Bond Case Briefs

Municipal Finance Law Since 1971

Read About the MSRB's Renewed Focus on Retrospective Rule Review.

MSRB Retrospective Rule Review Overview.

Fitch Ratings: If Home Prices Drop, Will U.S. Local Government Revenues Follow?

Fitch Ratings-New York/Chicago-13 February 2019: Despite recent investor concern, Fitch Ratings does not expect that local governments will be exposed to large revenue declines if home prices drop, according to a new report.

Property tax revenues barely declined in aggregate after the housing bust of the mid-2000s. And the housing market of today is very different with far less speculative construction and much more sustainable home price growth. However, not all local governments were immune to the precipitous home price declines during the last economic downturn.

"Weak housing market trends did create fiscal stress for some local governments during the last downturn so it's reasonable to expect that this stress could return," said Managing Director Amy Laskey.

A state to watch is California, where property tax revenues should be well protected if home prices were to fall again despite recent frothiness in some parts of the state. Offsetting a lack of tax rate flexibility, most areas have built up substantial cushion under Prop 13. This means assessed values would likely decline only mildly in the next downturn. Conversely, home prices in parts of Michigan, which has similar assessment and taxation restrictions, have not recovered from the last downturn. As such, some Michigan local governments are more susceptible to large revenue declines over time.

Recent caps on SALT deductions and mortgage interest deductibility are not likely to precipitate large, en masse home prices declines. "Employment, wage growth, consumer confidence, affordability and life events play a bigger role in home buying decisions than tax incentives," said Director Robert Rulla. The ripple effect of housing disincentives, however, would be felt more acutely in housing markets with high home prices and/or high taxes.

A longer-term demographic worth keeping a close eye on over time will be millennials as they will represent a higher proportion of homebuyers. In fact, most homebuilders are already repositioning communities to target these first-time homebuyers by offering more affordable homes. This likely means median prices for new homes would decline while existing entry level homes would become more expensive. "The large number and high homeownership rate of baby boomers may put downward pressure on prices as this group ages and millennials and Generation Z do not pick up the slack," said Rulla.

'What Investors Want to Know: Housing Market Trends' is available at 'www.fitchratings.com'

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
300 W. 57th St.
New York, NY 10019

Robert Rulla
Director
+1-312-606-2311

Media Relations: Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: elizabeth.fogerty@thefitchgroup.com
Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch Ratings: Quiet 4Q Caps Stable 2018 for US Municipal Rating Actions

Fitch Ratings-New York-11 February 2019: Stable economic growth led to another solid year for U.S. public finance with annual upgrades exceeding downgrades for the year, according to Fitch Ratings in a new report.

Both upgrades and downgrades in total were down for the year. Fitch reports 89 muni downgrades in 2018 versus 166 downgrades in 2017. Upgrades finished lower year-over-year with 168 for 2018 from 293 in 2017. Ratings movement again largely emanated from not-for-profit hospitals and health systems.

Rating Outlook revisions, by contrast, increased slightly in 2018. U.S. public finance securities with Negative and Positive Outlooks both increased to nearly 3% at the end of last year. Positive Outlooks totalled 103 at the end of 2018 (up from 84 in 2017) while 108 credits carried a Negative Outlook (up from 94 at year-end 2017).

As in past years, affirmations dominated the sector with 90% of U.S. public finance rating reviews by Fitch resulting in no change to the rating. Furthermore, 93% of the ratings had a Stable Outlook at the end of the year.

‘U.S. Public Finance Annual Rating Actions 2018’ is available at ‘www.fitchratings.com’.

Contact:

Andrew O’Hara
Analyst
+1-646-582-4496
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Jessalynn Moro
Managing Director, Head of U.S. Public Finance
+1-212-908-0608

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

Additional information is available on www.fitchratings.com

Fitch Ratings Updates Report Defining Credit Opinions.

Link to Fitch Ratings' Report(s): Credit Opinions

Fitch Ratings-London-15 February 2019: Fitch Ratings has updated its special report that defines Credit Opinions (COs) and their limitations compared with the agency's credit ratings. The report also explains their purpose, the process under which they are assigned, how they are communicated and certain other considerations.

The report has been updated to provide greater clarity with respect to certain points, for example, by specifying that some COs provided as inputs to certain collateralised loan obligations (CLOs) may be assigned using a model-based approach. COs are provided by Fitch on its primary rating scale, but under a process that is narrower in scope than credit ratings.

The full report, Credit Opinions, is available at www.fitchratings.com, or by clicking on the link above.

Contact:

Stuart Jennings
Regional Credit Officer
+44 20 3530 1142
Fitch Ratings Limited
30 North Colonnade
London, E14 5GN

Katie Falconi
Regional Credit Officer
+1 212 612 7881

Additional information is available on www.fitchratings.com

Fitch Updates U.S. Public Finance Letter of Credit Supported Bonds and Commercial Paper Criteria.

Link to Fitch Ratings' Report(s): U.S. Public Finance Letter of Credit-Supported Bonds and Commercial Paper Rating Criteria

Fitch Ratings-New York-15 February 2019: Fitch Ratings has published the following updated report, “U.S. Public Finance Letter of Credit Supported Bonds and Commercial Paper Rating Criteria”. This report updates the previous report dated Feb. 22, 2018. The key elements of Fitch’s letter of credit-supported bonds and commercial paper rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

[Fitch Ratings: Updated U.S. Public Finance Structured Finance Criteria]

Link to Fitch Ratings’ Report(s): U.S. Public Finance Structured Finance Rating Criteria

Fitch Ratings-New York-15 February 2019: Fitch Ratings has published the following updated report: “U.S. Public Finance Structured Finance Rating Criteria.” This report updates the prior report published on Feb. 22, 2018. The key elements of Fitch’s public finance structured finance rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

Fitch Internal Liquidity Worksheet.

Access the worksheet.

Bloomberg Brief Weekly Video 2/14/19

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

February 14th, 2019, 10:48 AM PST

S&P Credit FAQ: Criteria Considerations For Mass Transit Agency Ratings

In most cases, the obligor or related entity is also the issuer. However, in others–for instance, when the issuer is primarily a vehicle for issuing and servicing debt or has relatively little control over pledged revenues apart from payment of debt service–we may exercise analytic judgment to identify the obligor or related entity in evaluating the operating linkage.

Continue Reading

Nov. 14, 2018

S&P: U.S. States May See Negative Revenue Effects From Aging Demographic Trends.

In S&P Global Ratings' opinion, the aging of the U.S. population has significant implications for future state tax revenues. State governments will need to adapt their revenue structure and service levels to accommodate the growing elderly population.

Continue Reading

Feb. 14, 2019

S&P: Key Questions From The U.S. Not-For-Profit Health Care 2019 Outlook Webcast

On Jan. 17, 2019, S&P Global Ratings held a webcast to discuss its 2019 stable outlook on the U.S.

not-for-profit health care sector. Here, we answer the most frequently asked questions from the registration and the call, and provide results from our real-time polling questions.

Continue Reading

Feb. 4, 2019

Be Aware of Fraud in the Muni Bond Market.

The municipal bond market is often seen as a safe-haven among investors. After all, the bonds are issued by governments and are often backed by taxpayer dollars. Investors may be aware of default risks in rare cases, but for the most part, they remain unaware of the rampant securities fraud taking place.

In recent years, it has become increasingly apparent that fraud is commonplace in the $3.7 trillion muni bond market. The Securities and Exchange Commission (SEC) described the market as "too opaque" in a 2012 report and has taken action against large and small governments to curb the problem.

Let's take a look at some common types of fraud in the muni bond market and how the proper due diligence can avoid it.

Continue reading.

municipalbonds.com

Justin Kuepper

Feb 06, 2019

TAX - WASHINGTON

Eyman v. Ferguson

Court of Appeals of Washington, Division 2 - January 23, 2019 - P.3d - 2019 WL 299767

Tax protester sought declaration that separate advisory votes were required for each tax increase in tax legislation.

The Superior Court dismissed the action. Protester appealed.

The Court of Appeals held that:

- Protester's appeal was moot;
- Public interest exception to mootness doctrine applied;
- Phrase "not subject to appeal" applied only to short description to be placed on ballot for advisory vote; and
- Protester's petition for declaratory judgment was untimely.

Tax protester's appeal from trial court's denial of his petition seeking declaration that a separate advisory vote was required for each tax increase enacted by tax legislation was moot, where the legislation had been voted on in a single advisory vote in which a majority of voters advised its repeal, so that the Court of Appeals could no longer provide effective relief.

Exception to mootness doctrine for matters of continuing and substantial public interest applied to tax protester's appeal from trial court's denial of his petition for declaratory judgment as untimely, in protester's action claiming that a separate advisory vote was required for each tax increase enacted by tax legislation; the content of a ballot and issues of statutory interpretation were generally matters of substantial public interest, the timeliness and appealability issues did not depend on the nature of the tax increases at issue, and whether separate advisory votes were required was an issue that would likely recur with each package of legislative tax increases.

Phrase "not subject to appeal," as used in statute governing the short description to be placed on a ballot for an advisory vote on tax legislation, applied only to the Attorney General's formulation of the short description and not to other matters such as a decision to consolidate multiple tax increases in a single advisory vote; the phrase was placed in the middle of a clause requiring the Attorney General to prepare a short description for an advisory vote, and the phrase only appeared in the short description statute and was not found in sections addressing other steps in the preparation of advisory votes.

Tax protester's petition seeking declaration that a separate advisory vote was required for each tax increase enacted by tax legislation was untimely after the Attorney General transmitted the short description for the advisory vote to the Secretary of State; statutes governing short descriptions and their filing and transmittal established that the transmitted description would be used in upcoming ballots, and any challenge necessarily affected the description and how it appeared in a ballot, so that allowing challenges after transmittal would have injected self-contradiction into the statutory scheme and potentially jeopardized timely preparation of ballots.

MSRB Update: Winter 2019

Read the Newsletter.

CUSIP Request Volume Sends Mixed Signals to Kick Off 2019.

Corporate CUSIP Volume Trends Down While Municipal Volume Rises

NEW YORK, Feb. 13, 2019 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for January 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 significant year-over-year volume decreases in requests for new corporate identifiers and significant year-over-year increases in requests for new municipal identifiers.

CUSIP identifier requests for the broad category of U.S. corporate offerings, which includes both equity and debt, decreased 8% year-over-year versus January 2018. On a monthly basis, corporate identifier request volume through January 2019 was 27.4% higher than December 2018 levels. December 2018 volumes were historically low.

Municipal CUSIP requests increased in January after experiencing a volatile year in 2018. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – saw a 10.5% increase versus January 2018.

“Uncertainty over the future of interest rates has been visible in CUSIP request volume for the past several months and appears to be continuing into 2019,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “Overall, volumes are healthy as we kick off the new year, but we expect to continue to see continued swings in volume in the face of ongoing economic and geopolitical uncertainty.”

Requests for new international debt and equity CUSIP International Numbers (CINS) decreased on an annualized basis in January. International equity CINS were down 58.1% versus January 2019, while international debt CINS fell 40.7% during the same period.

To view a copy of the full CUSIP Issuance Trends report, please click here.

CUSIP Request Volume Sends Mixed Signals to Kick Off 2019.

NEW YORK, NY, FEBRUARY 13, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for January 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 significant year-over-year volume decreases in requests for new corporate identifiers and significant year-over-year increases in requests for new municipal identifiers.

Read Report.

Corporate CUSIP Volume Trends Down While Municipal Volume Rises.

“Uncertainty over the future of interest rates has been visible in CUSIP request volume for the past several months and appears to be continuing into 2019,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “Overall, volumes are healthy as we kick off the new year, but we expect to continue to see continued swings in volume in the face of ongoing economic and geopolitical uncertainty.”

Read Press Release.

BDA Releases Index of Fixed Income Activity (June 2018 – Dec. 2018)

The BDA recently released the results of its Index of Fixed Income Activity covering the period June 2018 through December 2018, as compared to the previous six months of activity in 2018. As a result of this survey, we were able to produce a report comparing such activity from two dozen BDA member firms.

The survey results can be found here.

Bond Dealers of America

February 15, 2019

[Short-Term Rentals - A Tale Of Two Cases.]

Courts across the country have been hearing cases about short-term rentals of homes and condominium units, and there is not much consistency in the decisions made. Sometimes, it is the homeowners' association that is trying to enforce its covenants in a manner that prohibits short-term rentals, and sometimes it is a municipality trying to enforce its zoning ordinances. In the two cases discussed below, we have one of each—and in both cases, the language of the covenant and the ordinance made all the difference.

(1) HOA Seeking to Enforce its Covenants to Prohibit Short-Term Rentals of Homes

Facts. A homeowner advertised several properties he owned in a subdivision for short-term recreational use, placing ads on a local short-term rental website. In the ads, he described the properties as being available for "vacation rental per night," and listed the rental fees he would charge. The short-term rentals got the attention of the HOA due to other residents' complaints of occasional excessive noise, vehicles being parked on the street, and the renters' damaging the subdivisions golf course, to name a few. The HOA's Declaration of Covenants did not specifically prohibit short-term rentals, but it did say "No trade or business, or profession of any kind shall be carried out upon any residential lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood." The Covenants also stated that the lots owned by this particular homeowner were to be "single family residential lots and shall be used only for residential purposes." By contrast, the Covenants allowed one of the lots (not owned by this owner) to be used for commercial purposes, including a hotel.

Court Rulings. The court dug in to the plain or common meaning of the words used in the Covenant and determined that a "residence" is a "dwelling place or abode of a single person or family unit;" or, defined another way, a "personal presence at some place of abode with no present intention of definite an early removal and with purpose to remain for undetermined period…" Using these definitions, the court ruled that using these lots for one-night, two-night, weekend, or weekly rentals cannot fit within the requirements of the residential use required by the Covenant. As such, the Court found that the short-term rentals violated the Covenant.

(2) Municipality Seeking to Enforce its Ordinances to Prohibit Short-Term Rentals of Homes

Facts. A number of homeowners within a municipality were renting out their lake homes as vacation houses for short-term intervals, typically for about a week in duration. At first, the municipality had a long-standing zoning ordinance affecting these homes that simply required that they be used as "single-family dwellings." The homeowners, wanting to continue their vacation rental practices, argued that as long as it was just one family renting at a time, they were following the single-family dwelling ordinance. The municipality then decided to stop all the guess work and amended the ordinance to explicitly prohibit short-term rentals. The homeowners filed suit against the municipality, arguing that they had a "prior nonconforming use" right to rent their homes short term, because the previous zoning ordinance allowed short-term rentals as long as it was to one family at a time.

Court Rulings. The court again analyzed the language of the previous ordinance to determine if there was really a right to rent the homes short-term—and just like with the other case, the devil was in the definitions. The court found that the definition of “single-family dwelling” under the ordinances came down to the definition of “family” within the ordinances, which was defined as “relationships of a non-transient domestic character,” excluding those “whose domestic relationship was of a transitory or seasonable nature or for an anticipated limited duration…” The court ruled that since short-term vacation rentals are inherently transitory, no matter who was renting they could not meet the definition of “family” under the prior zoning ordinance; therefore, the homeowners lost their case—and all the future vacation rental income they could have made.

Lesson. While these cases are interesting in how the various courts parse through the language used in the association documents and the ordinances, the lesson we can draw for Wisconsin Condominium and Homeowners Associations is that if you want to limit or prohibit short-term rentals in your community, it is best to specifically say so within your Declaration or Bylaws. These cases show us that relying on “single family” or “residential use” to justify prohibition of short-term rentals will only lead to lengthy litigation.

by Lydia Chartre

February 13, 2019

Husch Blackwell LLP

Municipalities Still Need To Play The Subsidies Game (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on infrastructure, Amazon, and high speed rail. Hosted by Abramowicz and Paul Sweeney.

Running time 06:00

Play Episode

Bloomberg Radio

February 15, 2019 — 11:30 AM PST

Hedge Funds See Windfall From Bets on Puerto Rico After Storm.

- **Debt swap provided seven times more than post-hurricane lows**
- **New sales-tax debt traded heavily Friday as some lock in gains**

In late 2017, while Puerto Rico was reeling from Hurricane Maria, the government’s bonds went into a free fall as Wall Street speculated that much of the bankrupt island’s debt would need to be forgiven, leaving some of it trading for pennies on the dollar.

But hedge funds including GoldenTree Asset Management, Tilden Park Capital Management and Taconic Capital Advisors started plowing hundreds of millions of dollars into the U.S. territory’s subordinate sales-tax-backed bonds — a well-timed wager that’s delivering big gains.

Puerto Rico's restructuring of $17.5 billion of debt this week allowed investors to exchange sales-tax bonds with the weakest claim to the revenue for 56 cents on the dollar. That's seven times more than what they traded for in December 2017, after President Donald Trump rattled the market by suggesting that Puerto Rico's finances were so devastated that its debts would need to be written off completely in court. Owners of senior-lien sales-tax bonds recovered 93 cents on the dollar.

Continue reading.

Bloomberg Markets

By Michelle Kaske

February 15, 2019, 9:12 AM PST

Your New York Taxes Are Too High? Muni Bonds May Offer an Answer.

- **Wilmington Trust's Roth sees munis as 'tail risk' hedge**
- **Filers in high-tax states may shelter more income in munis**

One of the most banal-sounding investments for U.S. investors may be one of the best opportunities, at least according to Anthony Roth, chief investment officer of Wilmington Trust Investment Advisors.

Roth is referring to the $3.8 trillion municipal bond market, which he calls one of the few places where investors can find a haven from the risks buffeting the market, and an area he expects to "hold up really well if we go through a down cycle."

Another draw for wealthy investors: the opportunity for residents of high-tax states to shelter more income, now that state and local property and income tax deductions are capped at $10,000. Roth expects overall tax refunds in 2019 to exceed those of 2018 by some $60 billion, but notes that some people in high-tax states like California, Connecticut, New Jersey, New York and Massachusetts will find that they owe more than ever. That could increase demand for municipal bonds on the margin, Roth said.

Muni finances are generally strong, with supply limited over the past year and tax receipts pretty healthy, said Roth.

"If you're careful with credit research, it's not hard to find high-quality muni issuers that have a very low chance of defaulting through the next credit cycle," he said. "If we're at the end of the cycle, just keeping your money intact and having a real positive return is not a bad result." He recommends that clients buy bonds with maturities between three and five years.

Munis are also attractive as a way to hedge tail risk, said Roth, which he defined as the chance of a significant drop in equities, perhaps accompanied by a recession. He isn't forecasting either in 2019, but if something like that does come to pass, "munis will hold up quite well because municipal balance sheets are generally very strong at this time, much more so than corporates," Roth said.

The after-tax returns for high-net-worth investors would be about 3 percent. "In an environment where inflation is 1.9 percent over the long term, getting a real return of more than 1 percent with very little risk, in order to wait out the cycle until things improve — that is not uncompelling," said

Roth. “There aren’t many places to hide today.”

Bloomberg Wealth

By Suzanne Woolley

February 13, 2019, 6:43 AM PST

Amazon’s Pivot Raises Scrutiny of Incentive Deals.

New York bills call for compacts with other states promising to not provide any company-specific subsidies

The collapse of Amazon.com Inc.’s plan to build a second headquarters in New York City has the potential to damp some states’ willingness to offer tax breaks.

Spurred by Amazon’s second-headquarters selection process, politicians and groups long opposed to incentive packages have launched legislative efforts to prohibit them in some states. In New York, bills proposed in the State Assembly and Senate call for compacts with other states promising to not provide any company-specific subsidies.

Recent pivots by large companies, including Foxconn Technology Group and General Electric Co. , will likely lead to increased attention to incentives tied to performance and timelines, with an emphasis on long-term commitments, said Jeff Finkle, president of the International Economic Development Council, a group that represents economic-development officials across the U.S.

Continue reading.

The Wall Street Journal

By Valerie Bauerlein, Kate King and Cameron McWhirter

Updated Feb. 15, 2019 3:57 p.m. ET

2019 Ohio Infrastructure Funding: How to Get It and Spend It Wisely

On January 14, 2019, the President signed the Water Infrastructure Improvement Act (H.R. 7279), granting municipalities new statutory tools to affordably confront expensive infrastructure challenges using Integrated Planning.

Bricker & Eckler, McMahon DeGulis and Muskingum Watershed Conservancy District are hosting a free series of public infrastructure planning events to discuss these tools and the integrated planning process.

This program will be offered in various Ohio locations February through May. For more information, including schedule, location details and to register, visit the event page.

Bricker & Eckler LLP

February 14, 2019

[With Amazon Out of New York, Some Lawmakers Seek Multistate Ban on Corporate Tax Breaks.]

Lawmakers in at least a half-dozen states are considering forming a compact in which they would agree to end efforts to lure companies with tax incentives.

- **SPEED READ:**
- **Legislatures in Florida, Illinois, New York and several other states are considering or may take up a version of the End Corporate Welfare Act, which would stop the practice of offering tax incentives designed to woo certain corporations to relocate.**
- **Supporters say such a multistate compact would end the "race to the bottom" of states trying to outbid one another in corporate giveaways.**
- **The effort is part of a backlash to the $2 billion in tax breaks promised to Amazon by New York and Virginia for its second headquarters.**

Amazon's yearlong, nationwide contest for its second corporate headquarters netted the internet retail giant more than $2 billion in promised tax breaks from New York state and Virginia. But after mounting public resistance to such "corporate welfare," Amazon announced Thursday that it will abandon its plans for New York City.

This, as the End Corporate Welfare Act is circulating in several states, including New York. The bill would essentially call a cease-fire on awarding tax incentives to certain companies by creating an interstate compact of states that agree to end the practice.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 14, 2019 AT 5:05 PM

Could a Market Penalty Shrink Lag Time on Municipal Bond Audits?

While public corporations are required to file an annual audit within 60 days after the close of the year, municipal bond borrowers often take close to triple that time or longer.

Although this issue has been lingering for decades, the time it takes to complete and sign an audit after the close of the fiscal year hasn't changed much over the last 10 years. The county, state and city sectors are the poorest performers even amid an improvement since 2015.

While investors need the audit documents for credit evaluation and securities pricing purposes, they are not the only stakeholders that have a need to see timely audited financial reports.

Governing boards associated with public bodies and not-for-profit organizations need to review the audits in order to fulfill their duty for proper oversight. Like municipal bond analysts and investors, they are better able to respond to issues disclosed in an audit if the documents are timelier.

Audit timeliness is a simple, common sense principle based on the expectation that accountability and transparency are best achieved if audited financial reporting is swiftly dispatched. That should hold true not only as a standard for responsible government but also for investors and taxpayers.

There's an added fiduciary responsibility for municipal bondholders in that late or stale audits inhibit accurate bond pricing and cloud assessments of risk. The absence of significant improvement in the overall speed in which are audits are signed and delivered begs the question as to why the market is not imposing a greater penalty on those that consistently are late to report.

Merritt Research Services, LLC, an independent municipal bond credit data and research company based in Hiawatha, Iowa and Chicago has been tracking the time it takes municipal bond borrowers to complete their audits since Merritt Research released its first report in 2010. Its latest findings looked at more than 10,500 Fiscal Year 2017 audits by credit sector and over 110,000 audits since 2008.

Latest Results

The latest analysis focused on 2017 audits found a modicum of good news in that there was a modest improvement in completion time rates over the past two years as governmental audits have made the adjustments to more detailed pension reporting in line with changes in GASB rules 67 and 68 that occurred mostly in the 2015 audits. Audits from non-governmental municipal bond borrowers, such as power agencies, hospitals and private universities, finished much faster than those for governments.

