private Partnership.

More institutions are looking to these deals for projects central to academics, raising new questions for their oversight and objectives.

Public-private partnerships (P3s), or the practice of sharing responsibility for providing a good or service with a for-profit company, are not new to higher education. Colleges have long outsourced elements such as food and laundry services, bookstores, custodial work and building construction.

In recent years, however, those partnerships have expanded to include academics and other pieces of the student experience that traditionally have been closely held, including online education, recruitment and even immersive learning experiences.

Such partnerships, however, involve more risk and “a level of skill set and competency to be able to both negotiate and to start up and manage that many universities are not set up or haven’t built themselves up to be able to address,” said Michelle Marks, vice president for academic innovation and new ventures at George Mason University, during a conference on the topic hosted there last week. “The reality today is that we can’t do it alone.”

Colleges are looking to P3s to help them quickly and nimbly respond to the range of headwinds reshaping the sector, among them: employers demanding more and different types of skills from graduates, the need to offer a wider range of credentials, and growing financial pressures.

In a survey of 249 college executives by The Chronicle of Higher Education in conjunction with the conference, the majority of respondents (83%) said their institutions are partnering more with private firms. While more than half (53%) are doing so on campus infrastructure projects, others are using them to outsource online programs (42%), student housing (39%) and predictive analytics (31%). Colleges are drawn to these companies primarily for their specialized skills, access to investment capital and the ability to quickly bring a project to market, respondents said.

“We have seen a change in the appetite of the governing boards to go into these public-private partnerships,” said Michael Amiridis, chancellor of the University of Illinois at Chicago (UIC). “That was not necessarily the case 20 years ago.”

But colleges considering a P3 should be mindful that the arrangement is not one size fits all, panelists said during one session. They shared lessons learned from their P3s and advised institutions on what to consider before striking the deal.

Do you need a private partner?

Some P3s are sought after from the start and others are borne from necessity. The latter was the case for Metropolitan State University of Denver, which went over budget on its Aerospace and Engineering Science Building and needed help fitting out one floor. The solution, said Janine

Davidson, the university’s president, was to lease the space out to companies in the aerospace and engineering fields, requiring them to offer internships and other hands-on learning for students.

“It’s not just renting out space, like a coffee shop,” she said, adding that the situation must be “a win-win” for the university and the partner.

Additionally, institutions should be able to clearly articulate the P3’s value proposition. “Why are we better off having a partner than doing what we are doing on our own?” Amiridis asked. Beyond financial support, he added, the arrangement must safeguard or enhance a college’s core values, including affordability and access, academic freedom and the integrity and quality of its processes.

It should not, however, be redundant with its core competencies. He noted that The Ohio State University, which has an energy-management P3, has done a “fantastic job” explaining how that service is not a core offering of a university and thus a good candidate for such a deal.

Are core values preserved?

The university must also ensure the P3 enhances the student experience, panelists said. For instance, a P3 allowed Georgia State University to build a student housing project with about 300 more beds than it would have otherwise, and more quickly, said its President Mark Becker. The university, where 59% of undergraduates are Pell Grant-eligible, wanted to ensure the housing remained affordable to students and that they couldn’t tell another entity owned the building.

“We fill these up, we market it, it’s our reputation,” Becker said. “It would be of no use to us to have a 1,100-bed facility that our students couldn’t afford to live in.”

Another of Metropolitan State’s P3s, a commercial hotel connected with its academic hospitality program but run by a third-party company, was designed to direct a portion of its profits to the university’s foundation to fund scholarships and other student support. The program raised $2 million in the first three years, Davidson said, well above the $500,000 initially expected from the first five to 10 years.

“The fact that we had a partner that was interested in doing something philanthropic was a total win,” she said.

Concerns over who has control of what in a P3 are particularly relevant for universities, which historically have had a longer lifespan than the companies with which they partner.

That was true for perhaps the best-known P3 discussed on the panel, Georgia State’s purchase of the 68-acre Turner Field site with Atlanta-based developer Carter to build private student housing, market-rate multifamily units and retail in addition to refitting the stadium.