As has been the case in other years, the median completion time for reports related to governmental type municipal bonds still hovers between 170 and 180 days. That's still a long way from the target reporting times in the corporate bond market and well below what the municipal bond industry considers to be a muni guideline of 120 days.

Merritt Research's latest report continues to show that certain types of municipal bond borrowers, mostly associated with corporate like enterprise entities and not-for–profit organizations (issued under the IRS 501c-3 code), are consistently faster to finish their audits than the governmental state and local governmental sectors. These non-governmental issuer sectors have median times which range from 99 days to 161 days.

Consistently placing fastest on the list of all municipal bond credit sectors are (1) public power wholesale electric agencies (also known as joint action agencies and quasi-government enterprises), (2) hospitals, (3) private higher education institutions and (4) Tollroads. Each of these sectors show a median audit completion time of 120 days or less, meeting the unofficial municipal bond guideline most frequently cited as best practice.

Fastest Reporting Sectors for Fiscal Year 2017

Public Power Wholesale electric audits achieved the best sector reporting time, boasting a median completion time of 99 days after the close of the fiscal year.

Hospitals, which often carry higher interest rates since many consider them as one of the riskier major credit sectors in the muni market, annually place nearly as well as wholesale electric entities in the audit time contest. As a group, they recorded a median audit completion time of 111 days, the same as the prior year.

The Private Higher Education sector took the third best sector finish for fiscal year 2017 with a median audit time of 115 days. Again, this sector has consistently completed its audits in a narrow range of between 107 and 115 days since 2008.

The Tollroads sector showed the best gain of any of the categories by improving its median from its already good audit time level of 126 days to 120 days. Fifty-one percent of the sector completed their audits in 120 days.

Slowest Reporting Sectors in Fiscal Year

On the other side of the speed continuum were the main governmental sectors – counties, states and cities.

Despite their absolutely disappointing finish times, each of these sectors showed a modest improvement and reduction in their median audit times from last year and further progress since 2015.

That's the year in which governments were required to apply more detailed pension accounting information in line with the new Governmental Accounting Standards Board (GASB) 67 and 68 rules concerning pension accounting that went into effect.

The County Sector showed the slowest financial reporting as a group. The median sector audit time came in at 179 days, several days better than two years ago and one day better than last year, but still nothing to boast.

States & Territories, which was the second slowest sector in 2017 and the tardiest of all sectors in the previous two years, inched up a notch with a median audit time of 175 days. Only 5.7% of this sector was able to have their audits signed for completion within 120 days.

The City Sector was the third slowest sector, albeit the best, among the major governmental categories. Its median audit time was 173 days. Like states and counties, it has fallen among the bottom three in each of the last 10 years. It tied states for having the same 5.7% of signed audits within 120 days of the end of the fiscal year.

By Richard Ciccarone

BY SOURCEMEDIA | MUNICIPAL | 02/14/19 09:00 AM EST

SEC Official Tackles Muni Disclosure.

AUSTIN, TEXAS – A Securities and Exchange Commission Official tried Tuesday to provide some clarity on disclosure issues in the municipal market, as the effective date of a major amendment to the disclosure requirements looms in two weeks.

Ahmed Abonamah, senior counsel to the director in the SEC's Office of Municipal Securities, discussed the soon-to-be effective amendments to the SEC's Rule 15c2-12 and other disclosure topics during a panel discussion at The Bond Buyer's Texas Public Finance Conference being held here this week. The amendments, which add two new material events to the list which issuers must agree to disclose on a continuing basis, take effect Feb. 27.

Abonamah, who arrived at the SEC in 2016 after several years in the private sector, told conference attendees that the SEC does not endorse any particular way for underwriters to fulfill their duties to reasonably determine that issuers for whom they underwrite bonds will comply with the new material events in their continuing disclosure agreements. Event 15 says issuers have to disclose when they incur material financial obligations, while event 16 says that issuers have to disclose events connected to those obligations which "reflect financial difficulties," such as a default or modification of terms.

One bright line rule is that underwriters can't rely solely on an issuer's reputation to determine whether the representations in the offering document are accurate, Abonamah said, though he allowed that the determination includes an element of judgment on the underwriter's part.

Abonamah said the commission has received a lot of requests to clarify what sort of "non-debt debt" might qualify as requiring disclosure under event 15. The key determination is whether there is a borrowing in the transaction such as in those that involve a lease development corporation. The rule was not intended to capture more straightforward leases, such as those of city vehicles, he said.

Other panelists also weighed in on disclosure topics. Bill Oliver, a spokesman for the National Federation of Municipal Analysts, said the SEC could be helpful by providing the market with clarity on how comfortable the commission is with issuers disclosing unaudited financial information. The industry is wrestling with how to overcome the stale nature of the numbers in issuers' comprehensive annual financial reports, and Oliver said unaudited data could be useful to analysts. Such information is already routinely disclosed in certain sectors, such as healthcare, he noted.

The SEC could further offer issuers some reassurance on the permissibility of talking to investors, when investor-issuer communication is "at an all-time low," Oliver said. Some buy-side analysts have said they believe issuers are hesitant to speak to them in any detail because they are afraid of "selectively disclosing" non-public information over the phone.

Panel member Gregg Bienstock, the CEO and a Co-Founder of Lumesis, said that whatever regulators might do to try to improve the timeliness of issuer disclosure, including technological investments, they have to keep in mind that disclosure is only as good as the data provided. Many of documents posted to EMMA aren't actually word-searchable, Bienstock said.

"Data has to be useful to the market participants," said Bienstock.

Abonamah said the SEC is studying those disclosure issues, but did not commit to any commission action.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 02/12/19 03:45 PM EST

Asset Monetization and Public Facilities: New Ground for P3s

As municipalities, state agencies, and educational institutions look for creative ways to fund needed capital improvements, leveraging the value of underutilized public real estate assets through commercial development is a viable strategy. There is concern as to whether this type of project constitutes a Public-Private Partnership (P3) and is authorized or prohibited under states' P3 enabling legislation.

This concern hovers amidst the growth of the social infrastructure market, a class of public-facing facilities such as schools and courthouses, for which government agencies are increasingly seeking alternative funding sources. To address aging social infrastructure, some state and municipal governments are exploring P3 solutions, but many states' enabling legislation is either restrictive of or silent on the use of private capital and private delivery for social infrastructure projects. Even fewer states contemplate monetization of underutilized public assets as an allowable P3 structure.

Currently, 38 states have P3 enabling legislation, but few of these statutes allow monetization of public assets through commercial development. Legislators have assumed that P3 only applies to alternative delivery of an asset or service for public use through an availability payment or a concession model.

As an example, the State of Pennsylvania is delivering one of the nation's most significant transportation P3 projects, intended to replace over 500 aging bridges across the state, but its restrictive, transportation-focused P3 statute does not enable the delivery of social infrastructure, much less doing so by monetizing underutilized assets.

This limited approach to alternative financing, taken by so many states, results in missed opportunities to renew critical public facilities.

Asset Monetization as a P3

To demonstrate the viability of asset monetization projects as P3s, consider the alignment of a recent project in the City of Falls Church, Virginia and the definition of a P3, as promoted by the National Council for Public Private Partnerships (NCPPP). The City of Falls Church recently selected a team of private partners to develop a commercial economic development project on 10 acres of city-owned land, the proceeds of which are intended to offset the cost of delivering a new high school adjacent to the commercial site. NCPPP offers three primary criteria for any P3 project, each of which the City of Falls Church project meets:

- A contractual agreement between a public agency (federal, state or local) and a private sector entity.
- The City of Falls Church will enter into a Comprehensive Agreement and a 99- ground lease with its private partner, dictating the uses to be constructed and the terms of payments.
- The skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public.
- The City of Falls Church is contributing the land and assisting with entitlement; the private partner is contributing capital and real estate development and operational expertise. Additionally, the project will fund the development of the new high school and provide significant civic space.
- Each party shares in the risks and rewards potential in the delivery of the service and/or facility. The City of Falls Church and private partner share in development risk as the City of Falls Church receives payments over time and as phases of development are completed. The City of Falls Church also shares in the long-term upside of the project through on-going capital event fees. The City of Falls Church project is being executed under the authority of the Commonwealth of Virginia's Public Private Education Act (PPEA). Virginia was an early adopter of broad-sweeping P3 legislation, passing the PPEA in 2002.

Some states are following Virginia's lead to address mounting capital improvement and deferred maintenance needs. In August, the State of New Jersey expanded its P3 authority, previously focused exclusively on public higher education institutions, to include a broad set of local governments, school districts, public authorities, and state and county colleges. These entities can now enter into P3s for capital projects, including both social infrastructure and transportation. While regulations are still under development, New Jersey should look at the City of Falls Church's example and create regulations that support and encourage monetization of underutilized public assets as one of the P3 tools available to municipal and educational institutions seeking to raise funds for critical facilities.

Conclusion

At a time when states are increasingly considering alternative financing or revisiting existing laws, recognizing asset monetization transactions that generate significant public benefit, like the City of Falls Church project, may encourage legislators to broaden the scope of allowable alternative financing projects, thereby allowing more social infrastructure projects to be funded by monetizing underutilized public and institutional assets.

By Jay Brown

BY SOURCEMEDIA | MUNICIPAL | 02/06/19 09:00 AM EST

EPA Accelerates Investments in America's Water Infrastructure.

LENEXA, KS, FEB 8, 2019 — As highlighted in President Trump's State of the Union address and in support of the President's Infrastructure Initiative, the U.S. Environmental Protection Agency (EPA) has accelerated investment in the nation's aging water infrastructure.

"EPA is delivering on President Trump's promise to jump-start critical infrastructure projects that will not only enhance environmental protections but also grow the economy," said EPA Acting Administrator Andrew Wheeler. "Under President Trump, EPA has issued seven WIFIA loans to help finance over $4 billion in water infrastructure projects that will improve water quality and create up to 6,000 jobs. By clearly defining where federal jurisdiction begins and ends, our new proposed Waters of the U.S. definition will provide states and the private sector the regulatory certainty they need to develop and streamline projects that will modernize our nation's aging infrastructure."

Over the past year, EPA has moved President Trump's infrastructure agenda forward by working to get the financing, tools and resources EPA's state, local, tribal and other partners need to modernize outdated water infrastructure while improving local water quality, creating jobs and better protecting public health.

"Supporting states in their efforts to modernize and upgrade water infrastructure is key to providing Americans with clean and safe water and protecting public health and the environment," said Region 7 Administrator Jim Gulliford. "The SRF programs have historically been the primary source of funds to support states and needed infrastructure improvements. With the addition of WIFIA, significant additional funding has been made available. EPA is committed to supporting the states and their public and private infrastructure programs and assuring that the highest health and environmental standards possible are achieved."

Together with the agency's state, local, tribal and other partners, EPA achieved the following major water infrastructure accomplishments in 2018:

WIFIA

Established by the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014, EPA's WIFIA program is the agency's newest water financing program, which provides long-term, low-cost supplemental loans for regionally and nationally significant projects. In 2018, EPA issued seven

WIFIA loans totaling nearly $2 billion to help finance over $4 billion for water infrastructure projects and create up to 6,000 jobs. In November 2018, EPA invited 39 additional projects in 16 states and Washington, D.C. to apply for a WIFIA loan. Together, these selected borrowers will receive WIFIA loans totaling approximately $5 billion to help finance over $10 billion in water infrastructure investments and create up to 155,000 jobs.

Omaha, Neb. and St. Louis, Mo. were two communities in Region 7 awarded WIFIA loans in 2018. The Metropolitan St. Louis Sewer District received $47.7 million to help construct a new pump station and replace or rehabilitate sewer pipes to address overflows and improve the water quality in Deer Creek. This project will provide storage for excessive inflow and infiltration during wet weather events, alleviate basement backups, and save the district an estimated $15 million by financing with a WIFIA loan compared to a bond issuance. The City of Omaha's Saddle Creek Retention Treatment Basin Project received $69.7 million to help finance the construction of a wastewater pump station. This project will decrease the number of overflow events into Little Papillion Creek and reduce the volume of untreated combined sewer overflow and E. coli bacteria entering the waterway, all while saving the City of Omaha nearly $20 million in interest costs.

Five additional projects in EPA Region 7 have submitted letters of interest in applying for WIFIA loans as well: Kansas City, St. Louis, and Joplin, Mo., and Wichita and Frontenac, Kan. EPA has offered these communities the opportunity to discuss and negotiate loans supporting up to 51 percent of their project costs. Combined, these five projects could receive WIFIA loans totaling approximately $513 million in water infrastructure investments serving a population of more than 2.3 million.

State Revolving Funds

The Clean Water and Drinking Water State Revolving Funds (SRFs) play an integral role in EPA's efforts to help communities replace or upgrade aging or inadequate drinking water and wastewater infrastructure through low-interest loans. Together, in 2018, the SRFs committed $9.6 billion in drinking water and clean water infrastructure loans and refinancing and disbursed $8.8 billion for drinking water and clean water infrastructure. This level of funding was facilitated through EPA's contribution of $2.2 billion to the state revolving funds in 2018.

Region 7 EPA works closely with the states of Kansas, Missouri, Iowa and Nebraska in the implementation of the SRF program. In 2018, Region 7 states received over $150 million in SRF funding from Congress that helped finance 339 loan agreements for water quality projects totaling $408 million.

In addition to funding large-scale infrastructure projects, EPA has also taken a leading role in the administration's initiative to promote greater efficiencies in the infrastructure permitting process. These actions include working to provide a clear and predictable approach to identifying waters that are subject to federal authority through the Department of the Army's and EPA's proposed "Waters of the United States" rulemaking, implementation of the administration's One Federal Decision initiative and through other improvements to the Clean Water Act permitting process. EPA will take these actions by cooperatively working with its state and tribal co-regulators with a goal of streamlining environmental permitting and increasing investments in critical water and other infrastructure projects.

Learn more at epa.gov.

WATER WORLD

February 8, 2019

S&P: Proposed New York State Budget Cuts AIM Funding, May Spell Long-Term Financial Stress For Municipalities

New York State's proposed fiscal 2020 budget contains funding changes for municipalities, that, if passed, could create revenue volatility over the long term. The proposed modifications don't change S&P Global Ratings' overall near-term view of the municipalities' credit quality…

Continue Reading

Feb. 6, 2019

Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No.

A growing number of jurisdictions have overturned local minimum wage ordinances and the state of Florida has now waded into the minimum wage waters.

Florida has a long-standing state statute that expressly prohibits municipalities from enacting local wage ordinances. Section 218.007 provides that **"a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage."** While the statute does permit local wage ordinances for local government employees, a Florida municipality cannot pass legislation that seeks to impose a higher wage upon private employers operating within the city/county.

In 2004, Florida voters approved a state constitutional amendment that established a higher, statewide minimum hourly wage. The constitutional amendment authorized the state of Florida to increase Florida's minimum wage above the federal minimum wage established by the Fair Labor Standards Act. However, the amendment did not supersede (or even address) Section 218.077 with regard to whether local municipalities could establish their own minimum wage scales. Pursuant to this constitutional amendment, the Florida Department of Economic Opportunity is charged with adjusting the state's minimum wage rate annually based on the Consumer Price Index. Effective January 1, 2019, the current Florida minimum wage is $8.46/hour.

In June 2016, the city of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. Attempting to rely on Florida's constitutional amendment, the city of Miami Beach approved a local minimum wage ordinance for all employers operating with the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of $10.31/hour and annual increases to $13.31/hour effective January 2021.

The Florida Retail Federation, Florida Restaurant & Lodging Association, and Florida Chamber of Commerce promptly filed a lawsuit on the grounds that the Miami Beach ordinance was preempted by state statute. Judges in both the Miami-Dade Circuit Court and Florida's Third District Court of Appeals agreed and that struck down Miami Beach's local wage ordinance.

Even more interesting is that the Florida Supreme Court initially agreed in August 2018 to exercise jurisdiction and hear the city of Miami Beach's appeal. However, last month three of the justices who had voted in favor of hearing the case retired. On February 5, 2019, the Florida Supreme Court issued a perfunctory order that stated simply: "Upon further consideration, we exercise our discretion and discharge jurisdiction. Accordingly, we hereby dismiss this review proceeding." As a result, the Florida appellate court's decision invalidating Miami Beach's local wage ordinance stands.

The Florida Supreme Court's decision does not bar other Florida municipalities from establishing their own respective minimum wages. However, the ruling certainly establishes that any such ordinances very likely would be struck down on preemption grounds just like the city of Miami Beach.

by Jennifer Williams

February 14, 2019

Cozen O'Connor

92nd Arkansas General Assembly/SB 289: Municipal Jurisdiction Over Utilities.

Senate Bill 289 has been introduced which would amend certain provisions of Chapter 200 (Municipal Authority Over Utilities) of the Arkansas Code.

The bill's sponsors include:

- Senator Jane English (North Little Rock)
- Representative Mark Lowery (Maumelle)
- Representative Carlton Wing (North Little Rock)

Provisions of the bill include an amendment to Ark. Code § 14-200-101(a) addressing municipal jurisdiction over utilities. This definition is revised to include water utilities, adding it to electric, gas, sewer, or telephone companies.

The bill also amends Ark. Code 14-200-101(b)(1)(A)(iii) addressing franchise fees for utilities. The word "public" is added, along with a revision addressing the cap on the franchise fee.

The bill also addresses Ark. Code § 25-30-319(b) regarding franchise fees by deleting (b) and adding the following language:

A participating public agency shall not require a public body created under this subchapter to pay a franchise fee under authority of other law.

A copy of the bill can be found here.

by Walter Wright

February 13, 2019

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Public Design-Build Projects in Arkansas (Part Two): Statutory Procurement Authority.

Part One of this series focused on the Arkansas Department of Transportation's ("ARDOT") first major project using the design-build project delivery method – 30 Crossing. Since then, ARDOT has awarded the 30 Crossing Project to a Kiewit Infrastructure South and Massman Construction joint venture. However, the question remains: what statutory authority does ARDOT have to procure construction through design-build? Furthermore, is there statutory authority to use design-build for other types of public construction? Part Two answers these questions, discussing when the State of Arkansas or one of its subdivisions may use a single company to provide the architecture, engineering, and construction for a project.

ARDOT, through the highway commission, has statutory authority to use "[q]ualification-based, design-build services" for "design-build project contracts" under A.C.A. § 27-67-206(j)(2)(A)(i). After receiving statements of qualifications (or proposals without competitive bidding), ARDOT may "[a]ward a project contract on a qualification basis that offers the greatest value for the state… and [c]ontract with an authorized entity to design, construct, improve, and maintain qualified projects," pursuant to subsections C and D.

Excluding ARDOT, Arkansas's state agencies may use design-build under Arkansas's P3 legislation. Under A.C.A. § 22-10-103(10)(B)(ii), a state agency has statutory procurement authority, provided the project is "designed and built, in whole or in part, by a private entity."

A school district may also use design-build for school buildings. Under A.C.A. § 19-11-807(b)(1), any "school district may use design-build construction as a project delivery method for building, altering, repairing, improving, maintaining, or demolishing any structure, or any improvement to real property owned by the school district."

At the end of the competitive bidding provisions of the Arkansas Code, municipalities and water authorities constructing wastewater treatment, storm water treatment, or water treatment plants have been given authority to use design-build as a project delivery method under A.C.A. § 22---203(j). As stated in subsection 2, the municipality or water authority "contracts may include provisions for the design, financing, construction, repair, reconditioning, replacement, operation, and maintenance of the system, or any combination of those services and functions."

There are several options for Arkansas design-build public projects, depending on the project type. As the statutes reveal, however, compliance with the specific procurement requirements may be cumbersome. Although Arkansas does not have comprehensive design-build legislation, this State is moving in the right direction.

by Larry Watkins

January 3, 2019

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

New Sales Tax Bonds Issued Under Latest Puerto Rico Debt Restructuring.

SAN JUAN, Feb 12 (Reuters) – Puerto Rico's Sales Tax Financing Corporation, known as COFINA, issued $12 billion of new bonds on Tuesday as a federal court-approved deal between the bankrupt U.S. commonwealth and its creditors took effect, according to island officials.

The plan of adjustment approved by U.S. District Court Judge Laura Taylor Swain on Feb. 4 restructures about $17 billion of sales tax-backed debt, leaving senior bondholders to recover 93 percent of their original investment, while junior bondholders recover only 56 percent. The island, which is trying to restructure about $120 billion of debt and pension liabilities through a form of municipal bankruptcy that Swain is overseeing, previously won court approval for a consensual deal with creditors over about $4 billion of debt related to its Government Development Bank (GDB).

According to Puerto Rico's federally created oversight board, the COFINA plan will slash debt service on the sales tax-backed debt by $17.5 billion over nearly 40 years, saving the island an average $456 million annually.

Future sales tax revenue previously pledged exclusively to COFINA will be split, with 53 percent going to COFINA bondholders and 46 percent flowing to the commonwealth government.

The new COFINA bonds were listed on the Municipal Securities Rulemaking Board's disclosure website with maturities in 2047 and 2054.

"Today's achievement is proof that the Government of Puerto Rico can accomplish creative restructuring solutions that safeguard the interests of the people of Puerto Rico," Governor Ricardo Rosselló said in a statement.

The oversight board said on Tuesday it has certified a fiscal 2019 budget for COFINA that includes money to cover the entity's past and future operating expenses.

S&P Global Ratings said last week that the credit quality of the restructured COFINA bonds is tied to Puerto Rico's long-term credit picture.

"While the COFINA settlement provides a degree of certainty with respect to the commonwealth's balance sheet, the absence of audited financial statements and continuing uncertainty around retirement obligations stands in the way of our ability to assess its long-term creditworthiness," S&P said.

The oversight board has turned its attention to the island's core debt of roughly $13 billion of general obligation bonds and almost $50 billion in unfunded pension liabilities.

Last month, the board asked Swain to invalidate more than $6 billion of GO bonds, contending the debt had been issued in violation of the Puerto Rico Constitution.

(Reporting by Karen Pierog in Chicago and Luis Valentin Ortiz in San Juan Editing by Matthew Lewis)

Illinois Housing Development Authority Launches New Initiative to Attract Bond Investors in 2019.

Illinois Housing Development Authority issued the following announcement on Feb. 8.

The Illinois Housing Development Authority (IHDA) launched a new initiative today aimed at attracting more investors to its municipal bond offerings.

IHDA introduced a new investor relations site providing access to over 1,000 pages of data and documents, providing a single location for investors to access their credit fundamentals: www.buyihdabonds.com.

"It's our fiduciary responsibility to raise capital at the lowest possible cost to taxpayers," said Audra Hamernik, IHDA's Executive Director. "With hundreds of municipal bond sales each week, we know investors have a choice as to where to invest. Our commitment to transparency and disclosure will enable IHDA to reach more investors and optimize long-term relationships with the buy-side, helping to better price our bonds. We are happy to announce that we will kick-off IHDA's investor platform with the release of a Preliminary Official Statement this week with respect to single-family bonds financing single-family mortgage-backed securities, the proceeds of which will be used to finance first time homebuyers across Illinois."

Regulators recommend a strong investor relations program for issuers. Academic research also shows improved disclosure leads to lower borrowing costs, which will improve IHDA's ability to finance affordable homeownership and rental opportunities throughout the state.

"We're extremely proud to partner with IHDA," said Colin MacNaught, co-founder and CEO of BondLink, which powers the state's investor relations site. "Sophisticated issuers like IHDA understand the edge of heightened transparency when selling bonds. We're excited to help drive additional investor demand for the state's bond programs, and those of its related agencies."

About the Illinois Housing Development Authority

IHDA (www.ihda.org) is a self-supporting state agency that finances the creation and the preservation of affordable housing across Illinois. Since its creation in 1967, IHDA has allocated over $18 billion and financed approximately 255,000 affordable housing units for residents of Illinois.

About BondLink

Led by founders Colin MacNaught, CEO, and Carl Query, CTO, BondLink's cloud-based IR platform provides efficiencies to issuers and investors in the $4 trillion municipal bond market. Since the launch of its first investor platform two years ago, BondLink has expanded its network across more than 25 states, as well as the District of Columbia and the U.S. Virgin Islands. Headquartered in Boston, BondLink is backed by top investors, including Franklin Templeton Investments, one of the largest municipal bond fund managers in the country. BondLink is also the founder of the world's first investor relations conference for the municipal bond industry. For more info, visit www.bondlink.com.

Financial Accounting Foundation Board of Trustees Notice of Meeting.

Read the notice.

Illinois Explores Ways to Pay Down Pension Debts.

- **Governor mulls steps to reduce unfunded retirement liability**
- **Pension strains have pushed Illinois rating to cusp of junk**

Illinois needs $134 billion and may hold a yard sale to raise it.

Governor J.B. Pritzker, a Democrat who took office last month, is turning to business experts to figure out how to chip away at the massive debt to the state's employee retirement system that's left the government's credit rating dangling just one step above junk. Among the options it will weigh: How to use the state's other assets — like buildings and roads — to pump more money into the pensions.

No state is struggling more with its retirement obligations than Illinois, but the steps it's exploring aren't unprecedented. New Jersey handed its lottery system over to its pensions, ensuring that politicians won't shortchange them as badly as they have in the past, and Connecticut has considered following suit. Arizona sold its capitol to raise cash after the last recession. And former California Governor Arnold Schwarzenegger proposed selling 11 state office buildings, though the plan was scrapped by his successor.

Continue reading.

Bloomberg Markets

By Danielle Moran, Claire Ballentine, and Martin Z Braun

February 12, 2019, 10:39 AM PST

Illinois Governor Eyes Bond Sale, Tax Hike to Save Pensions.

Illinois Governor J.B. Pritzker is considering a broad plan to inject cash into the state's struggling pensions by selling $2 billion of bonds, implementing a progressive income tax and using billions of dollars of government assets to reduce the massive debt owed to the retirement system.

At the same time, the Democrat, who took office last month, wants to extend the state's timetable for paying down the debt by seven years to prevent swelling pension payments from crowding out spending on other priorities, Deputy Governor Dan Hynes said in a statement. His administration also wants to encourage workers to accept early retirement buyouts.

The plan provides the greatest detail yet for how Pritzker will contend with the financial challenge posed by Illinois's $134 billion unfunded liability to its workers retirement plans. The shortfall built up from years of failing to set aside enough money to cover all the promised benefits, leaving the government facing escalating annual contribution payments. That has left Illinois's credit rating dangling just one step above junk, lower than any other state, and caused investors to demand large penalties on its bonds.

Hynes said that the administration would use the proceeds of any bond sale to increase its payments to the retirement system, not as a means of covering its annual contribution. That would prevent Illinois from repeating the mistake it made more than a decade ago, when it issued $10 billion of such debt only to see the shortfall reemerge.

‘We can lower the cost of our pension debt and inject cash immediately into the system by issuing a small-scale pension bond of about $2 billion,’ Hynes said in a statement. ‘The bond proceeds would be used for no purpose other than to be deposited directly into the funds — and would be used only for paying down our more expensive pension liabilities. No skimming off the top to pay this year’s pension payment.’

The pension shortfall is the biggest financial problem facing Illinois. With the state mired in partisan gridlock for much of the past four years under Republican Governor Bruce Rauner, Wall Street analysts have seen the return to a unified Democratic government as providing Pritzker with an opportunity to contend with issues that eluded his predecessor.

Pritzker has formed a panel of business experts to look into ways to use the state’s assets — like buildings and roads — to raise cash for the pension system, and Hynes said some revenue generated by scrapping the flat income tax in favor of a progressive one would also be directed there.

While a graduated income tax is the norm in most states, Illinois has a constitutionally-protected flat tax, which would require a voter-approved amendment to implement. If the change is successfully enacted, Hynes said Illinois would increase its contributions to the retirement system by $200 million a year over what it’s legally obligated to pay.

‘The state government needs to show the people they are behaving responsibility, because if they don’t, any proposal that requires a statewide vote will go down because they don’t trust them,’ said Howard Cure, head of municipal bond research at Evercore Wealth Management. ‘Pritzker doesn’t have a lot of time to prove his worth.’

Friday, 15 February 2019 10:43 AM

- FINRA 529 Plan Share Class Initiative Encourages Firms to Self-Report Violations.
- `Question Everything’: Puerto Rico Hits $3.8 Trillion Market
- P3 and Your Tax Dollars: Federal Government Makes Next Foray into Public Private Partnerships.
- U.S. Army Corps of Engineers Seeks to Establish P3 Pilot Program – Webinar **(Tomorrow! 2/13)**
- P3 Connect: Denver, CO
- *Snodgrass v. City of Wichita, Kansas* – After landowners filed suit against city and law firm, alleging that the proceeds resulting from the refinancing of general and special obligation bonds benefitting their properties should be refunded to them by reassessing the special assessments levied against their property, the District Court granted plaintiff’s motion to remand the matter to state court, holding that the special assessments are taxes under the Tax Injunction Act and that plaintiffs have an adequate remedy in state court.
- And finally, Your Editor Sets The Bar Low (And Promptly Trips Over It) is brought to us this week by *Ventura v. Town of East Haven* and *Rand Resources, LLC v. City of Carson*, in which Your Editor encountered a couple of ghosts of law school past. We noticed that the opinion in *Ventura* was written by Justice Palmer of the Connecticut Supreme Court. After I gave the opening argument in a moot court trial presided over by Justice Palmer, he called me over to the bench and announced, “That was the funniest thing I have ever heard from the bench, but of course I would have had to declare a mistrial.” And the opinion in *Rand* was written by Your Editor’s friend and classmate Justice Cuellar (hey, Tino!) who’s currently occupying a seat on the California Supreme Court. So perhaps we fell a bit short of our potential, but we still have each other, right? Right? Fine, I’m gonna go get a beer with Brett.

CONTRACTS - CALIFORNIA

[Rand Resources, LLC v. City of Carson]

Supreme Court of California - February 4, 2019 - P.3d - 2019 WL 418745 - 19 Cal. Daily Op. Serv. 1055

Stadium developer brought action against city, mayor, and developer's competitor, alleging tortious breach of an exclusive agency contract, promissory fraud, fraud, and intentional interference with contract and prospective economic advantage after city replaced developer with competitor as representative in negotiations with National Football League (NFL) regarding potential football franchise for city.

The Superior Court granted anti-SLAPP motion to strike. Developer appealed, and the Court of Appeal reversed and remanded. The Supreme Court granted review.

The Supreme Court of California held that:

- Mayor's alleged false statement that he did not know of competitor, and city attorney's alleged false statement that, so long as developer showed reasonable progress, exclusive agency agreement would be renewed, were not made "in connection with" an issue before the city council as required for anti-SLAPP motion;
- Alleged false statements misrepresented the identity of the city's agent and thus did not concern an issue of public interest as required for anti-SLAPP motion;
- City attorney's statement to developer that agreement would be extended so long as developer showed reasonable progress, followed by the city council's denial of an extension to the agreement, could not constitute a statement in connection with an issue "under consideration or review" within meaning of anti-SLAPP statute;
- City attorney's statement to stadium developer that agreement would be extended so long as developer showed reasonable progress did not constitute a statement "in connection with a public issue or an issue of public interest" within meaning of anti-SLAPP statute;
- City attorney's statement that agency agreement would not be renewed because city "did not need" developer anymore and have been "walking on eggshells" with developer's competitor could not provide basis for liability for promissory fraud;
- Intentional interference with contract and intentional interference with prospective economic advantage claims based on competitor's alleged meeting with city attorney regarding how to breach city's exclusive agency agreement with developer were subject to anti-SLAPP motion to strike; and
- Intentional interference with contract and intentional interference with prospective economic advantage claims based on competitor's alleged contact with NFL representatives were subject to anti-SLAPP motion to strike.

EMINENT DOMAIN - COLORADO

[Allen v. State]

Supreme Court of Colorado - January 22, 2019 - P.3d - 2019 WL 332985 - 2019 CO 6

Former property owner filed an inverse condemnation action seeking compensation for an alleged loss of property rights.

The District Court dismissed the action based on lack of subject matter jurisdiction. Former property owner appealed.

The Supreme Court of Colorado held that the water division trial court lacked subject matter jurisdiction to consider former property owner's inverse condemnation action seeking compensation for the deprivation of his rights in shares of ditch company; the dispute involved a property interest, not any water use matter.

IMMUNITY - CONNECTICUT

Ventura v. Town of East Haven

Supreme Court of Connecticut - January 22, 2019 - A.3d - 330 Conn. 613 - 2019 WL 254698

Pedestrian, who was struck by truck driven by motorist, brought personal-injury action against town, alleging that town police department's rules regarding towing of vehicles imposed clear ministerial duty on police officer to, after investigating an unrelated domestic-violence incident involving motorist, tow motorist's truck, because truck had invalid registration and improper plates.

Following jury trial, the Superior Court entered judgment in favor of pedestrian. Town appealed. The Appellate Court reversed and remanded. Pedestrian petitioned for certification to appeal.

The Supreme Court of Connecticut held that:

- Question whether town police department's rules regarding towing of vehicles imposed ministerial duty on police officer to tow motorist's truck gave rise to a question of law for resolution by trial court, abrogating *Strycharz v. Cady*, 148 A.3d 1011, *Bonington v. Westport*, 297 Conn. 297, 999 A.2d 700, *Martel v. Metropolitan District Commission*, 275 Conn. 38, 881 A.2d 194, *Lombard v. Edward J. Peters, Jr., P.C.*, 252 Conn. 623, 749 A.2d 630, and *Coley v. Hartford*, 312 Conn. 150, 95 A.3d 480;
- Police department's rules regarding towing of vehicles did not impose clear ministerial duty on police officer to tow motorist's truck, as required to show that town did not enjoy governmental immunity from pedestrian's claim; and
- Testimony of municipal employee designated by town as the person most knowledgeable about police department rules and procedures was insufficient to establish a ministerial duty on the part of police officer to tow motorist's truck.

Town police department's rules regarding towing of vehicles did not impose clear ministerial duty on police officer to tow motorist's truck following officer's investigation into unrelated domestic-violence incident involving motorist, and pedestrian thus failed to show that town did not enjoy governmental immunity from pedestrian's claim that injuries he sustained when motorist resumed driving truck, and subsequently struck pedestrian with truck, resulted from violation of such duty, even though truck had invalid registration and improper plates, since, when read together, rules made sense only with understanding that the rules regulated tow truck operators, not police officers.

ELECTIONS - FLORIDA

Orange County v. Singh

Supreme Court of Florida - January 4, 2019 - So.3d - 2019 WL 98251 - 44 Fla. L. Weekly S102

Constitutional county officers of a charter county brought action for declaratory and injunctive relief, challenging validity of ordinance providing for nonpartisan election of certain county constitutional officers.

The Circuit Court entered a final judgment striking a portion of the ordinance. County appealed. The District Court of Appeal affirmed. County appealed.

The Supreme Court of Florida held that:

- Election Code did not expressly preempt county's authority to determine that county constitutional officers be elected without partisan affiliation;
- Portion of ordinance requiring election of such officers at primary election was inconsistent with Election Code section requiring general election; and
- Portion of ordinance that conflicted with Election Code could be severed without rendering the remainder of ordinance incomplete.

Election Code did not expressly preempt the home rule authority of charter county to determine that county constitutional officers be elected in a general election without partisan affiliation; Election Code mandated that county constitutional officers be elected at a general election, but did not contain language requiring the election to be partisan.

Portion of county ordinance requiring that the election of county constitutional officers be held at the primary election was inconsistent with Election Code section requiring that county constitutional officers appear on the general election ballot, and thus, that portion of ordinance was unconstitutional.

The unconstitutional portion of county ordinance that was inconsistent with Election Code, in requiring that county constitutional officers be elected at the primary election rather than the general election mandated by Election Code, could be severed without rendering the remainder of the ordinance incomplete, where the purpose of ordinance was to provide for election of county constitutional officers on a non-partisan basis, and there was a way to achieve that goal consistently with Election Code by having the candidates for those offices appear on the general ballot without party affiliation.

AUTOMATED TRAFFIC ENFORCEMENT - IOWA

Behm v. City of Cedar Rapids

Supreme Court of Iowa - January 25, 2019 - N.W.2d - 2019 WL 320511

Owners of motor vehicles who received notices of citations for traffic violations brought putative class action against city and private contractor that operated automated traffic enforcement (ATE) system, challenging constitutionality of city ordinance that created ATE system, and for unjust enrichment.

The District Court entered summary judgment for defendants on all claims and owners appealed. On transfer from Supreme Court, the Court of Appeals affirmed.

On rehearing, the Supreme Court of Iowa held that:

- Challenges to ordinance as violative of equal protection, substantive due process, and privileges and immunities under Iowa Constitution were subject to rational basis review, and not strict

scrutiny;
- Ordinance did not violate substantive due process;
- Ordinance did not violate equal protection;
- Ordinance was not conflict preempted by statute governing proceedings on municipal infractions in district court;
- Ordinance, which excluded government-owned vehicles from reach of ATE system, was not preempted statute stating that traffic laws applied to drivers of all government vehicles;
- Ordinance did not violate procedural due process on its face; and
- Ordinance did not involve unlawful delegation of city authority.

BOND REFINANCING - KANSAS

Snodgrass v. City of Wichita, Kansas

United States District Court, D. Kansas - November 15, 2018 - Slip Copy - 2018 WL 6019344

The City of Wichita issued general obligation and special obligation bonds under Kansas law to finance certain street, sewer, and water improvements. The City spread special assessments across all of the lots in the improved parcel to pay for the bonds.

Sometime later, the bonds were refinanced and the City has allegedly reaped savings of more than $60 million as of December 2017 due to interest savings. Plaintiff landowners alleged that this resulted in the misappropriation of their tax payments and that the City should have refunded the tax payments by reassessing the special assessments levied against their property. Plaintiffs sought a declaratory judgment that Defendants (City, Law Firm, etc.) had “fraudulently, intentionally and willfully misappropriated the millions of dollars of ‘saved’ tax payments gained from the refinancing of general obligation and special obligation bonds.”

Defendant Law Firm filed a response brief asserting that the District Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331.   Law Firm argued that the Tax Injunction Act (TIA) or the principle of comity is not applicable as the special assessments levied in this action were not taxes or, alternatively, Plaintiffs do not have an adequate remedy under state law.

Plaintiffs moved to remand this action to state court on the basis that it was not ripe for federal review.

The District Court found that the special assessments are taxes under the TIA and that Plaintiffs have an adequate remedy in state court, and therefore this action must be remanded.

“Therefore, because this is an action for a refund of tax payments, and because Plaintiffs have a plain, speedy, and efficient, remedy in Kansas courts, this action must be remanded to state court under the TIA and the principle of comity.”

FINRA ARBITRATION - MICHIGAN

Lebenbom v. UBS Financial Services, Inc.

Court of Appeals of Michigan - October 23, 2018 - N.W.2d - 2018 WL 5275314

Brokerage account holder brought action against brokerage for statutory and common law conversion.

The Circuit Court denied brokerage's motion for summary disposition, or in the alternative, to compel arbitration. Brokerage appealed.

The Court of Appeals held that:

- Account holder's claims were subject to arbitration;
- Terms of arbitration agreement were not ambiguous;
- Arbitration clause was not substantively unconscionable;
- Arbitration clause was not procedurally unconscionable; and
- Arbitrability of account holder's claims under Financial Industry Regulatory Authority (FINRA) regulations was a question to be determined in FINRA arbitration proceedings.

Brokerage account holder's claims against brokerage for wrongful conversion, alleging that brokerage wrongfully froze and withheld funds in the account after receiving a tax levy, were subject to arbitration pursuant to a mandatory arbitration agreement between account holder and brokerage; the agreement compelled into arbitration "any and all controversies" between the parties, account holder's allegations presented a disagreement between the parties with respect to whether brokerage's actions were lawful and appropriate, and the agreement did not provide any positive assurances that arbitration would not cover claims of wrongful conversion.

Terms of mandatory arbitration agreement between brokerage account holder and brokerage were not ambiguous, where the agreement provided that "any and all controversies" that arose between the parties "concerning any account, dispute, or transaction" would be submitted to and decided by arbitration.

Arbitration clause in brokerage agreement form was not substantively unconscionable, regardless of whether it disadvantaged the brokerage account holder, where the clause contained a mandatory arbitration provision for "all controversies" arising between the parties and contained no language that could have been construed as inherently unreasonable.

Arbitration clause in brokerage agreement form, executed between trustor and broker, was not procedurally unconscionable, despite brokerage account holder's contention that she thought the form was for free checks and that she was not asked to consent to the arbitration clause's inclusion in the brokerage agreement; as a matter of law, account holder was presumed to have known the nature of the document and to have understood its contents and, despite account holder's advanced age, there was no evidence to suggest coercion, mistake, or fraud or that she had no realistic alternative but to accept the disputed terms.

Question as to whether brokerage account holder's conversion claims against brokerage were arbitrable under Financial Industry Regulatory Authority (FINRA) regulations was one to be determined in FINRA arbitration proceedings; as a matter of law, disagreement as whether the parties' mandatory arbitration agreement settled the question of FINRA arbitrability was to be resolved in favor of arbitrability, the arbitration agreement itself was broadly worded to include "any controversy" arising between account holder and brokerage, and a FINRA arbitrator would have been better equipped than a court to settle interpretation of FINRA regulations.

ANNEXATION - MISSISSIPPI

[Enlarging, Extending and Defining the Corporate Limits and Boundaries of City of Clarksdale, Coahoma County v. City of Clarksdale]

Supreme Court of Mississippi - January 17, 2019 - So.3d - 2019 WL 244426

City filed annexation petition, and county and neighboring town opposed the petition, with town initiating its own annexation proceeding and property owners petitioning for inclusion in town.

The Chancery Court approved, ratified, and confirmed city's proposed annexation in part, and denied town's and owners' petitions. County appealed and city cross-appealed.

The Supreme Court of Mississippi held that:

- City's need to expand supported partial grant of city's petition;
- City's path of growth supported partial grant of city's petition;
- Septic tank problems supported partial grant of city's petition;
- City's financial stability supported partial grant of city's petition;
- Need for planning and zoning supported partial grant of city's petition;
- Need for municipal services supported partial grant of city's petition; and
- Economic fairness to residents of proposed annexation areas supported partial grant of city's petition.

EMINENT DOMAIN - NEW YORK

Noghrey v. Town of Brookhaven

Supreme Court, Appellate Division, Second Department, New York - January 23, 2019 - N.Y.S.3d - 2019 WL 288072 - 2019 N.Y. Slip Op. 00450

Property owner brought action against town to recover damages for a regulatory taking of property without just compensation.

The Supreme Court, Suffolk County, denied property owner's motion to set aside jury verdict in favor of town and for judgment as a matter of law, or in the alternative, to set aside the verdict as contrary to the weight of the evidence and for a new trial. Property owner appealed.

The Supreme Court, Appellate Division, held that:

- Collateral estoppel did not apply to establish a regulatory taking by town with regard to parcel of real property on which property owner intended to build shopping plaza;
- Testimony of town's expert with regard to his appraisal of the subject parcel of real property could not be excluded on the basis it was unreliable or consisted of inadmissible hearsay; and
- Jury verdict in favor of town was not contrary to the weight of the evidence.

PUBLIC RECORDS - OHIO

Sheil v. Horton

Court of Appeals of Ohio, Eighth District, Cuyahoga County - December 20, 2018 - N.E.3d - 2018 WL 6818547 - 2018 -Ohio- 5240

Television journalist made request under Public Records Act for actress's contract with community college foundation for speaking at fundraising luncheon.

The Court of Claims refused to accept special master's recommendation that foundation was functional equivalent of a public office, but agreed that the contract was not a trade secret. Appeal and cross-appeal were taken.

The Court of Appeals held that:

- Foundation was functional equivalent of public office and was subject to Public Records Act, and
- Contract was not a trade secret and could be disclosed to television journalist under Public Records Act.

Community college foundation, which raised money for college scholarships, was responsible for college's public records, and, thus, foundation's speaking contract with actress could be obtained from foundation under Public Records Act, although college did not control foundation's day-to-day activities or property and foundation's fundraising database was on a separate server; foundation prepared records in order to carry out public office's responsibilities, college was able to monitor foundation's performance through ex officio board members and accounting requirements linking college and foundation, college's executive director kept foundation financial records, and college had access to foundation's financial records.

Actress's speaking contract with community college foundation for raising money to fund scholarships was not a "trade secret" and could be disclosed to television journalist under Public Records Act; key information about similar contracts was publicly available, including information revealing actress's speaking fee, a guaranteed fee, terms for reimbursement of travel and expenses, and other requirements, and others were able to easily duplicate and acquire the information.

NUISANCE - WISCONSIN

Yacht Club at Sister Bay Condominium Association, Inc. v. Village of Sister Bay

Supreme Court of Wisconsin - January 18, 2019 - N.W.2d - 2019 WL 273390 - 2019 WI 4

Condominium association brought action against village alleging that concerts held at village park were a public and private nuisance.

The Circuit Court dismissed complaint for failure to state a claim. Association appealed. The Court of Appeals affirmed. Association sought review.

The Supreme Court of Wisconsin held that:

- Each concert was a new nuisance that gave rise to new opportunity for association to file notice of injury with village, but
- Period for association to file notice of claim began to run on date of last concert alleged to be a nuisance.

Puerto Rico's Bleak Finances Brighten with Debt Restructuring.

Four years after Puerto Rico defaulted on billions of dollars in bonds, a federal judge has

approved a debt restructuring deal that will help bondholders recoup their losses and help the island's government gain credit – both with investors and Puerto Ricans.

A federal bankruptcy judge approved a major debt restructuring plan for Puerto Rico on Monday in the first deal of its kind for the United States territory since the island's government declared nearly four years ago that it was unable to repay its public debt.

The agreement involves more than $17 billion worth of government bonds backed by a sales-and-use tax, with officials saying it will help the government save an average of $456 million a year in debt service. The deal allows Puerto Rico to cut its sales-tax-backed debt by 32 percent but requires the government to pay $32 billion in the next 40 years as part of the restructuring.

Senior bondholders, who hold nearly $8 billion, will be first to collect, receiving 93 percent of the value of the original bonds. Junior bondholders, many of whom are individual Puerto Rican investors and overall hold nearly $10 billion, will collect last and recover only 54 percent.

"Puerto Rico has taken an important step toward its total financial recovery," Gov. Ricardo Rossello said in a statement. "This represents more than $400 million annually that will be available for services in critical areas such as health, education, pension payments, and public safety, in compliance with other obligations."

The deal was previously approved by bondholders but prompted hundreds of people to write and email Judge Laura Taylor-Swain, who held a hearing on the issue nearly three weeks ago, to express concerns about the government's ability to make those payments and the effect it will have on public services. In her ruling, she wrote that she reviewed and carefully considered all those messages before making a decision.

"Many of the formal and informal objections raised serious and considered concerns about the Commonwealth's future ability to provide properly for the citizens of Puerto Rico who depend upon it," she wrote. "They are not, however, concerns upon which the Court can properly act in making its decision … the Court is not free to impose its own view of what the optimal resolution of the dispute could have been."