“We said, ‘Look, in 100 years you’re probably not going to be here,'” whether they go under, get bought out or merge, Becker said. “We’re going to be here in 100 years.”

The same is true for deals with education technology companies given the trend of consolidation among them. “Many of the contracts don’t work for us,” he said, because the university doesn’t want to give up control of its content. Plus, he added, “We don’t know whether (they’re) going to be in business in five years, 10 years or not.”

What is going to change?

Avoiding duplication or redundancy is important, the panelists advised. “What process are you going to change, what are you going to stop doing that you've been doing for a long time because it's no longer necessary on this new platform?" Becker said, in the case of a technology partnership.

Davidson encouraged institutions to use pilots to ease in risk-averse stakeholders. Learning from efforts by peer institutions can also be helpful.

"One of my first questions to everybody is, 'What's the norm?'" she said. "Not that I want to jump on the norm, but if I'm going to deviate I'll do it out of conviction and not out of ignorance."

Ultimately, permission to think beyond rules, laws and conventions needs to come from the top, Davidson said.

The right legal support can also help. "You want a lawyer who sees her or his job as 'You tell me what you want to get done and I'll figure out a way to do it legally,'" Becker said, whether that's changing the law, obtaining a waiver or enduring a long wait to carry out some or all of the project.

"Once you start having those successes," he continued, "other people who have historically been risk-averse and lived in their lanes want to be part of the next big thing."

Who will be the point person?

P3s run the risk of consuming small institutions and slowing down operations at larger ones, Amiridis said. For that reason, placing someone in a role akin to a project manager is important. At UIC, a vice chancellor for innovation manages the P3 relationship and engages the rest of the university, he said.

Georgia State, meanwhile, spreads that responsibility across its vice presidents, Becker said; for instance, a partnership for online program management would fall under the purview of the senior vice president for academic affairs. The university's chief legal counsel works across the board to engage stakeholders and negotiate contracts.

George Mason created a separate position and office to run point on partnerships. That person became Marks, who shifted from her role as vice provost for academic affairs to lead the Office of Academic Innovation and New Ventures, which sits within the provost's office.

How will you engage the partner?

The outside partner in a P3 is, understandably, looking to profit from the venture. In that way, Becker said, it helped the Turner Field deal that two members of the foundation's board were experts in such projects and could "have a conversation of equals in the real estate business" with the partner. "What we got for free would have cost us $3 million to $5 million in consulting fees," he said.

Evaluating potential partners' track records and whether they are interested in a long-term relationship is also important, Amiridis said. For him, that means meeting face-to-face with that firm's leaders to learn more about why they are interested in such an arrangement and to ensure their missions are aligned.

In a P3, he said, "we change our role from being owners and managers of projects to managing relationships and managing contracts," he said. "It's two different sets of skills."

And while the shape and language of a P3 contract is critical to establishing purview and accountability, it can only protect against so much. "The glue in the system is the relationships," Davidson said. “We have tight relationships with these folks and where we didn’t have a tight relationship, we had to tighten it up.”

Education Dive

by Hallie Busta

May 7, 2019

JMP Launches an Opportunity Zone Platform: Portfolio Products.

Also, RIA in a Box introduces a cybersecurity platform for advisors.

JMP OppZone Services has launched an opportunity zone platform. The administrative platform is designed for investors, project sponsors and entrepreneurs who want to get involved in this new type of tax-advantaged investment.

“Navigating the regulations, creating workable investment structures and dealing with the investment timing requirements [of opportunity zones] can be challenging,” said Samuel Weiser, CEO of JMP OppZone Services, in a statement. “JMP’s primary goal is to create efficiency, transparency and scalability for OZ investors and sponsors looking to capitalize on the new law.”

The platform delivers due diligence, consulting, business support services, administration services and investor compliance for tax regulation.

It allows investors to identify opportunity zone investments and make direct investments across multiple zones, with options to self-direct investment or invest jointly with other families and individuals. Sponsors using the platform will have the ability to pool capital while reducing operational and compliance risk, according to Weiser.

RIA in a Box Launches Cybersecurity Platform

The new platform complements the firm’s MyRIA Compliance solution, empowering RIAs to design, implement and document a cybersecurity program within a single interface.

The platform is designed for firms of all sizes and is focused on the human side of cybersecurity, providing security awareness training, email phishing attack simulation, technology inventory and risk assessment. It also offers firms the ability to build a customized information security policy and includes a vendor due diligence tool announced previously at this year’s T3 conference.

“Helping firms strengthen their cybersecurity policies and awareness of vulnerabilities will not only help advisors sleep better at night but provide their clients added confidence that their personal information is security,” said GJ King, president at RIA in a Box.

The new cybersecurity platform can be purchased as a standalone subscription or bundled as part of a firm’s MyRIA Compliance subscription.

North Capital Introduces Evisor Platform

The Salt Lake City-based RIA, which provides financial planning and portfolio management to individuals, families, businesses and nonprofits has introduced a free financial planning platform for individual investors to access online called evisor.com.

Uses can create a customized financial review that incorporates the firm's proprietary "Lifetime Financial Analysis" tool, but for a 0.25% annual fee the users can open an investment account for North Capital to manage and monitor. An additional fee is involved to access an investment advisor on planning questions not addressed by the online tool. All assets are custodied at Charles Schwab.

Long/Short ETF Debuts With Focus on Undervalued/Overvalued Stocks

The Acquirers Fund (ZIG) is marketing itself as a "true deep value" fund whose long positions are in stocks that "are much more than 'cheap' [but] "also have strong, liquid balance sheets, and a robust business capable of generating free cash flows, and more."

The ETF will hold long positions in companies it deems deeply, truly undervalued and fundamentally strong targets of buyout firms and activist investors who want to force a major corporate change. It will also hold short positions in companies it deems overvalued and financially weak.

The 130/30 long/short strategy tracks the performance of The Acquirer's Index, which consists of the 30 most deeply undervalued, fundamentally strong stocks and the 30 most overvalued and fundamentally weak stocks that are included in the rules-based index. The index chooses stocks from the largest 25% of U.S.-listed stocks by market cap. ZIG trades on the NYSE Arca and has an expense ratio of 0.94%.

VanEck Launches Muni ETF

The VanEck Vectors Municipal Bond ETF (MAAX) is the latest addition to the firm's suite of Guided Allocation Funds.

MAXX is an actively managed ETF that seeks to reduce duration and/or credit risk during appropriate times by adjusting allocations primarily among VanEck Vectors municipal exchange-traded products, including the firm's high-yield, short high-yield, AMT-free long, AMT-free intermediate and AMT-free short municipal index ETFs. Allocations are adjusted based on interest rate and credit opportunities.

The fund seeks maximum total return and income and has a total expense ratio of 0.36%.

ThinkAdvisor

By Bernice Napach | May 20, 2019 at 10:14 AM

S&P Extra Credit: Quarterly Credit Conditions.

This week on Extra Credit Lisa Schroeer talks to Jane Ridley and Chris Morgan about our anticipated U.S. growth and what regional variations we can expect. Hear from Jane on broader U.S. and regional trends and then deep dive with Chris on what's behind the faster growing regions.

Listen to Audio

May 20, 2019

S&P Charter School Brief: Michigan

As of May 17, 2019, S&P Global Ratings maintains 28 public ratings on Michigan charter schools. Michigan enacted its charter school law in 1993, with the first schools opening in 1994. Today there are about 300 charter schools in the state serving just under 150,000 students, or approximately 10% of the state's kindergarten through 12th grade (K-12) population.

Continue Reading

May 17, 2019

S&P ESG Industry Report Card: Health Care

Social factors are prevalent considerations in our analysis of health care companies because they often play a crucial role for the communities they serve and derive a portion of their revenue from the government.

Continue Reading

May 21, 2019

Municipal Bonds That Offer the Ultimate Safe Investment.

Everything is bigger in Texas—including a school endowment.