The judge said that the deal represents a reasonable compromise and that further litigation would present a "significant gamble" for Puerto Rico. The island is mired in a 12-year-old recession and struggling to recover from hurricane Maria as the government tries to restructure a portion of its more than $70 billion public debt load.

A US government report issued last year said Puerto Rico's public finance problems are partly a result of government officials who overestimated revenue, overspent, did not fully address public pension funding shortfalls, and borrowed money to balance budgets. The Government Accountability Office also reviewed 20 of Puerto Rico's largest bond issuances over nearly two decades and found that 16 were issued solely to repay or refinance debt and fund operations, something many states prohibit.

Ms. Taylor-Swain's ruling said the compromise is "admittedly, deeply disappointing to countless citizens of Puerto Rico and investors in Commonwealth bonds."

A federal control board that oversees the island's finances praised the ruling, saying in a statement that the bond restructuring will help revive Puerto Rico's economy.

"The deal demonstrates … our determination to resolve Puerto Rico's debt crisis and establish sustainable foundations for [the] island's economic road to recovery," said Natalie Jaresko, the board's executive director.

Antonio Fernos, a Puerto Rico economist, said in a phone interview that the agreement is a good deal.

"It's positive because it brings some clarity to bondholders and what the board and government are willing to accept in negotiations," he said.

More challenges remain, with Puerto Rico's government still negotiating with those who hold general obligation bonds.

Last month, the control board asked the judge to invalidate $6 billion worth of that debt, including all general obligation bonds issued in 2012 and 2014, alleging that issuance violated debt limits established by the island's constitution. Taylor-Swain has held hearings on the issue, but has not ruled yet.

In November, Puerto Rico's government reached a debt-restructuring deal with creditors holding more than $4 billion in debt issued by the now-defunct Government Development Bank.

Associated Press

By Danica Coto

February 6, 2019

[Hedge Funds Bask in Puerto Rico Bond Deal.]()

Bondholders offering debt relief in $18 billion renegotiation gain substantial profits

A small group of hedge funds are being rewarded for backing an $18 billion restructuring of Puerto Rico's sales-tax debt that saddled other investors with losses.

Tilden Park Capital Management LP and GoldenTree Asset Management LP are among the credit-market specialists that have reaped hundreds of millions of dollars in paper profits on those revenue bonds and are poised to collect more under settlement terms that provide them with stronger claims to repayment than before, according a Wall Street Journal analysis of court records and trading information.

The deal slashed $6 billion in value from the bonds known as Cofinas, a painful outcome for individual investors who bought them at full price starting in 2007. But as some investors gave up hope of being repaid, hedge funds bought top-ranking Cofina bonds at beaten-down prices, betting they would fare better than others in a restructuring.

Continue reading.

The Wall Street Journal

By Andrew Scurria

Feb. 9, 2019 7:00 a.m. ET

Puerto Rico Oversight Board Tries To Repudiate GO Bonds (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on the Puerto Rico bonds. Hosted by Abramowicz and Paul Sweeney.

Running time 06:10

Play Episode

February 8, 2019 — 11:17 AM PST

PR Bonds Poised To Rally On Big Fund Involvement (Radio)

Dan Solender, Partner and Head of Municipal Bonds at Lord Abbett, and Michelle Kaske, Puerto Rico reporter for Bloomberg, on Puerto Rico winning approval for its plan to restructure more than $17 billion of sales-tax bonds. Hosted by Lisa Abramowicz and Paul Sweeney.

Running time 06:20

Listen to audio.

February 5, 2019 — 9:44 AM PST

S&P Bulletin: Puerto Rico's COFINA Restructuring Rests on Credit Fundamentals

DALLAS (S&P Global Ratings) Feb. 5, 2019–On Feb. 4, 2019, the federal court overseeing Puerto Rico's (NR) Title III bankruptcy approved its settlement with COFINA bondholders and its COFINA plan of adjustment, resolving multiple claims on nearly $18 billion in COFINA debt.

Continue Reading

Chicago Whistleblower Team Defeats Wall Street Banks' Motion to Dismiss Municipal Bond Fraud Suit.

Whistleblower Edelweiss LLC and its team of attorneys, led by attorney Michael Behn, scored an early victory in this False Claims Act lawsuit filed on behalf of the State of Illinois.

The whistleblower suit against multiple Wall Street banks, including JPMorgan Chase, Citibank, and Bank of America, cleared a major hurdle after an Illinois court rejected the defendants' motion to dismiss the case. The suit was filed by Edelweiss LLC under the Illinois False Claims Act, by Chicago attorney Michael Behn of Behn & Wyetzner, Chartered. (State of Illinois ex rel. Edelweiss LLC (Case

No. 2017 L 000289).

Judge Diane Shelley of the Illinois state court in Chicago stated after reviewing the arguments, that Edelweiss' whistleblower "complaint articulates in myriad detail how false claims could have been presented to the State of Illinois."

Judge Shelley's decision means the case against the banks will move forward. If successful, the State of Illinois could recover hundreds of millions of dollars in fines and damages from the defendants.

Behn described the ruling as "a major victory for Illinois tax payers and municipalities."

"We welcome Judge Shelley's decision, and intend to prove that defendants defrauded the government as alleged," added Dan Hergott, also of Behn & Wyetzner and another of Edelweiss' attorneys.

The banks will now have to answer Edelweiss' complaint, which alleges that the defendants engaged in a deliberate scheme to overcharge government entities while providing financial services relating to municipal bonds.

Behn founded the law firm Behn & Wyetzner to represent whistleblowers under the False Claims Act. Behn was formerly a federal prosecutor with the U.S. Attorney's Office in the Southern District of New York (Securities and Futures Fraud Unit) and with the Commodity Futures Trading Commission.

Behn & Wyetzner has achieved extensive recoveries for state and federal taxpayers on behalf of the firm's whistleblower clients. The firm is of counsel to Siprut PC and based out of Chicago, Illinois.

CHICAGO (PRWEB) FEBRUARY 06, 2019

S&P Upgrades Detroit's Credit Rating One Notch Closer to Investment Grade.

- **S&P upgrades Detroit's credit rating from B+ to BB-**
- **City's credit rating remains three notches below investment grade**
- **Rating upgrade follows $135 million bond sale solely using Detroit's credit**

Detroit's credit rating is one step closer to exiting the Wall Street doldrums of junk bond status that has hampered the city's ability to borrow for years.

S&P Global Ratings on Thursday upgraded Detroit's credit rating on unsecured debt from B+ to BB-, which is still three notches below the highly coveted status of investment grade for municipal bonds.

"The rating improvement reflects our view of the city's stabilizing financial position, whereby we feel it is well situated to absorb increasing pension commitments and scheduled increases in debt service in the coming years, as well as possible revenue setbacks, while still sustaining year-to-year budget balance and very strong reserves," S&P analysts wrote in a note to investors published Thursday.

S&P analysts cited several economic and budgetary factors that continue to restrain Detroit's credit rating, including a looming increase in pension payments set to escalate in 2024 after a 10-year post-bankruptcy pension holiday ends.

"We feel that stabilizing these neighborhoods will be key to long-term stability," S&P analysts wrote.

“A major factor still holding back this progress continues to be the struggling state of the Detroit public school system.”

At the end of June, the Detroit Police and Fire Retirement System was 77 percent funded, while the larger General Retirement System for city civil servants was 70 percent funded, according to the S&P report.

Detroit has set up a trust fund to cushion the blow of increased pension payments in 2024 when the city has to resume making full payments to the retirement systems after getting a 10-year reprieve in its 2013-2014 bankruptcy.

“In our view, despite the longer-term planning involved, there remains a pension funding gap that constitutes a structural imbalance, resulting in a management score of weak under our local (general obligation) criteria, which caps the rating,” S&P analysts wrote.

The improved credit rating was issued for $135 million in unlimited-tax general obligation (UTGO) bonds Detroit sold in December — first bond sale solely using the city’s credit in more than 20 years. S&P’s new credit rating applies all city bonds that aren’t secured by a specific revenue source.

The S&P upgrade — the second in 14 months — follows credit-rating upgrades by Moody’s Investors Service in October 2017 and May 2018.

“We believe an improved credit rating is a strong reflection that our strategies to improve the quality of life in Detroit are working,” Detroit Mayor Mike Duggan said in a statement.

S&P also issued rating downgrades for two separate Detroit-related bonds issued by the state of Michigan.

Michigan Finance Authority’s financial recovery bonds issued in 2014 for the city were downgraded from an A rating to S&P’s BB+ rating.

The rating agency also downgraded the credit rating for the Michigan Finance Authority’s Local Government Loan Program bonds for the Detroit Public Lighting Authority from A to BB+.

CRAIN’S CHICAGO BUSINESS

CHAD LIVENGOOD

February 07, 2019 02:20 PM

`Question Everything': Puerto Rico Hits $3.8 Trillion Market

- **Bankruptcy case casts doubt on bonds backed by revenue pledges**
- **Judge approves deal that shifts sales-tax money to government**

America’s local governments frequently pledge a slice of their revenue to investors to make their bond deals more attractive by adding an extra layer of security. But Puerto Rico’s record-setting bankruptcy has cast that safety in doubt.

That’s because bondholders who were promised a dedicated share of the island’s sales-tax revenue have seen that rolled back in court, where creditors since 2017 have been squaring off over who has the highest claim to the distressed government's cash.

On Monday, U.S. District Judge Laura Taylor Swain approved a restructuring of more than $17 billion of sales-tax-backed bonds that will leave owners of the securities with the lowest claim receiving about 56 cents on the dollar. While investors supported the deal because it gives them far more than what the debt was once trading for, it rests on an agreement that steers nearly half of the revenue that was pledged for the securities to the central government instead.

That's left some investors worried the approach could be used by other distressed governments. "It makes us question everything," said Jonathan Mondillo, head of municipal securities at Aberdeen Standard Investments, which owns insured Puerto Rican debt.

Puerto Rico's bankruptcy is the latest to trigger a reassessment of which bonds are the most iron-clad in the $3.8 trillion state and local government debt market, a haven where bankruptcies are rare enough that each one is closely watched for possible clues to how creditors will be treated the next time a government goes broke.

Detroit's bankruptcy undermined investors' faith in general-obligation bonds, which were once seen as the safest since they are backed by the unlimited ability of a government to raise taxes. That led some to favor bonds backed by dedicated revenues like sales taxes instead — a view that's now being challenged by what's happened in Puerto Rico. Last year, S&P Global Ratings began pushing the ratings on so-called priority lien debt closer to those of the underlying governments, reflecting the risk that officials could try to tap the funds if they experience distress.

Such bond issues are used by issuers because it allowed them to borrow at lower costs. The Puerto Rico sales-tax bonds, known as Cofinas, are similar to those issued by Chicago's Sales Tax Securitization Corp., which says it's insulated even if the city were given the power to go bankrupt.

While those Chicago bonds have AAA ratings from Fitch Ratings and Kroll Bond Rating Agency, investors demanded yields of as much as 4.79 percent on debt due in 2048 when the city sold the securities last month, according to data compiled by Bloomberg. That was about 1.7 percentage points more than benchmark debt, nearly twice the premium investors demanded a year earlier.

"Ultimately if the municipality gets into a distress situation, it's my belief, much like the Cofinas, they would be brought into the bankruptcy proceeding, or there would be a possibility" of that, said Mondillo.

In some ways, though, the outcome of the Cofina ruling — if not the precedent — is a win for investors who favor revenue-backed deals over general-obligation bonds. The most-senior Cofina bondholders will recover an estimated 93 cents on the dollar when they exchange their debt for new securities. They're trading for around 85 cents.

That's well above the current price for Puerto's general-obligation bonds, with those due in 2026 at about 57.5 cents. Owners of those securities have yet to reach such a restructuring deal, leaving potential recoveries uncertain. Some complained in court that the sales-tax deal was too generous, diminishing what other creditors stand to gain.

James Spiotto, managing director of Chapman Strategic Advisors LLC, said Puerto Rico's bankruptcy may also be a unique case, given the severity of the island's financial and economic strains, that may not apply elsewhere. Municipal bankruptcies have also been extremely unusual, with only a few cities seeking court protection from creditors even after the big financial hit of the last recession.

"They used tried, true and well-accepted structures but they're not going to fulfill what those structures represent," Spiotto said of Puerto Rico. "That's not indicative of the market and not indicative of the history."

Puerto Rico's bankruptcy may lead to still more reckonings over the protections municipal-bondholders have as it restructures the rest of its $74 billion debt load. The island's federal oversight board is seeking to invalidate more than $6 billion of general-obligation bonds sold since 2012 on the grounds that it was issued illegally. If the judge agrees, that could heighten already-existing concerns around the safety of the pledge and prompt another round of reassessments.

"This is a near-term headline — we don't know how it's going to play out over the next one, two or five years," said David Ashley, a portfolio manager at Thornburg Investment Management, which holds $10 billion in municipals. "You've made the sales tax folks fairly happy, you still haven't addressed the other part of the debt waterfall."

Bloomberg Markets

By Amanda Albright

February 6, 2019, 5:30 AM PST Updated on February 6, 2019, 7:50 AM PST

— With assistance by Michelle Kaske

S&P: Why California Special Assessment Ratings Are Bolstered By New Criteria

On April 2, 2018, S&P Global Ratings released its criteria "Special Assessment Debt" detailing implementation of new methodology across its rated portfolio. Ratings nationwide have so far met expectations stated in the report, but ratings in California have undergone slightly more changes than expected, and mostly positive.

Continue Reading

Feb. 5, 2019

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) convened on January 29–31, 2019, to discuss its market oversight activities and fiscal year 2019 strategic initiatives that support the MSRB's mission to protect municipal securities investors, issuers and obligated persons and promote a fair and efficient municipal market.

This year, the Board has renewed its commitment to stakeholder engagement to further inform its retrospective rule review, compliance support and other initiatives. In an outreach effort unprecedented in its scope, Board members this year are meeting with municipal securities dealers and municipal advisor firms around the country. At the Board's meeting last week, the full Board met with leadership of the Securities Industry and Financial Markets Association (SIFMA) Municipal Securities Division, the National Association of Municipal Advisors (NAMA) and the Government

Finance Officers Association (GFOA) Debt Committee. “These meetings were a tremendous advancement in our stakeholder engagement efforts,” said Board Chair Gary Hall. “The conversations we are having both with industry representatives and critical market participants allow for a necessary and valuable exchange of information about municipal market oversight.”

Retrospective Rule Review

Another strategic MSRB initiative is the prioritization of its retrospective rule review. Since 2012, the MSRB has been conducting a retrospective rule review to ensure MSRB rules are up-to-date, effective and reflective of the current reality of the municipal market. Chair Hall in October 2018 elevated the retrospective rule review initiative to a strategic priority and at last week’s meeting, the Board agreed on a formal approach and the highest priority rules to review in 2019. “The municipal market is evolving, and we recognize—and indeed are acting on—the imperative to keep our rules current,” he said.

The Board has prioritized an analysis of MSRB Rule G-23, on activities of financial advisors, MSRB Rule G-34, on CUSIP numbers, new issue, and market information requirements and MSRB Rule G-29, on availability of Board rules. The retrospective rule review plan also includes a goal to eliminate outdated information and references in the full rule book. The MSRB will publish a notice this week with details of the 2019 retrospective rule review plan designed to achieve its objectives while obtaining critical feedback from stakeholders in a way that respects their competing priorities.

As part of the MSRB’s ongoing retrospective rule review, it has been evaluating whether interpretive guidance concerning the application of MSRB Rule G-17 to underwriters of municipal securities to ensure and promote fair dealing practices by underwriters with issuers should be amended. The Board discussed feedback received on a second request for comment on draft amended interpretive guidance and plans to further review possible amendments to the guidance.

The MSRB is also working to clarify existing guidance on its rule on best execution of municipal securities trades. At its meeting, the Board discussed comments received on draft amendments to the guidance and, as a result of feedback received, agreed to clarify guidance that dealers’ do not need to post bid-wanteds on or through multiple alternative trading systems (ATSs) or broker’s brokers to satisfy their best-execution requirements. The MSRB expects to publish this guidance this week.

The Board discussed comments received on its November 2018 notice on draft interpretive guidance about the potential harms of “pennying.” This practice involves a dealer’s purchase of bonds for its own account from a customer seeking to sell a municipal security—after the dealer has reviewed other dealers’ bids—by matching a high bid or purchasing the bond at a price that is nominally higher than the highest bid. The Board directed staff to conduct additional analysis before considering next steps.

Market Transparency

The Board discussed the topic of the timeliness of financial disclosures by municipal securities issuers and agreed to begin a project to improve the form (MSRB Form G-32) through which underwriters provide information about the expected availability of annual financial information to the Electronic Municipal Market Access (EMMA®) website. The improvements will be aimed at helping underwriters fulfill their existing regulatory requirements and provide accurate data. The Board also agreed to continue to evaluate how to leverage the EMMA website and the MSRB’s ability to educate investors to enhance understanding about the timeframes for municipal financial disclosures. “This is an important and complex issue,” Chair Hall said. “The MSRB is committed to working within its Congressional authority to ensure that investors have the information they need regarding financial disclosures."

The Board also discussed adding third-party evaluated pricing services to the EMMA website. These services, used to estimate the value of individual bonds and to price fixed income portfolios including mutual fund holdings, would provide investors with an additional set of market data and enhance EMMA's existing tools and resources. The Board directed staff to continue to explore adding evaluated pricing services on EMMA.

As a result of outreach efforts and the MSRB's request for information on municipal market benchmarks, the Board directed staff to continue to engage with market participants on ways to promote transparency and availability of benchmarks.

Financial Oversight

As part of its commitment to long-term financial sustainability, the Board continued its ongoing discussion of the MSRB's reserve levels, which as previously communicated, are above the organizational target. The Board will continue its evaluation of reserve levels—incorporating input from an outside expert's reserves analysis—and determine additional steps to responsibly manage reserves to appropriate target levels. "The level of MSRB reserves is a high priority for the Board," said Chair Hall. "We are getting close to addressing this important issue."

Date: February 4, 2019

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

XBRL US CAFR Taxonomy Released for Review.

XBRL US recently released its draft CAFR taxonomy for public comment.

San Francisco Selling Bonds for Broken $2.2 Billion Terminal.

- **Booming real estate taxes backing debt trump project concerns**
- **California bonds are sought by those seeking tax shelter**

San Francisco is such a seller's market that the city is marketing municipal bonds for a new $2.2 billion transit terminal that's been shut down for months while crews make emergency repairs to cracked support beams.

The city's offering of $184 million of taxable municipal bonds Wednesday will finance work at the Salesforce Transit Center, where buses from throughout the Bay Area are supposed to drop off and pick up tens of thousands of daily commuters. The terminal was closed in September, a month after it opened, after crews found cracks in two structural steel beams. There's still no re-opening date scheduled and the cause of the fissures remains unknown.

The bonds are backed by special taxes levied on the buildings in the district around the regional bus and train hub, formerly known as Transbay. The assessed value of the properties for this fiscal year is more than $3 billion, deal documents show.

Even with the terminal closed, tax collections continue and development is underway on buildings around the facility that would fall under the levy that supports the bond payments. Fitch Ratings ranks the new securities AA+, second highest. The train and bus hub itself doesn't fall under the levy.

Wealthy California residents seeking tax shelters have helped drive down yields on bonds issued in the state. 10-year California general obligations are yielding just 10 basis points over AAA securities.

San Francisco — where the assessed value of property has risen by 57 percent in six years — is seeing "exceptional" demand for its debt, said Tom Lockard, head of investment banking at 280 CapMarkets. He expects investors will snap up the new securities.

From his office window in the City by the Bay, Lockard says he can see busy construction cranes raising buildings all around the terminal. "We can complain about the affordability, but it's a pretty special place to be here right now in terms of development and progress and Transbay is part of it," he said.

Bloomberg Business

By Romy Varghese

February 5, 2019

U.S. Army Corps of Engineers Seeks to Establish P3 Pilot Program - Webinar

U.S. Army Corps of Engineers Civil Works has been directed to establish a public private partnership (P3) pilot program. There will be an information webinar **February 13, 2019 from 1400 – 1530 EST**.

To learn more, click here.

NCPPP

FEBRUARY 8, 2019

P3 Connect: Denver, CO

Denver, Colorado

May 15 – 16, 2019

Click here to learn more and to register.

National Center for Public Private Partnerships

TAX - NEW YORK

Verizon New York, Inc. v. Supervisors of Town of North Hempstead

Supreme Court, Appellate Division, Second Department, New York - February 6, 2019 - N.Y.S.3d - 2019 WL 453961 - 2019 N.Y. Slip Op. 00925

Property owner filed actions against town, seeking refunds of special ad valorem levies for garbage and refuse collection services against certain “mass” properties, and town filed third-party actions against county and its board of assessors, seeking indemnification under county guaranty.

Following consolidation of actions, the Supreme Court, Nassau County, denied county’s motion for leave to renew its opposition to property owner’s motion for leave to renew its motion for summary judgment, denied county’s successive motion for summary judgment, granted property owner’s motion for summary judgment, and entered judgment in favor of town against county. County appealed.

The Supreme Court, Appellate Division, held that:

- County failed to offer new evidence in support of its motion to renew;
- County’s reimbursement of town pursuant to county guaranty was not prohibited by state constitution’s gift and loan clause; and
- County failed to make sufficient showing to warrant consideration of its successive motion for summary judgment.

CDFA EDA Revolving Loan Fund Webinar Series: Utilizing the Toolbox Approach

March 5, 2019 @ 2:00 PM Eastern

Hundreds of development finance programs exist at the federal, state, and local level. These programs have been created to address the financing needs of business, industry, real estate, housing, environmental and community development entities. Individually, none of these programs are a silver bullet solution to economic development challenges. The toolbox approach brings together the best of these financing concepts and techniques to provide a comprehensive response to capital and resource needs. Listen as our expert speakers discuss the various development finance tools that can be utilized to enhance the efforts of your Revolving Loan Fund.

Speakers:

Harry Allen, Moderator
Director, Research & Technical Assistance
Council of Development Finance Agencies

Toby Rittner
President & CEO
Council of Development Finance Agencies

Register in advance to confirm your participation and receive login information. Registration is free and open for all EDA RLF grantees.

Register Now

FINRA 529 Plan Share Class Initiative Encourages Firms to Self-Report Violations.

On January 28, the Financial Industry Regulatory Authority (FINRA) issued a Regulatory Notice announcing the 529 Plan Share Class Initiative, a self-reporting initiative to promptly compensate harmed investors and promote firms' compliance with the rules governing the recommendation of 529 savings plans ("529 Plans") (the "Initiative").1 Under the Initiative, broker-dealers are encouraged to review their supervisory systems and procedures governing 529 plan share-class recommendations, self-report supervisory violations and provide FINRA with a plan to remediate harmed customers. In response, FINRA's Department of Enforcement will recommend that FINRA accept a settlement that includes restitution for the impact on affected customers and a censure, but no fine, consistent with one of FINRA's principal aims—investor protection.

With the publication of the Notice, FINRA also issued a video interview with Susan Schroeder, Enforcement Chief, titled "A Few Minutes With FINRA: 529 Plan Share Class Initiative."2 Together, the Notice and the interview introduce this new type of self-reporting program. To be eligible for the Initiative, firms must self-report by providing written notification to FINRA Enforcement by April 1 and submit required information by May 3.