The Texas Permanent School Fund, a 165-year-old state agency, is one of the jewels of the $3.9 trillion municipal bond market. The fund backs $79.1 billion of debt from more than 800 school districts statewide, making it a sizable presence in the muni market.

With triple-A ratings from Moody's Investors Service and Standard & Poor's, the school fund is one the most secure credits in munis—or in any debt market—thanks to a large asset base that totaled $44 billion in August 2018.

While most of its assets now consist of financial investments like stocks, bonds, hedge funds, and private equity, its wealth largely originated from mineral rights, including what turned out to be valuable offshore oil fields in the Gulf of Mexico.

Continue reading.

Barron's

By Andrew Bary

May 24, 2019 9:06 p.m. ET

Puerto Rico's Bankruptcy Case Casts a Shadow on Billions in Municipal Bonds.

It might come as a surprise that about 10% of the Chicago Board of Education's long-term debt is rated investment grade, just two years after a budget shortfall threatened to close schools early.

Yet the school district has three series of bonds that are rated 'A' by Fitch—for now, at least. That is 7 notches above its other debt, which is solidly junk-rated at BB-. The investment-grade debt was issued in the form of special-revenue bonds, which are structured to provide bondholders with more security and higher recoveries in case of a bankruptcy.

Now those bonds' ratings are being reviewed for a potential downgrade, after a recent appellate court decision raised questions about the special status of special-revenue bonds. And at least two credit-ratings firms are considering downgrading billions of dollars in debt because of the court ruling, which is the first time an appellate court has addressed the issue.

Continue reading.

Barron's

By Alexandra Scaggs

Updated May 23, 2019 9:48 a.m. ET

IRS Notice 2019-39: Perpetuating the Gift of Targeted Bond Programs, but Creating Confusion about the Tax-Exempt Current Refunding of Build America Bonds.

To promote the provision of disaster relief and the development (or redevelopment) of economically distressed areas, Congress will at times enact targeted bond programs that authorize the issuance of specialized tax-exempt bonds. Tax-exempt targeted bond programs frequently contain both a cap on the amount of tax-exempt bonds that can be issued under the program and an expiration date. For example, in response to Hurricane Katrina, Congress permitted the issuance of tax-exempt Gulf Opportunity Zone Bonds, which were subject to an aggregate volume cap of about $14.8 billion and which had to be issued before January 1, 2012.

Where a tax-exempt targeted bond program features volume cap limitations or issuance deadlines (or both) and is silent about whether bonds issued under the program can be currently refunded on a tax-exempt basis, uncertainty might exist as to whether program bonds can be currently refunded by tax-exempt bonds issued after the expiration of the program and, if such refunding bonds can be issued, whether they require additional volume cap. The IRS has previously rendered guidance on specific targeted bond programs to address these questions. To achieve efficiency and uniformity in this guidance for existing and future tax-exempt targeted bond programs that are silent regarding refunding matters, the IRS yesterday released Notice 2019-39. This Notice sets forth helpful guidance on the tax-exempt current refunding of bonds issued under a targeted bond program, but it also creates unwarranted confusion regarding the tax-exempt current refunding of Build America Bonds. For more on both of these aspects of the Notice, read on.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers and Cynthia Mog on May 23, 2019

Squire Patton Boggs

Charts of the Week: Transportation infrastructure

This past week marked yet another "Infrastructure Week," per the White House, yet a $2 trillion concept between the Trump administration and House Democrats foundered due to contention between the president and Democratic leaders. Meanwhile, Brookings experts continue to research and provide analysis on a variety of issues related to infrastructure, including roads, water, and broadband. Here is a sample of recent material focused on transportation.

US INFRASTRUCTURE SPENDING IS DECLINING

Joseph Kane and Adie Tomer from the Metropolitan Policy Program at Brookings observe that "real infrastructure spending nationally has fallen over the past decade, from $450.4 billion in 2007 to $440.5 billion in 2017," and represents about 2.5 percent of GDP. Read their piece for more findings on changes in spending on infrastructure in the U.S.

Continue reading.

The Brookings Institute

by Fred Dews

Friday, May 24, 2019

John Lettieri: Opportunity Zones and Economic Dynamism (Podcast Episode #30)

How was the Opportunity Zones initiative created in the first place? And why is this program so radically different from…

Read More »

Opportunity Db

May 22, 2019

Puerto Rico Passes Opportunity Zones Regulatory Bill.

Puerto Rico Governor Ricardo Rosselló signed the Puerto Rico Opportunity Zones Development Act last week. The bill creates the regulatory framework for investing in Opportunity Zones on the island and establishes conformity with the federal tax incentive. Several additional incentives are also created by the new law, including:

1. 18.5 percent tax on the net income of an exempt business.
2. Exemption from dividend taxation.
3. 25 percent exemption on patents and property taxes.
4. 25 percent exemption on construction taxes.
5. Maximum investment credit of 25 percent, which is transferable.
6. A credit priority system for "Priority Projects" located in opportunity zones.
7. Deferral of capital gains invested in opportunity zones, similar to the federal incentive.
8. Tax exemption for interest earned on loans to exempt businesses.
9. An expedited permitting process for exempt businesses.

"I see this as the last piece to complete our economic offerings puzzle," Maria de los Angeles Rivera, a San Juan-based CPA with Kevane Grant Thornton, said via email.

"It is expected that the combination of this law with the [Community Development Block Grant] funds that are coming to [Puerto Rico] for reconstruction and the current tax incentives program in place for many years now, will take [Puerto Rico] to the next level," Rivera said.

Puerto Rico was granted a special exemption to the rule that capped each state's opportunity zone designations at 25 percent of their low-income census tracts. Puerto Rico was able to designate 100 percent of their low-income census tracts as opportunity zones. And as a result, nearly the entire island lies in an opportunity zone. See the map of Puerto Rico's opportunity zones.

The governor's office projects that the new law will generate over $600 million in capital investment in Puerto Rico.

"[Puerto Rico] is now the most attractive destination to invest," Rivera said.

Opportunity Db

By Jimmy Atkinson

May 22, 2019

Law Review Article Critiques Local Government Public Nuisance Suits: Reed Smith

Perhaps you recall how President Trump campaigned on behalf of "Big Luther" Strange in Alabama. Strange had been appointed by Alabama's Governor to fill the Alabama United States Senate seat vacated by Jeff Sessions when Sessions became U.S Attorney General. Trump supported Strange's effort to win election to the seat in his own right for the term to commence after the interim appointment expired. Big Luther is, indeed, big. At six feet, nine inches, he is the tallest U.S. Senator ever. But Strange lost the Republican primary to Judge Roy Moore, and then Moore went on to lose to Doug Jones.

Sometimes we forget that state attorneys general also – at least usually – had careers as working attorneys who handled the same sorts of discovery and motion issues that fill up the days of most of us. Strange was a lawyer for an important energy company (full disclosure: we represented that same company many years ago), and was once a partner at one of Alabama's preeminent law firms.

And it turns out that Strange is also an impressive legal scholar. He is the author of "A Prescription for Disaster: How Local Governments' Abuse of Public Nuisance Claims Wrongly Elevates Courts and Litigants into a Policy-making Role and Subverts the Equitable Administration of Justice," 70 South Carolina L. Rev. 517 (Spring 2019). It is a useful and good read, and it is not our aim to steal Strange's thunder. Consider our little summary an invitation to go to the article, study its citations, and follow its argument.

Strange makes the point that nuisance actions originated in criminal law, with the prosecution of such claims reserved for state or government officials seeking injunctive relief or criminal conviction for harms to the public. Strange then traces the evolution and expansion of the theory, with specific allusion to municipal suits against the gun industry for violent crimes, against the oil industry for climate change, and against banks and lenders for subprime lending practices. The last episode outlined in the historical section of the article is the opioids litigation. Strange distinguishes a state AG's parens patriae authority from local governments, which have authority to recover only for injuries suffered by the municipality/county/whatever itself. It is the latter species of action that troubles Strange.