Background and Discussion

529 Plans are tax-advantaged municipal securities designed to encourage saving for the future educational expenses of a designated beneficiary. As municipal securities, the sale of 529 Plans are governed by the rules of the Municipal Securities Rulemaking Board (MSRB), including MSRB Rule G-19 (Suitability of Recommendations and Transactions)3 and MSRB Rule G-27 (Supervision).4

As Schroeder explained in the interview, FINRA learned through its examination process that 529 Plans can be a "blind-spot" for some firms. Given the importance of 529 Plans to the investing public and the importance of expedited restitution, FINRA designed this Initiative to inform member firms of its concerns, and ask the firms to be proactive about assessing, correcting and reporting its processes.

529 Plans are commonly sold in different classes with varying fee structures. Class A shares typically impose a front-end sales charge but with lower annual fees comparative to other classes, whereas Class C shares typically impose no front-end sales charge but have higher annual fees than Class A shares. The recommendation of suitable share classes of 529 Plans were made more complex upon amendments made to the Internal Revenue Code (the "Code") in January 2018, that expanded the use of 529 Plans for tuition for grades K-12, subject to certain limitations. Instead of a "one-size fits all" approach to 529 Plan share classes, the changes to the Code underscore the importance of recommending a share class that is uniquely tailored and suited to the needs of the individual customer and beneficiary, in addition to the importance of supervising these recommendations.

The 529 Plan Share Class Initiative

Firms are encouraged to review their supervisory systems and procedures, including the failure to:

- provide training regarding the costs and benefits of different 529 Plan share classes;
- understand and assess the different costs of share classes for individual transactions;

- receive or review data reflecting 529 Plan share classes sold; and
- review share-class information, including potential breakpoint discounts or sales charge waivers, when reviewing the suitability of 529 Plan recommendations.

Further, firms are encouraged to assess and self-report the potential impact of such supervisory failures.

Eligibility for the Initiative

To qualify for the Initiative, firms must self-report by providing written notification to FINRA Enforcement on April 1 and provide additional, specified information by May 3.

The Notice explains that if a firm is deemed to meet the requirements of the Initiative, and FINRA Enforcement decides to recommend formal action based on the firm's compliance with the self-reporting obligations encouraged by the Initiative, *FINRA Enforcement will recommend that FINRA accept a settlement that includes restitution for the impact of affected customers and a censure, but no fine.* Schroeder explains in the interview that a settlement under this Initiative would be to supervisory violations and would not trigger a statutory disqualification.5

It is worth noting that FINRA intends to continue to examine and investigate firms' supervision of these issues. If a firm does not self-report under the Initiative and FINRA uncovers supervisory failures by that firm, any resulting disciplinary action and sanctions imposed in connection therewith are likely to exceed those contemplated by the Initiative. Further, FINRA *does not* offer the same initiative to *individuals* associated with member firms who sold 529 Plans to customers in violation of MSRB rules, or violated any state or federal securities laws. Individual liability will be assessed on a case-by-case analysis of the facts and circumstances.

Conclusion

The Initiative presents a unique and limited opportunity for firms to assess their supervisory systems and procedures governing 529 Plan share-class recommendations, to identify and remediate any defects, and to compensate any investors harmed by supervisory failures, while possibly avoiding fines for such conduct. As the deadline to take advantage of this program approaches, we recommend working with legal counsel to review and assess eligibility for the Initiative and for preparing the FINRA submission.

---

1 FINRA Regulatory Notice 19-04.

2 FINRA video: "Video: A Few Minutes With FINRA – 529 Plan Share Class Initiative."

3 MSRB Rule G-19.

4 MSRB Rule G-27.

5 Section 3(a)(39) of the Securities Exchange Act of 1934

———————————————————————————

by Leonard Licht, Susan Light, and James Normile

February 7, 2019

Katten Muchin Rosenman LLP

IRS Notice Offers Good News for State Colleges and Universities (at Least for Now).

In January 2019, the Internal Revenue Service (IRS) issued Notice 2019-09, which provides interim guidance for Section 4960 of the Internal Revenue Code of 1986. As a reminder, Section 4960 imposes an excise tax of 21 percent on compensation paid to a covered employee in excess of $1 million and on any excess parachute payments paid to a covered employee. A “covered employee” is one of the organization’s top-five highest-paid individuals for years beginning after December 31, 2016. An organization must determine its covered employees each year, and once an individual becomes a covered employee, that individual will remain a covered employee for all future years.

Of particular interest to state colleges and universities is the answer to Q–5 of the notice. It provides that the Section 4960 excise tax does not apply to a governmental entity (including a state college or university) that is not tax-exempt under Section 501(a) and does not exclude income under Section 115(l). What does this mean? Basically, if an institution does not rely on either of those statutory exemptions from taxation, the institution will not be subject to the excise tax provisions of Section 4960. This exclusion from Section 4960 means the institution could compensate its athletic coaches (or other covered employees) in excess of the $1 million threshold and not be subject to the 21 percent excise tax.

As we discussed previously, some institutions rely on political subdivision status for tax purposes. Importantly, the notice also provides that any institution relying on its political subdivision status to avoid taxation, as opposed to relying on either of the above-mentioned exemptions, will be subject to the Section 4960 excise tax if the institution is “related” to any entity that does rely on either of the exemptions.

Although the IRS’s guidance is helpful in determining Section 4960’s application to state colleges and universities, it appears not to reflect “Congressional intent.” On January 2, 2019, the Committee on Ways and Means of the U.S. House of Representatives released a draft technical corrections bill that seeks to correct “technical and clerical” issues in the Tax Cuts and Jobs Act of 2017. The corrections bill seeks to clarify Section 4960’s application by stating that any college or university that is an agency or instrumentality of any government or any political subdivision, or that is owned or operated by a government or political subdivision, is subject to Section 4960. Given the current state of affairs in Washington, D.C., we are not confident that the corrections bill’s expanded application to state colleges and universities will ever come to fruition, but we will continue to monitor the situation.

by Taylor Bracewell & Robert Ellerbrock, III

February 6, 2019

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

NAST Sends Letter to New Congress.

Read the Letter.

National Association of State Treasurers

February 1, 2019

NABL Suggests a Dozen Tax Tweaks for the Muni Market.

NABL suggests a dozen tax tweaks for the muni market

WASHINGTON — The National Association of Bond Lawyers has a dozen suggestions for tax code tweaks that the Internal Revenue Service tax could make to benefit the municipal bond market, including clarification about the ability of local and state governments to engage in public-private partnerships.

None of the 12 requires congressional action and all are within the scope of the service's administrative powers, according to NABL.

Seven of the proposed changes relate toIRS Revenue Procedure2018-26, 2018-18 IRB 546 published last April regarding remedial actions to preserve the tax-advantaged status of bonds when non-qualified uses occur.

Five other NABL suggestions for are unrelated measures, including the ability of state and local governments to engage in public private partnerships.

All 12 were developed by an ad hoc committee of bond attorneys chaired by David Cholst, a partner at Chapman and Cutler in Chicago.

NABL President Dee Wisor sent the 35-pages of detailed suggestions and an accompanying two page executive summary to IRS Commissioner Charles Rettig and nine other top officials of the IRS earlier this month.

"The revenue procedure did a number of good things," Cholst said in an interview. "That's the way we started our comments. One big part was the ability to remediate for direct pay bonds without actually calling in bonds or defeasing bonds. People realize there ought to be a way to say the bond doesn't qualify anymore so I'm not going to ask for the subsidy payment."

Many Build America Bond issuances had what Cholst described as "onerous call provisions such as a make-whole calls at a premium."

"There is no reason from the U.S. government's policy point of view why the bond should be called so long as they can stop making the tax subsidy," he said.

The IRS revenue procedure also offered a cure for nonqualified uses that occur under long-term leases that's similar to the cure for a sale of property that was financed by tax-exempt bonds.

The NABL letter suggests that the cure should include shorter term leases as well.

"If it works for a 20-year lease it ought to work for a 10-year lease as well," Cholst said. "We don't see a policy reason for it to be longer term." NABL suggested there be no specific time limit.

The executive summary of the recommendations related to the 2018 IRS Revenue Procedure suggests that Treasury:

- Eliminate the double remediation that seems to be currently required by Rev. Proc. 2018-26 in the context of the remediation via removal of the tax advantage;
- Expand anticipatory remediation to apply to all permitted remedial actions;
- Make rules more consistent to avoid needless complexity;
- Limit required remediation to the amount of available funds created by the violation;
- Make the yield reduction mechanism of the Revenue Procedure more consistent with the arbitrage rules (and clearer at the same time);
- Modify the trigger for determining when nonqualified use occurs to be more consistent with Treas. Reg. §1.141-12; and
- Clarify the determination of the amount of nonqualified bonds resulting from a nonqualified use.

The other five recommendations propose that Treasury:

- Eliminate current expensive requirements, such as defeasance escrows, that do not further the purpose of the remediation provisions;,
- Expand the remedial action provisions to allow remediation of private payments;
- Add direct payment to the United States Treasury of taxpayer exposure as an alternative to redemption of nonqualified tax-exempt bonds;
- Expand anticipatory remedial action to cover all types of remediation otherwise available; and
- Provide more flexible remediation when a change in use preserves public access and some control over the financed facilities following the change in use.

The last recommendation is intended to make it easier for governments to engage in public private partnerships.

"If you do are doing something to improve public infrastructure that is going to be continued to be used by the public even though it is going to be privately used in some way….it shouldn't require any additional actions," Cholst said. "That's really what's going to allow the country to rebuild its roads and bridges and other public structures."

Congress has the authority to enact legislation to also accomplish the same goal, but this administrative action by the IRS "would be more direct and easier to implement," he said.

BY SOURCEMEDIA | MUNICIPAL | 03:11 PM EST

By Brian Tumulty

OZ Overload.

Confusion is mounting over real estate's most buzzed-about federal program, but there still may be an excess of players trying to get in on the action.

It was a telling moment for those fixated on Opportunity Zones.

"Who the hell is EJF and their expertise as it relates to real estate?" Anthony Scaramucci asked on a December conference call to promote his $3 billion Opportunity Zone fund.

The rhetorical question seemed to be an attempt to reassure potential investors that EJF Capital would be a qualified partner for Scaramucci's firm, SkyBridge Capital. But the former White House communications director's swagger wasn't enough to move the needle — and the two hedge funds parted ways a month later.

SkyBridge attributed the split to concerns from its distribution partners that EJF didn't have enough experience managing real estate funds. "It's a difficult investment environment," the firm's president, Brett Messing, told *The Real Deal*. "People get more risk-averse. And being risk-averse means bringing your clients a track record and someone who might be a little more known for being associated with real estate."

Continue reading.

therealdeal.com

By Rich Bockmann and Eddie Small | Research by Yoryi De La Rosa and Kyna Doles

February 01, 2019 09:00AM

OZFramework.

We are committed to evaluating and amplifying the long-term outcomes benefiting those living and working in Opportunity Zones today.

About the Framework

The Opportunity Zones Reporting Framework is a voluntary guideline designed to define best practices for investors and fund managers looking to invest in Opportunity Zones. It includes a set of first principles and a detailed impact measurement framework.

Learn More and Download the Framework

S&P Public Finance Outlook Sees Slower Growth Impacting Muni Market.

Robin Prunty, head of analytics and research at S&P Public Finance, discusses how an expected economic slowdown may impact state spending and municipal bonds. She speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets TV Shows

February 6th, 2019

Why Wall Street's Muni-Bond Desks Welcome the Tax-the-Rich Push.

- **Presidential hopefuls' plans include higher rates on wealthy**
- **Higher rates would likely boost demand for tax-exempt debt**

Politics aside, one corner of Wall Street is likely welcoming Democrats' talk of raising taxes on the rich.

Higher rates tend to be a good thing for the $3.8 trillion state and local government bond market, a haven for investors looking for income that's exempt from federal taxes. And progressive Democrats looking to define their party's platform ahead of next year's presidential election have made boosting rates on the wealthiest Americans a key part of their agenda, seeking to seize on discontent with rising income inequality.

If history is any guide, that might provide a boost to returns, at least temporarily. Municipal bonds outperformed Treasuries soon after the election of Bill Clinton, who raised the top marginal rate in 1993, according to Bloomberg Barclays indexes. The same thing happened under Barack Obama, when the expiration of previous cuts for the highest earners in 2013 was followed by a run of outperformance.

Continue reading.

Bloomberg Markets

By Danielle Moran and Claire Ballentine

February 4, 2019, 10:28 AM PST

City, Meet County: St. Louis Weighs Historic Merger

A measure to consolidate St. Louis City and County could go before Missouri voters as soon as 2020. But St. Louisans are mixed on what that means.

On Monday, the St. Louis think tank Better Together unveiled a formal proposal to combine the City of St. Louis and St. Louis County in a new type of local government for Missouri: a metropolitan city. Governed by an elected "Metro Mayor" and a 33-member council, the new Metro City of St. Louis would have sweeping powers to enact new laws, tax residents, and oversee law enforcement, justice, planning, zoning, and economic development. This proposal, which would be decided by voters across Missouri, would essentially do away with the present government of the City of St. Louis, including the city's 29-member Board of Aldermen and the office of Mayor Lyda Krewson.

Such a consolidation would overnight transform St. Louis into the 10th largest city in the U.S., with 1.3 million people—larger than San Jose and right behind Dallas.

The idea is rekindling a longstanding debate in several cities that are pondering the virtues and potential pitfalls of joining up with their surrounding counties. There have been about 40 city-county mergers in the U.S.; in recent decades, major examples include Nashville (1962), Indianapolis (1970), and Louisville (2003). They're rare because they're difficult to pull off: Voters may be skeptical of the money-saving arguments for consolidation and susceptible to fears over changing borders between segregated communities. Louisville only got their union done on the fourth try.

[Continue reading.]

CITY LAB

JACK GRONE JAN 30, 2019

[Stakes are High for Cities and Regions Ahead of an Unsettled 2020 Census.]

A little over one year from now, the United States will participate in a democratic tradition that stretches back to the founding of the republic: the once-a-decade census of its population.

From 1790 (U.S. population: 3.9 million) to 2010 (U.S. population: 309 million), the decennial census has changed alongside the nation itself. From the territory it covers, to the questions it asks, to how it collects the information, the census has reflected evolution in technology, the role of the federal government, and the size of the country itself.

As we approach 2020, however, both technical and political changes in the census are introducing unprecedented new challenges. The stakes are high for cities and regions, which depend on a full and accurate count of their populations to ensure their fiscal health and political strength. Three areas of concern stand out.

[Continue reading.]

The Brookings Institute

by Alan Berube
Senior Fellow and Deputy Director – Metropolitan Policy Program

February 7, 2019

[North Carolina Court of Appeals Takes Insurer to Task For Sloppy Drafting.]

Last month, the North Carolina Court of Appeals released its decision in *[Meinck v. City of Gastonia]*, — S.E.2d —, 2019 WL 114054 (N.C. Ct. App. Jan. 2, 2019), holding a policy exclusion to be ambiguous because of poor drafting by the insurer.

The case started in 2013, when plaintiff Joan Meinck fell while walking down the steps of a historic building owned by the City of Gastonia, suffering injuries including a broken hip. While the city owned the property and was responsible for maintaining the exterior of the building, it had leased the property to the private non-profit Gaston County Art Guild, which had subleased the building for use as an art gallery and gift shop.

In 2015, Meink sued the city, alleging specifically that the city was not entitled to governmental immunity because it was engaged in a proprietary (not governmental) function, and alternatively, if the City had governmental immunity, it had been waived by the purchase of liability insurance. Under North Carolina's doctrine of governmental immunity, a county or municipal cooperation is immune from suit for the negligence of its employees in the exercise of governmental functions absent waiver of immunity. *Evans ex rel. Horton v. Hous. Auth.*, 602 S.E.2d 688 (N.C. 2004).

However, a city may waive its government immunity in tort by the act of purchasing liability insurance. N.C. Gen. Stat. § 160A-485(a).

The trial court granted summary judgment in favor of the city, finding that the city's use of the building was a governmental function and that therefore the city was entitled to sovereign immunity. The trial court also held that the city had not waived that immunity by purchasing liability insurance because the city's insurance policy contained an "express non-waiver provision."

In a 2017 decision, the Court of Appeals reversed, holding that the city was not engaged in a proprietary, not governmental function in renting the building, and therefore was not entitled to governmental immunity. Based on this holding, the Court did not address any insurance coverage issues. *Meinck*, 798 S.E.2d 417 (N.C. Ct. App. 2017).

However, the Supreme Court granted the City's petition for discretionary review and reversed on the governmental function issue, remanding the case to the Court of Appeals to determine if the City had waived governmental immunity by purchasing liability insurance. *Meinck*, 819 S.E.2d 353 (N.C. 2018).

In an opinion written by Judge Tyson and joined by Judges Elmore and Dietz, the Court of Appeals concluded that the non-waiver provision in the city's insurance policy, issued by Argonaut Insurance Company, was ambiguous and must be construed in favor of coverage, and that therefore, the city had waived its governmental immunity.

The relevant policy endorsement read as follows (emphasis supplied):

> 12. Sovereign Immunity and Damages Cap
>
> ***For any amount for which the Insured would not be liable under applicable governmental or sovereign immunity but for the existence of this Policy***; the issuance of this insurance shall not be deemed a waiver of any statutory immunities by or on behalf of any insured, nor of any statutory limits on the monetary amount of liability applicable to any Insured were this Policy not in effect; and as respects to any "claim", we expressly reserve any and all rights to deny liability by reason of such immunity, and to assert the limitations as to the amount of liability as might be provided by law.

The Court of Appeals concluded that the italicized portion of the endorsement was ambiguous. Judge Tyson called the clause "ungrammatical" and wrote that it did "not clearly convey whether governmental immunity is waived under the policy. It is not a complete sentence of clause, and does not convey any clear meaning on its own." Further, Judge Tyson noted that of fourteen provisions in the "North Carolina Common Policy Conditions" endorsement, only this provision did not begin with a complete, grammatical sentence.

The Court of Appeals then set out a hypothetical clause which, in its view, would suffice to preserve the city's governmental immunity, replacing the italicized language in the actual policy with the following: "This policy does not apply to any amount for which the Insured would not be liable under applicable governmental or sovereign immunity but for the existence of this Policy."

The Court of Appeals then reviewed three prior decisions in which it had concluded that policy language preserved governmental immunity: *Hart v. Brienza*, 784 S.E.2d 211, rev. denied, 793 S.E.2d 223 (N.C. 2016), *Estate of Earley v. Haywood Cty. Dep't of Soc. Servs.*, 694 S.E.2d 405 (N.C.

Ct. App. 2010), and *Patrick v. Wake Cty. Dep't of Human Servs.*, 655 S.E.2d 920 (N.C. Ct. App. 2008), concluding that in each case "the relevant language was unambiguous . . . and those policies did not cover claims for which sovereign immunity would otherwise be waived by the purchase of insurance." By contrast, the court stated, "[u]nder the endorsement at issue, it is unclear whether the exclusion for coverage applies to claims for which sovereign or governmental immunity would apply." Accordingly, the policy must be "strictly construed" in favor of coverage.

by Joshua Davey

February 7, 2019

McGuireWoods LLP

[Why Green Bonds May Be Our Best Hope For Tackling Climate Change.]

- **Green bonds appeal to investors who are looking for a safe place to park their money and do some good for the world.**
- **Investors are willing to accept a lower rate of return in exchange for the environmental benefits.**

Municipalities have been selling bonds to pay for public works projects—fire stations, parking garages, sewage treatment systems—for 200 years. It's only in the past decade or so, however, that they've been selling them with an extra perk: helping the environment.

In the absence of a global carbon pricing scheme, bond markets will be central to financing climate change and other environmental interventions. Green bonds appeal to investors who are looking for a safe place to park their money and do some good for the world.

Harvard Business School professors George Serafeim and Malcolm Baker have long been interested in investor motivations that go beyond pure financial return to include environmental, social, and governance (ESG) criteria. With the recent uptick in green bonds, they wondered how that might improve municipalities' ability to help the environment by accessing finance at better terms.

"The whole idea of ESG investing is predicated on the notion that by tilting their portfolios towards securities that have better ESG properties, investors might be able to change who has access to lower-cost capital," says Baker, Robert G. Kirby Professor of Business Administration at HBS. "In the process, they jump-start investing in areas that might be important for the environment."

They examine the phenomenon in a new paper for the National Bureau of Economic Research, Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds, written with Daniel Bergstresser of Brandeis University and Jeffrey Wurgler of NYU's Stern School of Business.

While green bonds have been issued by banks and corporations as well, the researchers focused on municipal bonds, which are the most ubiquitous green bonds historically in the United States, and the easiest to track thanks to the availability of government data.

For starters, determining what bonds truly qualify as green—as opposed to just greenwashing—wasn't straightforward.

“There isn’t a crisp definition about what is a green bond and what isn’t,” says Serafeim, a professor in the Accounting and Management Unit. “The test we used was to look at how the money from the bond flows into actual projects, and whether those projects are going to deliver environmental benefits.”

The projects include efforts to create alternative energy by building solar panels and wind turbines, as well as projects to improve water efficiency, control pollution, create sustainable agriculture and forestry, or provide infrastructure for electric vehicles.

While not all projects have a climate-change benefit, many help reduce future carbon emissions or even remove carbon emissions from the atmosphere. In addition to looking at bonds self-labeled as green by municipalities, the researchers also considered certification by the nonprofit Climate Bonds Initiative, which provides a Climate Bond Standard (CBS) rating.

Green bonds priced at a premium

In the past eight or nine years, they found, the green bond market has gone from nonexistent to $160 billion. (The first green bond was issued in 2007 by the European Investment Bank.) When the researchers compared green bonds with other bonds issued by the same municipality, they found a slightly lower yield of 6 basis points (.06 percent) for self-identified green bonds, and up to 20 basis points (.2 percent) for certified green bonds. Investors are willing to accept a lower rate of return in exchange for the environmental benefits.

“The story is supply and demand,” says Baker. “If there is an element of a security that the investor desires for nonfinancial reasons, it will trade at a higher price than other securities.”

In addition, the researchers found that green bonds were more concentrated in their ownership in a small group of investors—reflecting the smaller subset of investors who place value on environmental benefits, such as funds that have some green or social investing orientation.

While the difference in return is admittedly small, it could be a factor in tipping the scales for municipalities favoring green bonds.

“If I’m an entrepreneur or state government and I have to choose between a project that is green and one that isn’t, one factor in that decision will be the terms at which I can finance it,” Baker says. “That is the sense in which green bonds can theoretically push firms and municipalities in the direction of doing something environmentally friendly.”

HBS Working Knowledge

by Michael Blanding

Feb 8, 2019

Verizon Has Bond Market Seeing Green After Billion-Dollar Deal.

- **Green bond drew orders for eight times offering amount**
- **U.S. companies sluggish to tap $600 billion green-bond market**

Verizon Communications Inc.’s billion-dollar entrance into the green-bond market this week is fueling optimism that more U.S. corporations will begin tapping into the growing pot of money seeking to invest in sustainable projects.

The telecommunications giant on Tuesday issued $1 billion of 10-year green bonds in a deal that drew orders for eight times the amount offered, a person with knowledge of the matter said. The sale was one of the most oversubscribed corporate-bond offerings this year and allowed Verizon to lower its borrowing cost as investors jockeyed for a piece of the debt. Bank of America Corp. and Goldman Sachs Group Inc. managed the sale.

"This really opened up a whole new investor base and funding source for us," said Jim Gowen, chief sustainability officer at Verizon.

Continue reading.