Strange's fundamental criticism of local government actions against alleged public nuisance is that they inject litigants and courts into democratic policy-making decisions. He does not favor regulation by litigation, and warns that it implicates separation of powers concerns. Regulatory lawsuits invade legislative powers, and courts are not particularly good at such regulation. Moreover, the subject of the proposed judicial regulation will often be a nonjusticiable political question, which was committed to a coordinate government branch, eludes judicial standards, reeks of policy determinations, and creates the possibility of multifarious pronouncements by different organs of government. Legislatures and regulators possess technical expertise that courts (and juries) lack, and are also peculiarly capable of balancing cross-cutting policy interests.

There are, of course, legal doctrines that should step in and halt lawsuits that infringe upon regulatory regimes. Any reader of this blog will have bumped into dozens of posts about preemption and primary jurisdiction. Strange takes those doctrines seriously – certainly more seriously than the many rogue courts that seem to view them as inconveniences. Wyeth v. Levine is appropriately cabinned by the article. Primary jurisdiction gets the respect it deserves in this article, as does the dormant commerce clause. Strange also sets out how public nuisance suits allege damages that are not traceable to and proximately caused by the defendants' conduct – with such conduct usually being lawful under the applicable regulatory regime.

The article also makes the point that local government actions disrupt the ability of state attorneys general to bring and manage litigation arising from the same alleged conduct. The actions might be beyond the scope of local governmental authority. Even if within scope, the local government actions raise the specter of double recovery.

Aside from doctrinal barriers and practical dangers, local government suits adversely affect the administration of justice in other ways. Strange describes how the various layers of redundant suits can multiply discovery requests, enable outlier verdicts to distort the overall litigation process, and penalize defendants for conduct occurring outside the relevant jurisdiction.

Anyone who has played a role in local government nuisance litigation will recognize the force of Strange's insights. The system is messy and sometimes yields unfair results. As is always the case, there are winners and losers. Predatory plaintiff lawyers and policy-making judges seem to think the system is just fine. But Strange makes a compelling case that judicial administration is a loser, as is the regulatory function that weighs costs and benefits for society as a whole.

by Stephen J. McConnell

May 22 2019

Reed Smith LLP

[ARRC Releases Recommended Fallback Language for Floating Rate Notes and Syndicated Loans.]

"It's no longer a question of if—but when—LIBOR will become unusable, yet most contracts referencing it don't adequately account for this eventuality."

The above statement by Tom Wipf, chair of the Alternative Reference Rates Committee (the "ARRC"), summarizes the driving force behind the ARRC's release of its final recommended contractual fallback language for U.S. dollar LIBOR denominated floating rate notes ("FRN")[1] and syndicated business loans ("syndicated loans")[2] in anticipation of the phasing-out of LIBOR and the transition to a benchmark rate based on the Secured Overnight Financing Rate ("SOFR").

In making this recommendation, the ARRC intends to set forth robust fallback provisions that provide clarity and specificity upon a LIBOR cessation while also preserving the flexibility needed for any unforeseen circumstances. As this recommendation follows the publication by the International Swaps and Derivatives Association ("ISDA") for different types of derivatives contracts, the ARRC noted that it strived to align its fallback provisions with the ISDA approach as much as possible.

The recommended fallback language generally addresses the following key terms:

1. **Benchmark Transition Events**: trigger events that represent a significant shift away from LIBOR;
2. **Benchmark Replacement**: successor adjusted rate that replaces LIBOR; and
3. **Benchmark Replacement Adjustment**: the spread adjustment applied to the successor rate to preserve the economic terms of the relevant contract.

Floating Rate Notes

The ARRC's recommended FRN fallback language can be used in a variety of floating rate securities issued in the capital markets, such as municipal bonds, convertible debt, and other debt issuances in connection with a cessation of LIBOR. It is meant to provide a more robust waterfall for a conversion to SOFR-based rates than the historic waterfall provisions included in FRN documentation. In general, the recommended FRN fallback language provides specificity on the triggers, successor rates, and spread adjustments in an effort to eliminate ambiguity and limit the exercise of discretion by any party. The ARRC's language includes the following key terms:

- **Triggers**: Two permanent cessation triggers cover public statements from the benchmark administrator or the administrator's regulator or the central bank for the relevant currency announcing that the benchmark administrator has ceased or will cease to provide the benchmark and one pre-cessation trigger covers when the benchmark administrator's regulatory supervisor announces that the benchmark is no longer representative.