Bloomberg Markets

By Emily Chasan

February 6, 2019, 7:43 AM PST

Wisconsin Governor Promises to Close 'Dark Store' Tax Loophole.

Walmart, Target, and other big-box retailers around the U.S. are deploying "dark store theory" to slash property taxes. Now the state at the center of this fiscal threat may take action.

In November, CityLab investigated the practice of "dark store theory," the novel legal argument big-box retail chains like Walmart, Target, and Menards use to slash their property taxes by assessing active stores as if they were vacant. The practice has resulted in the loss of millions of dollars in taxable value to communities in Wisconsin, Michigan, Minnesota, Indiana, and beyond.

Now Wisconsin Governor Tony Evers is pledging to shut it down: His proposed state budget will close the "dark store" legal loophole.

CityLab's story was followed by additional reports about the issue by the New York Times, Slate, and others. These articles, and the practice itself, have generated vigorous debate about what big-box properties that proliferate across the urbanized U.S. should be worth.

Lawyers representing retailers say that big-box stores are effectively worthless at the point of sale, which should be reflected in the taxes they pay—even while the stores are still active. And many companies file repeat tax assessment appeals until municipalities capitulate. Tax assessors say that this argument defies common sense, and that the lost revenue will eventually force a heavier tax burden onto other homeowners.

State tax boards weighing the two sides have largely been split about who's right. And municipal finance experts have warned that fiscal havoc lies ahead for local governments across the U.S. if the issue isn't resolved by state tax laws.

The commitment to close the loophole by Evers, Wisconsin's newly elected Democratic leader, also follows statehouse lobbying by the Wisconsin League of Municipalities and the Wisconsin Counties Association, two groups representing the interests of local units that levy property taxes. In 2018, state lawmakers considered a bill that would have blocked the practice, but the measure failed to reach a vote.

"Having large big box stores have the property tax levied at a level as if the building is empty is absolutely a non-starter with me," he told reporters this week. "It should be fair for all and in order to do that we have to close that loophole."

Still, this element of Evers' budget proposal is likely to find a challenger in Wisconsin Manufacturers & Commerce, the trade group representing retailers that have benefited from this tax appeal tactic. And Indiana, the only state that has enacted legislation to combat dark store theory, has continued to see challenges by commercial property tax payers using the same type of argument.

To Robert Hill, a Minnesota-based attorney who is perhaps the nation's top lawyer propagating dark store theory on behalf of big-box stores, the issue is a matter of rebalancing the property tax burden that currently weighs too heavily on successful businesses. Corporations must defend themselves from being "discriminated against" by assessors, Hill told CityLab last year.

"We eat what we kill," he said. "We kill only because they need to be killed."

Evers' budget proposal is expected later this month.

CITYLAB

LAURA BLISS FEB 8, 2019

BDA Participates in U.S. Chamber National Infrastructure Forum.

On February 5, 2019, the U.S. Chamber of Commerce hosted a major policy event titled, "America's Infrastructure: Time to Invest," in partnership with the Bond Dealers of America, at the Chamber Headquarters in Washington, D.C. The forum focused on encouraging federal investment in infrastructure, specifically to increase economic growth while updating the country's lagging infrastructure systems.

The full webcast of the event can be viewed here. ***BDA's participation begins at the 2:09:42 mark.***

BDA Participation

BDA member Alan Polsky, SVP, Dougherty & Company, LLC, participated in a panel discussion alongside Councilwoman Melanie Piana, City of Ferndale, Michigan and Jennifer Aument, President, Transurban. The panel titled, "Utilizing Public-Private Partnerships" focused on the P3 model and how it can be successful in the United States and on how bonds can be used more efficiently to supplement infrastructure investment in the U.S., including within the P3 model and other cost-savings they may present to local, state, and federal government.

Chairman Peter Defazio (D-OR) of the House Transportation and Infrastructure Committee spoke briefly before the panel and set the stage to discuss the need for variety in financing mechanisms needed to tackle our nations infrastructure deficit. Mr. Polsky built off these remarks and expounded on BDA priorities as cornerstones to any federal infrastructure package.

Mr. Polsky's remarks focused primarily on the reinstatement of tax-exempt advance refundings, expansion of private-activity bonds, direct-pay bonds and the continued protection of the tax-exempt status of municipal bonds. Also highlighted was the ability for bonds to finance infrastructure at little to no cost to the federal government, an important point as the national debt continues to climb.

Bond Dealers of America

February 6, 2019

Fitch Rtgs: Oakland Teachers Strike Vote Will Not Trigger Downgrade; Highlights Pressures.

Fitch Ratings-San Francisco-07 February 2019: Fitch Ratings does not expect to take rating action on the Oakland Unified School District's 'BBB+' Issuer Default Rating (IDR) based solely on the Oakland Education Association's (OEA) vote to authorize a strike as early as Feb. 15. The IDR, which already incorporates slow revenue growth and pressured budgets, assumes the district will maintain solid expenditure flexibility and adequate financial resilience throughout economic cycles, including at least a 2% reserve for economic uncertainties as required by the state.

The strike vote comes after months of negotiations, mediation and fact finding have failed to settle new agreements for contracts that expired June 30, 2017 and as the district is attempting to reduce ongoing expenditures by about $30 million in fiscal 2020 (equal to about 7% of estimated fiscal 2020 expenditures). Fitch will incorporate the impact of any eventual agreement and other implications of the labor impasse on the district's ability to balance its fiscal 2020 and 2021 budgets and, more broadly, on its expenditure flexibility and expectations for operating performance over time.

OUSD's planned expenditure reductions would help accommodate cost increases associated with the final agreement. The district had offered a 5% pay increases over three years which OEA rejected. OEA is seeking a 12% pay increase over three years. The district estimates each 1% salary increase costs about $1.9 million per year for teachers and $3.5 million per year for all employees.

Based on unaudited information, the district ended fiscal 2018 with a $17.4 million unreserved fund balance, equal to 3.3% of spending, an improvement from the $3 million, or 0.6% at the end of fiscal 2017.

Operating pressures do not affect the 'AAA' rating and Stable Outlook that Fitch maintains on the district's unlimited tax general obligation (GO) bonds, which are based on a dedicated tax analysis, without regard to the district's financial operations. The distinction between the 'AAA' ratings on the GO bonds and the 'BBB+' IDR reflects Fitch's assessment that the pledged special revenues for repayment of the GO bonds meet the definition of "pledged special revenues" under the U.S. Bankruptcy Code, and therefore bondholders are legally insulated from any operating risk of the district.

For more information on Fitch's analysis of the OUSD, see "Fitch Affirms Oakland USD, CA's GOs at 'AAA' and IDR at 'BBB+'; Stable Outlook," dated April 18, 2018.

Contact:

Karen Ribble

Senior Director
+1-415-732-5611
Fitch Ratings, Inc.
One Post Street, Suite 900
San Francisco, CA 94014

Andrew Ward
Director
+1-415-732-5617

Amy Laskey
Managing Director
+1-212-908-0516

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

Additional information is available on www.fitchratings.com

Fitch Ratings: Alaska Proposals to Limit Budget Flexibility Could Pressure Rating.

Fitch Ratings-New York-05 February 2019: Potential amendments to Alaska's constitution proposed by the governor last week would constrain the state's ability to proactively manage its financial operations and could result in negative pressure on the state's Long-Term 'AA' Issuer Default Rating (IDR)/Stable Outlook, according to Fitch Ratings.

The proposed amendments would require voter approval for new or increased taxes; enshrine the Permanent Fund (PF) dividend (PFD) formula, which is currently controlled by state statute, in the state constitution; place a more restrictive cap on annual growth in state expenditures; and prioritize the deposit of any fiscal year's unappropriated state general fund surplus to the PF ahead of the budget reserve fund, reducing funds available to cure any future budget shortfalls.

Fitch believes the enactment of these amendments, which require approval by two-thirds of each legislative chamber and a state-wide vote, could weaken assessments for key rating drivers related to budget control (i.e., independent legal ability to raise revenues, expenditure flexibility, financial resilience, and budget management), and therefore, exert pressure on the 'AA' IDR for the state. Removing legislative discretion over the PFD formula alone would require a $1.9 billion dividend payment to residents in fiscal 2020, well ahead of the $1.2 billion payment proposed by the prior governor in his $6.9 billion executive general fund budget. Barring other offsetting action, this would result in a more significant draw on the approximate $16 billion PF Earnings Reserve (PFER) than currently expected. The maintenance of reserves is a significant rating consideration for Alaska given the volatility inherent in the economic and resource base (see "Fitch: Depletion of Alaska's PF Earnings Reserve a Possibility" dated July 2, 2018).

Separate legislation submitted on behalf of the governor seeks to appropriate additional funds from the PFER over the next several years to retroactively restore residents' full dividend payments pursuant to the dividend formula; this amount has been reduced in each of the last three fiscal years as part of the state's budget balancing measures. Passage would result in larger PFD payments from the PFER for eligible residents in fiscal years 2020 through 2022. The state estimates restoration payments would total a maximum of $2.3 billion based on proposed eligibility guidelines.

Under the PF Protection Act of 2018, the state established annual draws on the PFER as a means for addressing ongoing projected budget gaps. Fitch's analysis at that time determined that eventual depletion of the PFER was likely in the long term, and noted that prudently structured draws would be necessary to sustain the assets. Enactment of the proposed measures would be expected to escalate depletion of the PFER, barring other moves to reduce the anticipated use of PFER funds to support general operations.

Governor Dunleavy's fiscal 2020 budget proposal is expected to be presented to the legislature on February 13 for their consideration. The governor has publicly committed his administration to delivering a balanced budget without the use of budget reserve funds. In the context of crude oil prices that are forecast at $64/barrel, as compared to much higher historical averages, there is the potential for significant spending cuts. Fitch will evaluate the details of the budget once it is available with an eye toward the critical drivers that have sustained the state's 'AA' IDR: substantial independent management power over revenue raising and expenditure decisions and maintenance of sizable reserves to offset volatility in key revenue sources.

Contact:

Marcy Block
Senior Director
+1-212-908-0239
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Douglas Offerman
Senior Director
+1-212-908-0889

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

Additional information is available on www.fitchratings.com

Fitch Ratings: TX Tax Proposals Could Limit Local Government Revenue Flexibility.

Fitch Ratings-Austin-07 February 2019: Bills recently filed in both chambers of the Texas legislature (HB 2 and SB 2) propose to significantly lower the rollback property tax rate for local Texas taxing entities with a certain amount of annual tax revenue and require ratification elections if rollback rates are exceeded. According to Fitch Ratings, this legislation if enacted could negatively impact Fitch's assessment of certain local governments' ability to independently raise revenues for operations–a component of one of Fitch's four key rating drivers in its U.S. public finance tax supported rating criteria.

The rollback rate in Texas currently is a calculated rate that produces an increase in operating tax levy of 8% from the prior year's levy. If local taxing jurisdictions exceed the rollback rate they are subject to a petition and, if the petition garners enough signatures, an election to reduce the rate back to the rollback rate. HB 2 and SB 2, which are backed by the governor, lieutenant governor and speaker of the house, would both reduce the rollback rate from 8% to 2.5% for local taxing units with combined annual property and sales tax revenue of at least $15 million. Taxing units below the $15 million threshold would retain the current 8% rollback rate. School districts, which have separate operating tax rate constraints, are excluded from the proposed changes. The bills would also require a ratification election–replacing the current petition process–if any local taxing unit exceeds its rollback rate (either 2.5% or 8%). Local rollback petitions and elections historically have been relatively rare.

In analyzing a local government's revenue framework, Fitch considers the entity's ability to independently increase operating revenues (without voter or other jurisdiction approval). For Texas cities, counties, community college and special districts, Fitch views the current rollback tax structure as only a potential threat to revenue-raising ability, noting that a restriction on tax revenue increases would require both a successful petition effort and subsequent election. Fitch considers the limit on operating revenues to be the more restrictive of the constitutional and statutory tax limits (e.g. $2.50 for cities, $0.80 for counties, $1.00 for community college districts), or the voted or charter caps on local government tax rates and/or revenue growth. Nearly all of the Texas local governments rated by Fitch are well below their tax rate or revenue limits. As a result, the assessments for independent revenue-raising ability for Texas cities, counties, community college and special districts are with few exceptions at the 'aaa' level.

The magnitude of the reduction to independent revenue-raising ability for targeted Texas local governments will depend on the requirements of any legislation ultimately signed into law. Previous efforts to reduce the rollback rate have failed, due in no small part to concerted opposition from local governments around the state; lobbying efforts to defeat the current proposal are already underway. Legislators also may negotiate a reduction in the rate to a level between the current 8% and 2.5%; other bills have been introduced that would reduce the rollback rate to 4%.

Both the current and proposed rollback rate calculations consider an entity's tax base growth, which can reduce the revenue impact. Most local governments also retain the ability to increase non-tax operating revenues (e.g. fines, service charges and fees), which could offset the impact of a lower rollback rate as it relates to revenue-raising ability. In addition, Fitch considers the amount that can be raised relative to expected revenue volatility in a typical downturn; as a result, application of a uniform rollback rate limitation would not have the same effect on all governments. Finally, the assessment of independent revenue-raising ability is only one component of Fitch's analytical framework. The strength or weakness of other considerations (revenue growth prospects, expenditure flexibility, long-term liability burden, and operating performance) will determine how much a shift in the revenue-raising ability assessment will affect an entity's overall rating.

Contact:

Steve Murray
Senior Director
+1-512 215-3729
Fitch Ratings, Inc.
111 Congress Ave., Suite 2010
Austin, TX 78701

Amy Laskey
Managing Director
+1-212 908-0568

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

Additional information is available on www.fitchratings.com

Fitch Ratings: TX K-12 Funding Proposals Would Boost Rev Expectations.

Fitch Ratings-Austin-05 February 2019: Public school funding proposals from both the Texas House of Representatives and Senate for the 2020-21 biennium include sizable increases, which if realized would boost near-term revenue growth expectations for Texas school districts, according to Fitch Ratings.

Fitch's U.S. public finance tax-supported rating criteria consider the prospects for future revenue growth in assessing one of its four key rating drivers. Of the nearly 100 Texas districts that Fitch rates, 80% currently have either an 'aaa' or 'aa' revenue growth prospect assessment. The primary considerations for school district revenue growth are enrolment and state funding trends, and to a lesser extent local economic/tax base growth. The limits on Texas school districts' ability to increase local operating tax revenue (unless voter approved) typically result in a weak assessment of independent revenue-raising ability. However, the state's responsibility for and control over education funding overall reduces the emphasis on the lack of local revenue control when assessing a district's revenue framework.

The House proposal would boost state funding for K-12 education by more than $7 billion and contribute to a nearly 17% jump from the last biennium to more than $70 billion in total funding (state, local and federal). The proposal specifies part of the funding be used for property tax relief, salary increases and other specific programs. The proposed $6 billion Senate increase includes $3.7 billion for a $5,000 teacher pay raise and another $2.3 billion for property tax relief, if reforms to the current equalization (recapture) system are enacted.

Several factors likely contributed to the increased K-12 funding proposals introduced as the 2019 session gets underway. First, the state's continued strong economic growth produced an 8% increase in estimated general purpose revenues for the upcoming biennium (total revenue estimate of $119 billion). Also, legislators seem to be responding to ongoing criticism about local property tax burdens on homeowners and businesses and increasing recapture burdens on property wealthy districts. Finally, a 2016 Texas Supreme Court ruling found the current funding system constitutional but flawed and advocated for major reforms. The state's K-12 finance system has been the subject of periodic lawsuits over the past 50 years, mostly aimed at questions of equity and adequacy.

Fitch will monitor the fate of these funding proposals as the legislative session progresses through the spring. The session is scheduled to end May 27th.

Contact:

Steve Murray
Senior Director
+1-512-215-3729
Fitch Ratings, Inc.
111 Congress Ave., Suite 2010
Austin, TX 78701

Jose Acosta
Senior Director
+1-512-215-3726

Amy Laskey
Managing Director
+1-212-908-0568

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

Additional information is available on www.fitchratings.com

Investors Put a Price on Michigan State's Sex-Abuse Settlement.

About $323 million of taxable bonds are sold at a not-too-punitive rate.

Michigan State University on Thursday sold about $323 million of taxable bonds to fund a settlement with the more than 330 women and girls who were victims of serial sex abuser and campus doctor Larry Nassar. It was never truly a matter of whether the deal would get done, but at what cost to the school.

Now there's an answer: 4.5 percent over almost 30 years.

That was the top yield on the $304 million of debt that matures in 2048. It's about 150 basis points above the going rate on 30-year U.S. Treasuries. For context, the spread is 134 basis points on a Bloomberg Barclays index of taxable municipal bonds, which averages about 22 years to maturity and counts Illinois as its largest component. The state, of course, is rated just one step above junk by Moody's Investors Service and S&P Global Ratings, while Michigan State has the third-best investment grade rating. In another comparison, top-rated Texas A&M University issued 30-year taxable securities last month at a spread 25 basis points less than Michigan State.

I wrote in June that "it's an open question whether investors will show up for this offering as they would any other." It's a good thing that the proceeds will compensate Nassar's victims, but it's easy to see why investors might pass on lending to an institution where at least 14 representatives reportedly received reports of Nassar's crimes over the two decades before his arrest. Incidentally, that question was never put to the test until now, as Bloomberg News's Danielle Moran reported.

> Even though the school had always intended a public sale of municipal bonds, it was forced to seek private lenders because terms of the settlement required payment to the victims within 10 days of court approval.
>
> "It is not logistically possible to issue public debt and close in that time period," Mark Haas, vice president for finance and treasurer at Michigan State said in an emailed statement.
> …
>
> RBC Capital Markets was the original lender in December. It in turn sold the loan to its affiliate Royal Bank of Canada, according to a filing.

The results of the sale show that there's almost always a clearing price in the market, and often when things are operating smoothly, it's lower than expected. Suppose the school could have priced the 30-year debt at a yield 15 basis points lower if the proceeds weren't tied up in the Nassar scandal, which Moody's says raises "potentially material financial and reputational risks." Roughly, that comes out to $456,000 a year in higher interest costs. For a 50,000-student university with a $2.5 billion in operating revenue, that's easily manageable.

For bond investors, it usually takes a direct threat to getting paid back to really put the brakes on any sort of deal. In one high-profile example in 2015, Louisiana State University took the rare step of scrapping a $114.5 million offering. Buyers were spooked by talk that because of state budget cuts, it was exploring the option of financial exigency, declared when schools face insolvency.

Michigan State will try to come to terms with Nassar's crimes by paying what appears to be a slight premium to fund its $500 million settlement. More important, as I said more than seven months ago when the sale was first in the works, I hope this public offering is one of the last steps for the victims to get some closure and move forward.

Bloomberg Opinion

By Brian Chappatta

February 7, 2019, 11:51 AM PST

[How Amazon's Booming NYC Neighborhood Got Tax Perks Meant for the Poor.]()

City officials aligned opportunity zones with potential sites. Retailer now says it won't take advantage of tax breaks.

The Amazon.com Inc. executives looked battered after more than an hour of questioning last week about their plans to build an office in New York. City Council members thrashed the retailer for its resistance to unions, working conditions at warehouses and its founder's wealth. The responses drew laughter from the balcony.

So when Jimmy Van Bramer, who represents the Queens neighborhood where Amazon decided to locate its new office, raised the issue of a suite of generous tax breaks the project was eligible for, it was an opportunity to offer a satisfying answer.

"We will not be using the opportunity zone on this project," Holly Sullivan, Amazon's head of economic development, said at the Jan. 30 hearing.

Continue reading.

Bloomberg

By Caleb Melby and Lauren Leatherby

February 8, 2019, 2:00 AM PST Updated on February 8, 2019, 9:32 AM PST

S&P Webcast Replay: 2019 U.S. State and Local Government Outlooks

Jan. 15, 2019 | New York, NY

S&P Global's state and local government sector leaders held a live, interactive webcast on Tuesday, January 15 at 2:00 p.m. Eastern Standard Time for a discussion of our 2019 outlook . States sector lead Gabe Petek discussed the implications of decelerating economic growth in 2019 to state finances and credit quality. The webcast also featured our Local Government sector leads: Jane Ridley who provided our views on how pressures looming in 2019 will not impact local governments uniformly; Geoff Buswick gave our perspective on how disruptors like cyber security and LIBOR transitions could affect credit quality; and Lisa Schroeer discussed how S&P Global Ratings incorporates ESG factors and issues to watch in the coming year.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Public Power and Electric Cooperative Outlook

Jan. 30, 2019 | New York, NY

S&P Global Ratings U.S. Public Finance team held a live, interactive webcast on Wednesday, January 30, 2019 at 2:00 p.m. Eastern Standard Time for a discussion on the U.S. Public Power and Electric Cooperative sector outlooks.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Municipal Housing Outlook

Feb. 6, 2019 | New York, NY

S&P Global Ratings' U.S. Public Finance Housing team held a live, interactive webcast on Wednesday, February 6, 2019 at 2:00 p.m. Eastern Standard Time for a discussion on the U.S. Municipal Housing sector outlook.

View The Webcast Replay

S&P Webcast Replay: Green Evaluations in the North American Water Utilities Sector

Nov. 12, 2018 | New York

S&P Global Ratings leading analysts' from the Sustainable Finance team held a live interactive webcast on Monday, November 14, 2018 at 2:00 p.m. Eastern Standard Time, where they provided an analytical overview and examples of S&P Global Rating’s Green Evaluations completed for water utilities.

[View The Webcast Replay](#)

[S&P Webcast Replay: Green Evaluations: Airports](#)

Nov. 7, 2018 | New York

S&P Global Ratings analysts from the Sustainable Finance team held a live, interactive webcast on Wednesday, November 7, 2018 at 3:00 p.m. Eastern Standard Time, where they provided an analytical overview and shared examples of S&P Global Rating’s Green Evaluations completed at airports.

[View The Webcast Replay](#)

[Webcast Replay: Priority-Lien Tax Revenue Debt - Final Criteria](#)

Oct. 25, 2018 | New York

S&P Global Ratings held a live, interactive webcast on Thursday, October 25 at 12:00 p.m. to discuss our recently released final criteria for Priority-Lien Tax Revenue Debt. We covered the final criteria in detail, the potential impact on outstanding ratings, and changes from the RFC.

[View The Webcast Replay](#)

[Port KC Seeking Financial Advisor for Missouri River Terminal.](#)

The Port Authority of Kansas City, Missouri (Port KC), requests submissions of proposals for financial and commercial advisor to redevelop a portion of Port KC property as an inland intermodal/multi-modal port as a public-private partnership.

[Learn more here.](#)

NCPPP

FEBRUARY 9, 2019

[P3 and Your Tax Dollars: Federal Government Makes Next Foray into Public Private Partnerships.](#)

In an interesting turn, the U.S. Army Corps of Engineers (the “Corps”) published a Request for Information On Conceptual Public Private Partnership Delivery of Specific Corps Projects. 84 Fed.

Reg. 1084-85, Feb. 1, 2019, here. Under this RFI Notice, the Corps has been directed to create a pilot program on P3s to try and determine the viability of different and new (at least new to the Government) delivery methods. It is the hope that these "new" methodologies will result in reduced cost and time impacts to project deliveries.

P3s, like the name suggests, are partnerships between, in this instance, a federal agency and private/commercial sector partners in which the agency retains ownership of the facility or system, but the private partner invests capital to design, develop and operate the facilities, typically with a revenue stream in mind. *See e.g.*, GAO GGD-99-23. These may relate to operate and maintain ("O&M"); operate, maintain, and manage ("OM&M"); or other types of lease/develop/operate vehicles, to name just a few. Typically, the private partner builds, maintains, and operates the facility for a fixed number of years through a contract vehicle in return for part of the revenue stream. At the end of that term, the asset is either returned to the agency, or the contract vehicle is renewed or replaced.

While the Government has dabbled with P3s in the past, particularly with base housing in which private entities build, operate, maintain and oversee military family housing on federal land, the Government has largely taken a very hands-off approach to P3s. In the past the Office of Management & Budget frowned upon P3s as they, in effect, give away (albeit temporarily but for a long term) federally-owned property. With the turn of the century, however, Congress provided statutory authority for certain agencies to enter into P3s (including the National Park Service, Veterans Affairs, and others).

In summary, this initial foray by the Corps is seeking submission of proposals to develop the program in which the Corps identifies up to ten P3 pilot projects. The initial screening criteria consist of:

(1) The P3 proposal:

> (a) Has a construction cost in excess of $50 million;
>
> (b) Has non-Federal sponsor support;
>
> (c) Includes design, build, finance, operation and maintenance (DBFOM) or some combination thereof for Federally authorized projects;
>
> (d) Accelerates project delivery; and
>
> (e) Has the ability to generate revenue or leverage non-Federal funding sources.

(2) Existing authorities are sufficient to allow the P3 project to be completed.

(3) A qualitative assessment demonstrating that the P3 will deliver the project faster and/or more cost effectively than traditional delivery.

The Selection Criteria consist of the following:

(1) Return on Federal Investment.

> (a) P3 project proposals will be evaluated and ranked on the basis of Return on Federal Investment (ROFI). ROFI will be calculated by annualizing the total project benefits and

> Federal costs utilizing the current discount rate, and applying the formula: (Benefits & Federal Costs)/(Federal Costs).
>
> (b) For any P3 project where it has been determined that a reduction in the non-Federal share is warranted with authority provided in 33 U.S.C. 2213, the ROFI calculation will be adjusted to account for those modifications and address concerns pertaining to equity.

(2) Replicability: Project proposals that are replicable, meaning the proposed P3 structure or underlying concepts may be applied to other prospective projects.

(3) Reliable Funding Sources: Reliable non-Federal funding sources for the design, construction, operation and maintenance of Federally authorized water resource projects are identified.

(4) Risk Allocation: Project effectively allocates delivery and performance risk to non-Federal entities and minimizes Federal direct and contingent liabilities associated with the project.

Interestingly, based on prior research, the Corps recognizes certain "key known challenges", which are typical to most government programs. These include: "(1) [i]nability to collect, retain and reinvest fees; (2) inability to make commitments on future appropriations; and (3) enabling framework and authorities to implement P3 projects."

The Corps' Notice keeps the type and size of the projects sought open, but notes some examples, including hydropower, navigation systems, ecosystem restoration, flood management, and the like.

While this is both an interesting and strong next step for the Corps (and presumably, by extension, the government as a whole), it is not without significant potential problems and questions that remain. Some fundamental questions and concerns exist from a plain reading of the Notice.

For example, seeking proposals on contracts in excess of $50 million but only providing about 1½ pages of notice and related data is highly problematic. The Notice itself is quite vague and lacks the sort of details that one might expect associated with the sort of spend these projects anticipate. There is also little in the way of investment information, how evaluation will occur (there is reference to an evaluation matrix but it is not included) and what the end deliverable or outcome will be. As a pilot program, there appears to be much asked, but little told. Some pressing questions:

- What is the likelihood of the Corps pursing the projects submitted (recognizing that the offerors/responders are not reimbursed for their proposal responses)?
- How is proprietary information disclosed to be truly protected (recognizing that there are methods under the FAR and FOIA exemption (b)(4) for trade secret and competition sensitive information)?
- Perhaps most vital, is how will the government develop P3 programs given its relatively small experience in both commercial work and in P3s in particular? Where will it develop that expertise?

Hopefully this pilot program creates the first step in learning about the "ins and outs" of P3s; and while this appears to be a good effort, the Corps needs to tread carefully. We will continue to watch and report as further developments occur.

For further insight go to the Corps P3 homepage here.

by Lawrence Prosen

February 11, 2019

Kilpatrick Townsend & Stockton LLP

[State and Local Lawmakers Pitch How to Pay for a Big Infrastructure Package.]

Congress has little time to reach consensus on ideas like increasing the gas tax and phasing in vehicle miles traveled before the 2020 election cycle shuts their window to fix and modernize everything from roads to water pipes.

WASHINGTON — State and local officials continued to lobby federal lawmakers Thursday on hiking the gas tax in order to help close the nation's $2 trillion infrastructure investment gap over the next decade.

That number comes from the American Society of Civil Engineers, with surface infrastructure accounting for more than $1 trillion of the shortfall. The group estimates $249 billion is necessary to shore up water and port-related infrastructure, while airports need about $100 billion in investment.

The bipartisan National Governors Association has not taken an official position on increasing the gas tax from 18.4 cents per gallon, or 24.4 cents per gallon for diesel, for the first time in 26 years. But Minnesota Gov. Tim Walz joined Los Angeles Mayor Eric Garcetti, both Democrats, in appearances Thursday before Congress supported a phased approach to fixing the federal Highway Trust Fund.

The Highway Trust Fund is sustained by the gas tax, which hasn't been increased since 1993. Without an injection of billions in additional dollars annually on top of expected user fee revenue, the fund will be broke by 2022, according to the Congressional Budget Office.

Like many others who have looked at the country's infrastructure needs, Garcetti emphasized that a gas tax increase would just be a first step. Eventually, he said the country would need to transition to what is being called "vehicles miles traveled," or a way of taxing how much a car actually drives on the road.

"I would put in a gas tax, find a formula to get a pilot in for vehicle miles traveled and then wean from the first to the second over time as we electrify every vehicle in this country, which is going to happen," Garcetti told the House Committee on Transportation & Infrastructure.

State and local officials in recent weeks have repeatedly underscored that getting Congress to pass an infrastructure package is their main priority. Despite some support from President Trump—who referred to the country's "crumbling infrastructure" briefly in his State of the Union address this week—it is not yet clear what the path forward for a major plan would be. Trump did not outline a particular agenda during his speech, while deep philosophical differences remain in Congress about how to pay for any package. Republican lawmakers in particular have been resistant over the past two years to calls to increase the gas tax.

Both the U.S. Conference of Mayors and National League of Cities support increasing the gas tax, which Garcetti estimated would be needed another five to 10 years.

Vehicle miles traveled, or VMT, measures a vehicle's distance traveled on public roads during a set period, in order to charge drivers a user fee for wear and tear on driving infrastructure. The measure would also capture electric vehicles, whose drivers currently avoid paying the gas tax that feeds the Highway Trust Fund.

ROUTE FIFTY

By Dave Nyczepir,
News Editor

FEBRUARY 7, 2019

Feds Launch New Source for Information About Major Transportation Projects.

Have you ever wished there was a comprehensive, easily accessible project cost database for major US transportation projects? It would be populated following an in depth review of information available from State DOT's and would capture not just the capital cost of the project, but it's operation and maintenance cost and delivery and financing approach. The information could be valuable in many ways, including assessing the project performance outcomes for P3's and non P3's.

As I found out a couple of weeks ago at the Transportation Research Board annual meeting, now there is an internet based, open- source database for this information courtesy of the FHWA's office of Innovative Program delivery housed in the USDOT Build America Bureau. With assistance from researchers at the University of Maryland, FHWA conducted a rigorous data collection effort for over 130 US transportation projects covering development, procurement, design, construction and operation and maintenance costs. Projects are categorized by type, such as tunnel, bridge, managed lanes and location by region and delivery and financing approach (DB, DBF, DBFOM, CM/GC).

As you can imagine this was a labor intensive effort on the part of the researchers, not just to gather and catalogue the information, but to develop a searchable, user friendly database. Here is the link to the database which you should immediately add to your "favorites" list.

By Barney Allison on February 5, 2019

Nossaman LLP

Some Love for the Infrastructure We Already Have.

Deferred maintenance is beginning to get the attention it needs.

Leaders in Washington, in both the executive and legislative branches, cite infrastructure as a top priority for the new Congress. All agree that the case for serious investment has been made. But while federal policymakers prepare to debate how they might provide more funding for new or improved infrastructure, state and local governments are beginning to tackle the long-neglected issue of deferred maintenance with money, muscle and spreadsheets.

This is an important development after decades of postponing scheduled upkeep and routine repairs on roads, schools, bridges and water lines as pleas for additional funding to maintain these critical workhorse assets were drowned out by the allure of new shiny-pony assets. More and more, public finance officials are taking stock of their existing assets, their condition and the costs to address the consequences of deferred maintenance. These efforts mark a profound change in focus.

One of the forces driving this change is the realization that current accounting practices do not require governments to recognize deferred maintenance obligations as liabilities on their balance sheets. This is similar to the dawning that took place about unfunded public pension obligations, which governments did not begin to book as liabilities until after Government Accounting Standards Board guidance to that effect was issued in 2012.

Like pension debt before, the cost of deferred maintenance has largely gone unmeasured and unreported, with staggering multi-trillion-dollar estimates repeated again and again. No one really knows, though, because there is no standard practice for defining, measuring and reporting deferred maintenance. This led credit ratings agencies to announce last summer that they would begin to focus on deferred maintenance in reviews of municipal debt levels.

Instead of waiting for regulatory directives, some state and local governments are already taking action. At the state level, Alaska, California, Hawaii, Tennessee and Utah, along with the District of Columbia, are among governments that are disclosing deferred maintenance obligations on their balance sheets and in annual financial reports.

To do so, they developed asset inventories and condition-assessment practices — the building blocks for tracking deferred maintenance needs — to make regular calculation of the costs they face in repairing and replacing the assets they own. While more work is needed to standardize how deferred maintenance is assessed, jurisdictions like these are leading the way toward clearer depictions of maintenance liabilities and more accurate municipal financial reporting.

Even better, credit agencies are rewarding governments for taking charge of deferred maintenance. Case in point: the District of Columbia. All three of the major credit rating agencies raised the District's credit rating on the strength of its plan to fund deferred maintenance, which was developed using D.C.'s centralized system for managing asset inventories, condition assessments and needs prioritization across all departments.

Infrastructure maintenance may never get its due beyond the credit rating agencies' lens — unless John Oliver does a sequel to "Infrastructure: The Movie" — but it is one of government's most critical obligations. Awards and fanfare are rare; maintenance projects are not often given names or tracked by industry market data providers. And our public finance officials are more used to fielding complaints about inconveniences caused by maintenance work than receiving thanks or credit for tackling it.

But there are plenty of deferred maintenance projects that deserve recognition. Here are just a few:

• Libraries: Against an accumulation of $100 million in deferred maintenance needs, the Denver library system is using a $31 million voter-approved bond issue to modernize the central library and the 10 of its 25 regional branches that have gone the longest without renovation. Soon, the some 2,600 patrons who use those branches every day will enjoy updated HVAC systems, elevators, computer access and other basics.

• Roads: The Louisville, Ky., Metro Council developed a "fix it first" strategy expressly to address deferred road maintenance needs. It resulted in 130 roads being repaved, besting all previous efforts. An additional $190 million in street and sidewalk repairs is on deck.

• Levees: In addition to a $100 million repair program dedicated to through-levee conduits that had been compromised by deferred maintenance, the California Department of Water Resources funded an experimental flood control project for the Dos Rios floodplain to test a methodology that reconnects rivers with natural floodplains. It changed hearts and minds not only in California but also in Mississippi and Missouri, where similar projects are now underway.

Notable projects across more infrastructure sectors can be found here. These projects show that in an era of diminished budgets, public finance officials are making the case to taxpayers to take care of the assets we already have. They are increasingly advocating for using tax dollars to fix potholes, dredge port channels, replace pipes, modernize HVAC systems, paint schools, rehabilitate bridges, service parks, green wastewater systems, strengthen levees and fortify dams. Experience has shown that a hundred routine-maintenance projects will yield a much higher return on taxpayer money than any single big, new project ever will.

By taking responsibility for the assets that are delivering services taxpayers need and those that are no longer performing, public officials will be able to make smart decisions about which assets should be repaired, replaced or recycled based on long-term asset management strategies. More importantly, they will be better able to help taxpayers differentiate between fiscal responsibility and political folly in the dialogue on infrastructure.

GOVERNING.COM

By Jill Eicher | Contributor
Director of the Infrastructure Lab at the Bipartisan Policy Center

FEBRUARY 4, 2019 AT 6:15 AM

Rust Belt Cities Should Try Embracing the Suburbs.

Merging aging urban centers with surrounding municipalities shows promise as a path to revival.

Some U.S. cities have seen their fortunes rise in the new economy. Technology hubs such as San Francisco and Seattle, as well as coastal metropolises like New York and Los Angeles, are thriving. But some less-glamorous cities — especially in the Midwest — have been struggling. St. Louis isn't the worst off, but it's definitely in the latter category.

The numbers aren't all bad. Unemployment in St. Louis is low — only about 3 percent. Poverty in the city has fallen slightly, though at 25 percent it's still very high. But people are still streaming out of the city (which may be one reason for the low unemployment rate:

Continue reading.

Bloomberg Opinion

By Noah Smith

February 5, 2019, 7:37 AM PST

[Plans to 'Fix the Damn Roads' May Help U.S. Hold Off Recession.]

- **States and cities gave expansion biggest tailwind in two years**
- **Tax revenues for states soared 8.8% in the first half of 2018**

Minnesota leaders are starting work on a $2 billion light rail project, the state's largest infrastructure project — and the kind of spending that may help keep recession risk at bay.

Spending by cities and states is a bright spot that could help to extend the expansion, now in its 10th year and within months of becoming the longest ever. Economists see it helping to offset other drag from the trade war, slowing global growth and a fading boost from federal fiscal stimulus and the effects of the longest government shutdown in U.S. history.

States and municipalities contributed 0.22 percentage point to annualized growth in the third quarter, the most in two and a half years, Commerce Department data show. State and local spending will add as much as 0.3 percentage point to growth in 2019 and the first half of 2020, estimates Neil Dutta, head of U.S. economics at Renaissance Macro Research LLC.

Continue reading

Bloomberg Economics

By Steve Matthews and Margaret Newkirk

February 3, 2019

State, Local Leaders Urge Congress to Act on Infrastructure Plan.

SPEED READ:

- **Minnesota Gov. Tim Walz and Los Angeles Mayor Eric Garcetti testified on Capitol Hill Thursday, pleading with lawmakers in Congress to pass legislation that would provide new revenue for infrastructure improvements.**
- **Both the governor and the mayor have pushed for tax increases to fund transportation needs in their own jurisdictions — and have emerged unscathed.**

As the new Congress looks to reignite a national conversation on investments in infrastructure, two politicians — a governor and a mayor — pressed lawmakers Thursday on the importance of raising revenues to fund necessary transportation improvements across the country. Both officials, Minnesota Gov. Tim Walz and Los Angeles Mayor Eric Garcetti, have at points staked their political careers on raising taxes for infrastructure improvements and emerged victorious.

"It's usually pretty good advice: Don't run on raising people's taxes," Walz told members of the House Transportation and Infrastructure Committee, "except in the case of infrastructure."

Walz, a Democrat who served in the U.S. House before becoming governor last month, called for raising the gas tax in Minnesota by 10 cents a gallon as part of his campaign. When his opponent ran TV ads attacking him for the proposal, Walz said his own polling numbers actually went up. "People aren't begging you to raise their taxes, but the way I framed it was, what is your alternative?" Walz said. Voters, he said, “know they’re spending [the money] anyway” in lost time on congested roads and on car repairs.

Congress has struggled for more than a decade to find money to pay for highways, bridges and other surface transportation infrastructure. Both Republicans and Democrats have shied away from raising the gas tax, the traditional way of funding those improvements. Other areas, including locks and dams on rivers, port dredging, and investments in new air traffic control technology, have languished as well.

But industry experts and their allies in Congress hope infrastructure is one area where Democrats, who now control the House, and Republicans, who control the Senate, can find common ground in the new Congress.

President Donald Trump made a similar point during his State of the Union address on Tuesday.

“Both parties should be able to unite for a great rebuilding of America’s crumbling infrastructure,” Trump said. “I know that the Congress is eager to pass an infrastructure bill, and I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting-edge industries of the future. This is not an option. This is a necessity.”

But Trump’s brief mention of infrastructure did not give lawmakers any guidance as to what the president wanted to see in an infrastructure package, or what, if anything, he would accept as a way to fund the new spending. The White House released an infrastructure plan last year that would have relied on states and local governments to pay for the vast majority of its spending, but that idea went nowhere in Congress. Meanwhile, Senate Majority Leader Mitch McConnell has been skeptical of calls from Democrats to pass a major new infrastructure spending legislation.

That leaves the task of fashioning a new infrastructure plan to the House Transportation and Infrastructure Committee. But the most politically dicey question of any new infrastructure plan – how to pay for it – would be up to the House Ways and Means Committee.

How to Rally Voters Around Tax Hikes? ‘Keep It Visceral.’

Walz and Garcetti, along with former U.S. transportation secretary Ray LaHood, talked with lawmakers about the nuts-and-bolts of infrastructure concerns, including everything from airport landing fees to state revolving funds to finance local water infrastructure.

But the key to selling the idea to the public, Garcetti said, is to translate all of those policies into real-world changes in people’s lives.

“Keep it visceral. Keep it human,” he urged. “Don’t talk about policies and statistics.”

Garcetti noted that he was re-elected even after pushing a half-cent sales tax hike in 2016 to expand rail lines, fix streets and make other transportation improvements in Los Angeles County. The $120 billion ballot measure was the largest local transportation funding measure in U.S. history. But it very nearly failed.

California law required the measure to pass by a two-thirds vote to take effect, because it called for raising taxes. Polling showed that only about 63 percent of potential voters supported it before the campaign launched TV ads. “It was going to be a tough lift,” Garcetti told U.S. Rep. Greg Stanton, a former Phoenix mayor. (Stanton successfully ran for re-election as mayor on the same day he pushed a tax increase for light rail expansion and road improvements.)

Garcetti said the Los Angeles ad campaign included the “typical” images and arguments in favor of big infrastructure initiatives: new trains, new roads, workers paving streets and people moving around the city. They explained how many jobs would be created and how much time people would save on their commutes. After two weeks and $5 million worth of ads, support for the measure had dipped to 61 percent, Garcetti said.

“I said, ‘Oh no, this thing is going down,’” Garcetti told the committee. “I’d put all my political capital on the line.”

Then his campaign consultant suggested a different tack. He told the mayor to get in the car and drive, while the consultant filmed him on his phone. There would be no script.

Not surprisingly, the mayor ran into traffic on the interstate. “Here we are stuck in rush hour traffic,” Garcetti says in the video. “The only problem is, it’s Saturday afternoon.”

The message intrinsically resonated with voters, he told the committee. “Everybody in Los Angeles got that…. They got being stuck in traffic.” The measure was approved by 72 percent of voters.

Urging Lawmakers to Act

When it comes to shaping a new federal infrastructure plan, Garcetti encouraged Congress to fund projects that bring in money from a variety of sources, including states, local governments and private investors. He said that programs should reward agencies that innovate, whether by using new technology or creative financing. And the mayor said federal lawmakers should consider paying part of the cost of maintenance for existing infrastructure, to prevent it from decaying further.

LaHood, a former Republican congressman from Illinois who served in the Obama administration, said lawmakers should not settle for little plans.

“It’s got to be big and it’s got to be bold. It can’t be chintzy,” he said. “Everybody knows what the problem is: America is one big pothole.”

To get a new plan signed into law, LaHood urged the House members to get a signal from the White House about what Trump would agree to in the plan. “If President Trump is not with you on this, it will be very difficult to pass through the Senate. [If president is with you] I think he will sell it in the Senate,” LaHood said.

Earlier this week, transportation committee chair Rep. Peter DeFazio told reporters he had not received a commitment from the White House about what it would support. Further complicating matters, many members on the committee from the greater New York area want the plan to include replacements to the century-old rail tunnels between New Jersey and New York’s Penn Station. But Trump has fought the so-called Gateway Program at every turn.

LaHood urged the lawmakers to move quickly with their plans. “We have a very short window,” he said. “If it doesn’t happen this year, folks, it doesn’t happen until after another presidential campaign.”

GOVERNING.COM

BY DANIEL C. VOCK | FEBRUARY 7, 2019

Association Press Congress for Bipartisan Infrastructure Revamp.

A day after President Trump called for improvements to the nation's infrastructure in his State of the Union address this week, a coalition of more than 150 associations appealed to Congress for a bipartisan infrastructure bill, noting wide support for such a measure.

Even in an era of divided government, common ground can be reached on some of the nation's priorities—in particular, a wide range of needed infrastructure improvements, a coalition of associations told congressional leaders in a letter this week.

More than 150 organizations signed on to the letter, calling for a "bipartisan, comprehensive package that transforms U.S. infrastructure systems beyond the status quo and maintains U.S. competitiveness in a 21st-century economy." The Infrastructure Working Group, led by the National Association of Manufacturers and the Associated General Contractors of America, warned that a failure to invest risks increasing an already present "infrastructure deficit."

"As this challenge persists and worsens, we encourage you to develop and advance a bipartisan infrastructure investment package that will improve the safety, reliability and efficiency of our nation's infrastructure," the coalition said in the letter [PDF].

Other groups signing the letter included the American Beverage Association, the American Society of Civil Engineers, the International Association of Fire Chiefs, the National League of Cities, and the U.S. Travel Association.

The group called for legislation to address six specific needs: an increase in direct federal infrastructure investment; a remedy for shortages in existing funds; stronger financial tools used for infrastructure investment, such as municipal bonds; more opportunities for private investment in infrastructure projects; an easier federal permitting process; and greater collaboration among all levels of government and between the public and private sector.

In a post on NAM's Shopfloor website, Robyn Boerstling, the association's vice president of infrastructure, innovation, and human resources policy, noted that all sides understand the need for action.

"Manufacturers, Congress, and the president all agree the failure to upgrade U.S. infrastructure threatens U.S. economic competitiveness," she wrote. "Now is the time for the business community, labor organizations, Republicans, and Democrats to work together to pass an infrastructure bill."

It's widely perceived that 2019 offers the best opportunity to pass infrastructure legislation during the current administration—though it faces many hurdles—and it was a key point in President Trump's State of the Union address this week, though his speech was light on details.

ASSOCIATIONS NOW

BY ERNIE SMITH / FEB 8, 2019

Highway Backers Seek Proposals, Revenue for Trump Infrastructure Plan.

President wants Congress to unite to fix 'crumbling infrastructure,' but advocates say

questions over revenue sources persist

Transportation advocates said they are happy to see President Trump raise the need for infrastructure investment in his State of the Union speech, but they also are anxious to see concrete plans and funding for improvements to U.S. roads, bridges and ports.

“It’s time to stop talking about investing in infrastructure and get to work fixing it,” said Dave Bauer, chief executive of the American Road & Transportation Builders Association, one of several trade groups that have been frustrated by the inaction in Washington despite broad bipartisan support for infrastructure spending.

The president in his address Tuesday night told lawmakers both parties should “unite for a great rebuilding of America’s crumbling infrastructure.”

“I know that Congress is eager to pass an infrastructure bill,” Mr. Trump said. “And I am eager to work with you on legislation to deliver new and important infrastructure investment, including investments in the cutting edge industries of the future. This is not an option, this is a necessity.”

Mr. Trump, who has said he supports spending $1 trillion on infrastructure, offered no details, however, and didn’t mention the spending plan for transportation programs his administration submitted in 2018.