- **Benchmark Replacement**: Once a trigger event occurs, if only some tenors of LIBOR have been affected, then the interpolated value based on the nearest available benchmark tenor will be the benchmark replacement. If it is not possible to determine such an interpolated benchmark, the fallback language establishes a waterfall to determine the successor rate to be used. The waterfall for FRNs has several additional steps as compared to some of the other cash products, to account for long maturities and difficulty in amending the applicable contracts. In order to maintain consistency across asset classes, each step in the waterfall is assessed when a trigger event first occurs, without reversion back to an earlier step. The waterfall runs as follows:

– Step 1: Term SOFR + Adjustment

– Step 2: Compounded SOFR (compounded average for tenor in arrears) + Adjustment

– Alternative Step 2: Simple Average SOFR (uncompounded simpler calculation) + Adjustment

– Step 3: Relevant Governmental Body Selected Rate + Adjustment (if SOFR-based rate is discontinued)

– Step 4: ISDA Fallback Rate (the fallback rate embedded in the ISDA standard definitions) + Adjustment

– Step 5: Issuer or its Designee Selected Rate + Adjustment

"Term SOFR" will be a forward-looking term SOFR rate with various tenors, which currently does not exist.

- **Benchmark Replacement Adjustment**: To account for the difference between LIBOR, which is an unsecured term rate, and SOFR, which is a secured overnight rate, the fallback language provides for an adjustment to be included in the determination of any benchmark replacement. Correlating to the benchmark replacement waterfall outlined above, the benchmark replacement adjustment waterfall runs as follows:

Step 1: ARRC Selected Adjustment (as selected or recommended by the ARRC or other Relevant Government Body)

Step 2: ISDA Fallback Adjustment (to be used with the ISDA Fallback Rate)

Step 3: Issuer or its Designee Selected Adjustment

Syndicated Business Loans

The ARRC recommended two sets of fallback language for new originations of LIBOR-referenced U.S. dollar-denominated syndicated loans: the "hardwired approach" and the "amendment approach," further described below. Whereas the hardwired approach provides more clarity and certainty upfront as the specific fallbacks are built into the contract, the amendment approach, by providing a framework for negotiating a replacement rate in the future, maximizes flexibility and does not reference any rates or adjustment methodologies not yet existent. Although market participants initially may favor the amendment approach for its flexibility during the transition phase, they eventually may move to the hardwired approach to overcome operational difficulties in amending contracts in volume and the possibility of being subject to manipulation depending on the economic environment at the time of transition, as also noted by the LSTA.[3]

- **Triggers**: The same two permanent cessation triggers and the pre-cessation trigger applicable to

FRNs apply to syndicated loans, but syndicated loans also have an additional “early opt-in election” trigger, which takes advantage of a syndicated loan’s flexibility for parties to agree to switch to an alternative rate before LIBOR is discontinued or becomes unrepresentative.

- **Hardwired Approach**: As with FRNs, the fallback language for syndicated loans is included in the original contract so that upon a trigger event, the waterfalls for the benchmark replacements and the benchmark replacement adjustments will apply.

Benchmark Replacements:

– Step 1a: Term SOFR + Adjustment

– Step 1b: Next Available Term SOFR (SOFR for longest tenor that can be determined that is shorter than the applicable tenor) + Adjustment

– Step 2: Compounded SOFR +Adjustment

– Alternative Step 2: Simple Average SOFR + Adjustment

– Step 3: Borrower and Administrative Agent Selected Rate + Adjustment

Benchmark Replacement Adjustments:

– Step 1: ARRC Selected Adjustment

– Step 2: ISDA Fallback Adjustment

– Step 3: Borrower and Administrative Agent Selected Adjustment

- **Amendment Approach:** Instead of the predetermined waterfalls, the amendment approach provides the process and procedures for parties to agree on a benchmark replacement for LIBOR and the adjustments that should apply. Upon a trigger event, the borrower and the administrative agent may agree to select a successor rate and a spread adjustment, in each case giving due consideration to any selection or recommendation by the Federal Reserve Board, the ARRC, or any evolving or then-prevailing market convention for determining such successor rate or spread adjustment. Similar to the “early opt-in election” trigger, the amendment approach is a specific feature for loans due to the relative ease in modifying applicable agreements.

Differences from ISDA Fallback Language

While the two permanent cessation triggers included in the ARRC fallback language align with the fallback triggers included in ISDA’s 2018 consultation,[4] the pre-cessation trigger (which permits market participants to transition to an alternative rate when the quality of the benchmark has deteriorated such that it no longer is representative of the underlying market or economic reality) does not align and could create a potential area where the ARRC’s language and ISDA’s language may diverge. On May 16, 2019, ISDA published a consultation[5] on the pre-cessation issue for LIBOR and certain other IBORs seeking market feedback on this pre-cessation trigger and other related issues, but it remains to be seen whether ISDA ultimately will include a similar pre-cessation trigger with the FRN and syndicated loan fallback.

Another area where the ARRC fallback diverges from the proposed ISDA fallback is the primary fallback rate. Whereas the ARRC recommended fallback language references a forward-looking term SOFR rate (which currently does not exist) as the primary fallback rate, the primary fallback rate proposed by the ISDA 2018 consultation is based on the average of SOFRs for the relevant term and compounded in arrears. Market participants should be on the lookout for ISDA's final fallback language, and to the extent it diverges from the ARRC's fallback language, market participants should consider whether to adjust the ARRC's fallback language to eliminate mismatch with any interest rate derivatives they have entered into in order to offset or hedge the floating rate exposure of the FRN or syndicated loan.

Conclusion and Next Steps

The ARRC recommendations offer a helpful framework for market participants to consider adopting into their agreements with appropriate modifications catered to their specific needs. Regardless of what fallback regime is followed, it is critical that market participants inventory existing agreements that could be affected by the cessation of LIBOR, understand their LIBOR exposure across relevant contracts, and develop a timeframe for amendments. Also, determining a robust fallback regime that will be used going forward will help ensure a smooth transition away from LIBOR.

As the next step, the ARRC will be releasing recommended fallback language for bilateral business loans and securitizations soon. The ARRC also expects to consult with a broad range of stakeholders on proposals for fallback language in consumer products in the future.

*****

Paul Hastings lawyers are actively counseling our clients on the cessation of LIBOR as well as the benefits and consequences of each fallback regime for the various products.

[1] The Alternative Reference Rates Committee, ARRC Recommendations Regarding More Robust Fallback Language for New Issuances of LIBOR Floating Rate Notes (2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/FRN_Fallback_Language.pdf.

[2] The Alternative Reference Rates Committee, ARRC Recommendations Regarding More Robust Fallback Language for New Originations of LIBOR Syndicated Loans (2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/Syndicated_Loan_Fallback_Language.pdf.

[3] The Loan Syndications and Trading Association, LIBOR: Free Fallbacking (2019), https://www.lsta.org/news-and-resources/news/libor-free-fallbacking.

[4] International Swaps and Derivatives Association, Inc., Interbank Offered Rate (IBOR) Fallbacks for 2006 ISA Definitions – Consultation on Certain Aspects of Fallbacks for Derivatives Referencing GBP LIBOR, CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR and BBSW (2018), http://assets.isda.org/media/f253b540-193/42c13663-pdf.

[5] International Swaps and Derivatives Association, Inc., Consultation on Pre-Cessation Issues for LIBOR and Certain Other Interbank Offered Rates (IBORs) (2019), https://www.isda.org/a/t6tME/Pre-cessation-issues-Consultation.pdf.

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May 23, 2019

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