An early draft of the address contained a line in which the president would urge Congress to “pass my proposal” for rebuilding the nation’s infrastructure, an administration official familiar with the drafting process said before the speech. When other officials saw the draft, they urged that the line be deleted because the president doesn’t actually want Congress to pass the only infrastructure proposal his administration has produced.

Mr. Trump has continued to tell aides and officials that he “hates” central elements of the 2018 infrastructure plan, especially public-private partnerships, according to two people familiar with the speech drafts. The plan would have required cities and states to put up at least 80% of the cost of the plan, likely pushing local government into the arms of private financiers.

That will leave Congress to wrestle with the gap between anticipated revenue and plans for a new spending once the existing $305 billion highway bill passed in 2015 expires next year. Many building programs are supported by the Highway Trust Fund, which gets its revenue from federal fuels taxes, but the flow of money into that fund has lagged behind needs, highway groups say, because the fuel taxes haven’t been raised in nearly 25 years while improved vehicle efficiency has cut into gasoline and diesel consumption.

Congress has periodically pushed general government revenues into the trust fund to make up for shortfalls, and spending advocates believe the fund will need another infusion as soon as next year.

Chris Spear, chief executive of the American Trucking Associations, said lawmakers must address the revenue gap to meet the country’s needs. “A win on this issue will require real investment, not budgetary gimmicks as tried in years past,” Mr. Spear said in a statement.

The Wall Street Journal

By Paul Page

Feb. 6, 2019 11:14 a.m. ET

—Ted Mann contributed to this article.

- Securities and Exchange Commission Amends and Updates Rule 15c2-12: K&L Gates
- What Do the SEC's New Continuing Disclosure Requirements Mean for Governmental Borrowers? – Miller Canfield
- Issuers Not Clear On Upcoming 15c2-12 Amendments
- Fitch Ratings Publishes Updated Criteria for US Variable-Rate Demand Obligations & Commercial Paper.
- GFOA Report: Infrastructure Funding in the New Budget Environment.
- Senators, House Members Request Clarity from Treasury on OZ Issues.
- Novogradac 2019 Opportunity Zones Spring Conference.
- And finally, Liar, Liar, Oh Crap, He's Not Lying! is brought to us this week by *Sikorjak v. City of New York*, in which dude's pants literally caught fire as he was using a cutting torch. One co-worker instructed him to "stop, drop, and roll" in lieu of the fire extinguisher for which they were frantically searching. Thanks, dude, super helpful. The plaintiff testified that he eventually put out the fire by covering his leg with clay. The record is silent at to whether he took advantage of the makeshift kiln to craft one of those lumpen ashtrays we used to fashion in Arts & Crafts at school back in the day to take home to the folks. Before, you know, it became clear that perhaps the local school district shouldn't be sanctioning smoking.

ZONING & PLANNING - FLORIDA

City of Miami v. AIRBNB, Inc.

District Court of Appeal of Florida, Third District - December 5, 2018 - So.3d - 2018 WL 6332240 - 43 Fla. L. Weekly D2700

Online hosting platform that matches guests with short-term rentals filed action against city, seeking temporary injunction in response to city's adoption of resolution affirming enforcement of zoning regulations as to short-term and vacation rentals.

The Circuit Court entered order granting emergency motion for temporary injunction, enjoining city from prohibiting any vacation or short-term rental in suburban residential zone, and from requiring public to provide names and addresses as condition of right to make public comment at City Commission meetings. City appealed.

The District Court of Appeal held that:

- City ordinance prohibiting certain short-term and vacation rentals in suburban residential zone was not preempted by statute precluding prohibition of vacation rentals;
- City's official interpretation of city ordinance was preempted by statute to extent such interpretation went beyond restrictions in city ordinance;
- Temporary injunction, enjoining city from prohibiting any vacation or short-term rental in suburban residential zone, was overbroad; and
- Temporary injunction, enjoining city from requiring public to provide names and addresses as condition of right to make public comment at City Commission meetings, was overbroad.

City ordinance prohibiting short-term and vacation rentals in suburban residential zone that convert a property's use to anything other than "predominantly permanent housing," was not preempted by statute precluding prohibition of vacation rentals, and regulation of frequency or duration of vacation rentals, where ordinance was identical in its material provisions to zoning code in effect prior to effective date of statute.

City's official interpretation of city ordinance, prohibiting short-term and vacation rentals in suburban residential zone that convert a property's use to anything other than "predominantly permanent housing," was preempted by statute precluding prohibition of vacation rentals, and regulation of frequency or duration of vacation rentals, to extent such interpretation went beyond restrictions in city ordinance; official interpretation declared that using a single family residence or two family-housing within a single family neighborhood to provide rental accommodations for anything less than one month violated city ordinance.

Temporary injunction, enjoining city from prohibiting any vacation or short-term rental in suburban residential zone, was overbroad; state law did not preempt city ordinance prohibiting short-term and vacation rentals in suburban residential zone that convert a property's use to anything other than "predominantly permanent housing," and city's official interpretation of ordinance was only preempted to extent it went beyond restrictions in city ordinance.

Temporary injunction, enjoining city from requiring public to provide names and addresses as condition of right to make public comment at City Commission meetings, was overbroad, where injunction was intended to address concern that city, which had adopted resolution affirming enforcement of zoning regulations as to short-term and vacation rentals, would take heightened enforcement measures against property owners who spoke in favor of vacation rentals.

PENSIONS - MASSACHUSETTS

Essex Regional Retirement Board v. Swallow

Supreme Judicial Court of Massachusetts, Essex County - January 18, 2019 - 481 Mass. 241 - 114 N.E.3d 581 - 2019 Employee Benefits Cas. 17, 262

Police officers appealed decisions of regional retirement board determining that officers forfeited their pensions through misconduct.

The District Court reversed. The Superior Court Department certified officers' petitions and affirmed District Courts' decisions. Board appealed. The Appeals Court found board's determinations were supported by substantial evidence. Officers sought certiorari review.

The Supreme Judicial Court held that forfeiture of officers' pension allowances was not legally tenable.

Forfeiture of officers' pension allowances was not legally tenable, even though their conduct in connection with their criminal activities was reprehensible, when there were neither factual links, nor legal links between the officers' positions and their convictions; police sergeant was charged with several crimes related to the discharge of his personal weapon, and state trooper pleaded guilty to a charge of using the internet to attempt to coerce and entice a child under the age of 18 years to engage in unlawful sexual activity.

TORT CLAIMS - NEW JERSEY

O'Donnell v. New Jersey Turnpike Authority

Supreme Court of New Jersey - January 14, 2019 - A.3d - 2019 WL 179054

Surviving spouse and mother of automobile accident victims brought action against New Jersey Turnpike Authority (NJTA) to recover for wrongful death in head-on collision with ambulance after crossing into opposite lane of traffic.

The Superior Court denied NJTA's motion to dismiss and granted cross-motion to file late notice of claim. NJTA appealed, The Superior Court, Appellate Division, reversed. Spouse's petition for certification was granted.

The Supreme Court of New Jersey held that spouse demonstrated extraordinary circumstances for filing late notice of claim.

Any doubts as to whether extraordinary circumstances exist should be resolved in favor of application of extraordinary circumstances exception allowing late notice of claim under Tort Claims Act; generally, Supreme Court examines more carefully cases in which permission to file a late claim has been denied than those in which it has been granted, to the end that wherever possible cases may be heard on their merits.

Surviving spouse and mother of automobile accident victims involved in collision with ambulance after crossing over to opposite side of Turnpike demonstrated extraordinary circumstances for filing late notice of claim against New Jersey Turnpike Authority (NJTA), where spouse quickly pursued claims against NJTA in good faith and identified it as responsible party in properly completed notice of claim, but her attorney improperly served state, ambulance driver served timely notice of claim on NJTA listing exact circumstances and same theory of liability about missing safety barriers, and spouse pursued statutory procedure for permission to file a late notice of claim within one year of accident.

LIABILITY - NEW YORK

Sikorjak v. City of New York

Supreme Court, Appellate Division, Second Department, New York - January 9, 2019 - N.Y.S.3d - 2019 WL 138357 - 2019 N.Y. Slip Op. 00157

Worker brought action for negligence and violations of Labor Law against city, city department of transportation, and general contractor seeking to recover damages for personal injuries sustained while demolishing a concrete wall at ferry terminal for his employer.

Following jury trial, the Supreme Court, Richmond County, entered judgment in favor of defendants. Worker appealed.

The Supreme Court, Appellate Division, held that:

- Defendants were not liable for negligence or violation of workplace safety statute;
- Issue of whether lack of nearby fire extinguisher was a substantial factor in causing injuries was for jury; and
- Jury's determination that defendants were negligent but that their negligence was not proximate

cause of injuries was not contrary to weight of evidence.

BALLOT INITIATIVES - WASHINGTON

State v. Evergreen Freedom Foundation

Supreme Court of Washington - January 10, 2019 - 432 P.3d 805

State brought regulatory enforcement action against foundation that provided pro bono legal services in support of local initiatives, alleging failure to report independent expenditures as required by Fair Campaign Practices Act (FCPA) and seeking imposition of a civil penalty and injunctive relief.

Foundation moved to dismiss for failure to state a claim. The Superior Court granted the motion. State appealed. The Court of Appeals reversed. Foundation petitioned for review, which was granted.

The Supreme Court of Washington held that:

- A local proposition is a "ballot proposition," for which certain expenditures are required to be reported under FCPA, but only if the measure is actually filed with an election official;
- Portions of FCPA delineating what constituted a ballot proposition were not unconstitutionally vague; and
- Under exacting scrutiny standard, campaign finance disclosure requirements of FCPA did not violate foundation's First Amendment right to free speech.

Portions of Fair Campaign Practices Act (FCPA) delineating what constituted a ballot proposition, and thus what expenditures in support of a ballot proposition were required to be reported, were not unconstitutionally vague, despite argument that it was unclear whether definition of "ballot proposition" applied to local initiatives; statutes established clear course of conduct, requiring persons to report any nonexempt independent expenditures in support of a ballot proposition, and statutory language was clear as to when a local initiative became a ballot proposition.

Under exacting scrutiny standard, campaign finance disclosure requirements of Fair Campaign Practices Act (FCPA), requiring the reporting of all independent expenditures totaling $100 or more during same election campaign and defining independent expenditures to include those made in support or opposition to a ballot proposition, did not violate local initiative supporter's First Amendment right to free speech; providing information to electorate was vital to advancing democratic objectives, and challenged requirements had substantial relationship with advancing those objectives.

INSURANCE - WISCONSIN

Steadfast Insurance Company v. Greenwich Insurance Company

Supreme Court of Wisconsin - January 25, 2019 - N.W.2d - 2019 WL 323702 - 2019 WI 6

Liability insurer for municipal sewer system operator brought equitable subrogation action against prior operator's insurer to recover cost to defend sewerage district in lawsuits arising out of rain event during subsequent operator's contract with district.

The Circuit Court entered summary judgment in favor of plaintiff. Defendant appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court of Wisconsin held that:

- Each insurer's coverage for district, as additional insured, was primary;
- Prior operator's insurer breached duty to defend district;
- Defending insurer's claim was for breach of express contractual subrogation right and was governed by six-year statute of limitations;
- As a matter of first impression, pro-rata allocation of defense costs based on policy limits of $30 million and $20 million was required; and
- As a matter of first impression, defending insurer was entitled to recover attorney fees.

Contractor's pollution liability policies that covered different operators of metropolitan sewer system and sewerage district, as additional insured, during successive periods were primary with regard to each operator's respective insurance and provided successive primary coverage for district, and, thus, "other insurance" clauses did not apply to claims for sewer backups as result of heavy rains.

Contractor's pollution liability insurer for sewer system operator breached duty to defend metropolitan sewerage district, as additional insured, by relying on erroneous unilateral determination that its coverage was excess to coverage under another operator's policy in effect at time of sewer backups, and insurer was thus responsible for all damages that naturally flowed from the breach; insurer did not seek judicial determination of coverage obligations or pay any amount toward district's defense costs.

Liability insurer's claim to recover defense costs from another insurer for breaching duty defend sewerage district, as additional insured, against claims for sewer backup was claim for breach of express contractual subrogation right, rather than contribution, and, therefore, was governed by six-year statute of limitations for breach of contract; policy subrogated insurer to insured's rights of recovery against any person or organization.

Liability insurer's breach of duty to defend metropolitan sewerage district, as additional insured, against claims of sewer backup did not abrogate defending insurer's duty to defend district, and, thus, pro-rata allocation of defense costs based on policy limits of $30 million and $20 million was required making insurers liable for 60 percent and 40 percent; both insurers owed duty to defend, and financial sanction of insurer for breaching duty to defend did not include judicial forgiveness of another insurer's financial obligation for defense costs.

Insured's right of recovery to which liability insurer was contractually subrogated for defending sewerage district, as additional insured, included attorney fees incurred in successfully establishing another insurer's duty to defend district, and, thus, defending insurer was entitled to recover attorney fees incurred in suit against other insurer under principles of contractual subrogation.

What Do the SEC's New Continuing Disclosure Requirements Mean for Governmental Borrowers? - Miller Canfield

As reported in our October 10, 2018 alert, the Securities and Exchange Commission has amended Rule 15c2-12 (the "Rule"), which governs continuing disclosure by state and local governmental borrowers to add two new material events requiring disclosure within 10 business days after they occur. Unlike the other 14 material event notice requirements, application of these two new requirements may be less obvious and requires more careful analysis.

The two new events are:

(15) Incurrence of a financial obligation of the issuer or obligated person[1], if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

With the February 27, 2019 compliance date approaching, and with many underwriters and municipal advisors focusing more closely on the new requirements, this alert offers more detailed analysis of steps governmental borrowers can take to facilitate compliance when they are required to do so.

When Will Issuers Need to Comply?

The amendments apply to continuing disclosure undertakings (CDU's) for publicly offered bonds or notes which are delivered on or after February 27, 2019. Until an issuer sells debt obligations with a CDU containing the new material events, the amendments have no effect on that issuer's continuing disclosure obligations.

What Are The New Material Events?

While the existing 14 events (including payment defaults, draws on reserves, unscheduled draws on credit enhancement, or changes in credit enhancement, adverse tax actions or opinions, material changes to bondholder rights, refundings, bond calls, rating changes, changes in trustee, mergers or bankruptcy) which continue to apply are fairly straightforward, the new requirements require disclosure within 10 business days of:

- "material" new financial obligations (or agreements concerning covenants, events of default, remedies, property rights or similar terms) incurred by the borrower for which there is no CDU and which could materially affect bondholders' interests [event (15)]
- events occurring in connection with a financial obligation which reflect financial difficulties for the borrower [event (16)]

What Is A "Financial Obligation?"

A financial obligation does not include any debt obligation for which the borrower posted an official statement and provided a CDU, or ordinary operating liabilities.

A financial obligation does include:

- a debt obligation
- a derivative instrument, such as a swap, entered into in connection with a debt obligation
- a guarantee of either a debt obligation or a derivative.

"Debt Obligations" include:

- privately placed bank or state authority purchases of bonds or notes or lines of credit
- installment contracts or lease purchase agreements
- energy conservation improvement financing contracts
- emergency loans from the State
- judgments
- any other obligation that is "debt-like"

What Information Must Be Filed?

The answer to this question is a bit open-ended, involves the exercise of judgment and depends on the facts and circumstances in the broader context.

Under event (15), only "material" financial obligations must be disclosed. The SEC release does not define "material." In addition, borrowers must provide certain information about the financial obligation, where material. While guidance on this question is likely to evolve, a rule of thumb may be that if a holder of a security for which the borrower has provided a CDU would find financial obligation terms relevant to a decision to buy or sell the security, and the price at which to do so, the name of the financial obligation and relevant terms should be included in the event filing.

Examples of terms to be disclosed include:

- amount financed and term and interest rate
- security and source of payment, including priority of payment
- defaults and events of defaults
- remedies, including acceleration, penalties and default rates
- modifications of terms and triggers for modifications
- key covenants, such as maintenance of ratings, most favored nations provisions, coverage and additional debt tests

Under event (16), the occurrence of an event under a financial obligation creates an obligation to disclose if that event reflects financial difficulties. In this circumstance, default (even if not yet an event of default triggering remedies), acceleration, termination events which obligate the borrower to pay a penalty, modification of terms and the imposition of remedies may each trigger a disclosure obligation. In this case, the relevant financial obligation may be one the borrower incurred before or after it executed a CDU which included new events (15) and (16), if the triggering event occurs after delivery of the new CDU.

Whether a disclosure obligation arises will depend on the context – the size of the borrower, the magnitude of the financial obligation relative to the size of the borrower and the impact or potential impact of the covenant or covenant breach on the borrower generally and on the bondholders to be benefitted by the CDU. An event which by itself may be immaterial may become material or reflect financial difficulty if it occurs in the context of multiple other events.

Managing Compliance with the New CDU Requirements

While borrowers have no obligation with respect to the new material events until they issue publicly offered securities on or after February 27, 2019 pursuant to an official statement, it wouldn't hurt to take an inventory of any outstanding financial obligations to identify those which may be material and to catalog material terms of those obligations. Underwriters have a responsibility under the amended rule not only to obtain a CDU satisfying the Rule from the borrower, but also to determine the ability and willingness of the issuers whose bonds they buy to comply with the Rule and as part of their due diligence may request the details of those obligations.

Borrowers will need to develop a system (which may or may not rise to the level of a formal policy or procedure) for identifying, cataloging and tracking these obligations so they can have confidence they will be able to post, within 10 business days, both (i) notice that a material financial obligation has been incurred together with material terms of such obligations or agreements and (ii) the occurrence of events arising in connection with any financial obligation or agreement which reflect financial difficulties.

Many borrowers will have very few obligations to track while others may have several, with many material terms.

How Do You Post?

The Municipal Securities Rulemaking Board has updated EMMA to include the new material events. Once a borrower has identified a material financial obligation, the borrower or its agent may post the details of the financial obligation or identify the financial obligation with and attach the entire document. If a borrower chooses to post the full document, certain types of sensitive information, such as account numbers and signatures, should be carefully redacted, while material terms should remain viewable.

For events which reflect financial difficulties, a description of the event and/or notice from the holder of the related obligation, should be disclosed.

[1] An "obligated person" is an entity, other than the nominal issuer or credit enhancer, which is legally committed to support all or a material portion of the payment of the obligation. Materiality here also depends on the context, but generally is regarded as translating to a commitment to support payment of at least 20% of the financial obligation

January 29, 2019

Miller Canfield

Securities and Exchange Commission Amends and Updates Rule 15c2-12: K&L Gates

Since 1995, states and local governments have been subject to Rule 15c2-12 (the "Rule"), promulgated by the U.S. Securities and Exchange Commission (the "SEC"). Under the Rule, governmental entities that issued securities (and persons obligated under those securities ("obligated persons")) were required to enter into continuing disclosure agreements (generally referred to as "undertakings"). These undertakings obligated the governmental entity to make regular annual filings of financial information and also to file notices whenever certain "listed events" occurred. The undertakings remained in effect for the entire life of the bond issue or defeasance of the bonds.

In August 2018, the SEC announced an amendment to the Rule. **This amendment will take effect on February 27, 2019.** These amendments have been the topic of substantial public discussion in seminars and written releases in the press and numerous law firm blogs. Regardless of what you have read or heard, however, **this amendment may or <u>may not</u> increase your future financial reporting obligations** or otherwise affect your community. Before you spend a lot of time in seminars or meetings learning about the Rule, consider whether it will have an impact on your public entity/community.

In general, a public entity will not be affected by the changes in the Rule, if:

1. The public entity has no outstanding debt;
2. The public entity's only outstanding debt is in the form of bank loans; or
3. The public entity does have outstanding bond issues (issued prior to February 27, 2019) and the public entity has no expectation of going to the public market with new bond issues in the foreseeable future.

If, however, your community does expect to issue publicly offered bonds in the foreseeable future, then you should understand more about the Rule.

The discussion below provides information to help you understand more about the Rule and the changes incorporated under the Rule's recent amendment and includes information about Government Accounting Standards Board ("GASB") Statement No. 88:

The SEC has indirectly regulated the obligations of states and local governments in the financial markets through its ability to regulate the activities of brokers/dealers in the municipal industry. [1] The Rule was originally promulgated in 1989 by the SEC under authority of the Securities Exchange Act of 1934. The original Rule required that dealers acting as Participating Underwriters in Offerings (an offering of municipal securities by a municipal issuer with an aggregate principal amount of $1,000,000) obtain, review, and distribute to potential customers copies of the issuer's official statement. The Rule was amended in 1994, and this amendment accomplished, albeit indirectly, what the SEC could not do directly. When the SEC adopted paragraph (b)(5) of the Rule, Participating Underwriters could no longer purchase or sell municipal securities unless the issuer had adopted an undertaking for the issue. With that change, the Rule now imposed regulations on states and their local governments. [2]

Paragraph (b)(5) of the Rule prohibits a Participating Underwriter from purchasing or selling municipal securities covered by the Rule in an Offering unless the Participating Underwriter has reasonably determined that an issuer or obligated person of those municipal securities has undertaken in a continuing disclosure agreement (an "undertaking") to provide specified information to the Municipal Securities Rulemaking Board (MSRB) in an electronic form as prescribed by the MSRB. [3] The information to be provided consists of: (i) certain annual financial and operating information and audited financial statements, if available ("annual filings") [4]; (ii) timely notices of the occurrence of certain events ("event notices") [5]; and (iii) timely notices of the failure of an issuer obligated person to provide required annual financial information on or before the date specified in the continuing disclosure agreement ("failure to file notices"). Event notices are required to be filed within 10 business days of the occurrence of the listed event. [6]

The SEC has been considering expanding the list of the disclosure events for some time. In particular, there has been a focus on the increased number of private placements of bonds and bank loans, as they have not been not subject to the Rule. On August 20, 2018, the SEC released adopted amendments to the Rule. [7] These amendments apply to all undertakings entered into on and after February 27, 2019. From this February date and after, all new undertakings are required to comply with the amended Rule. The amendments added two additional events, expanding the list from 14 to 16 events, in a continuing disclosure undertaking. Future undertakings are required to include the following event notices:

> (15) Incurrence of a material financial obligation of the issuer or obligated person or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, any of which affect

security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The amendments define the term "financial obligation" as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term "financial obligation" does not include any obligation for which a final official statement has been provided to the MSRB. In other words, the issuer does not need to file an event notice for the incurrence of any security that is already disclosed to the market through a final official statement.

Key considerations for the amended Rule include:

1. The amendments are not retroactive.
The amendments do not add any new requirements to issuers' current undertakings. Accordingly, issuers may continue to comply with their existing undertakings in the same manner as they have been filing and posting with EMMA.

2. If a governmental entity enters into an undertaking in the future, that undertaking will include the two additional event notice requirements.
With respect to those new event requirements:

1. The additional disclosure requirement identified in (15) above applies to debt or "debt-like" obligations. The issuer is not required to disclose ordinary operating liabilities.
2. The disclosure requirement identified in (15) only applies to those debt obligations that are "material." The amendments do not define the term "material," and issuers are permitted to make their own determination of what debt obligations are material. On a going-forward basis, issuers may consider developing procedures or protocols for identifying which debt or "debt-like" obligations are material.
3. If an issuer determines that the incurrence of a debt or "debt-like" obligation is material, the notice of the event should include the material terms of the financial obligation. The SEC provided examples of "material terms" as: (i) date of the incurrence, (ii) principal amount, maturity, and amortization; (iii) interest rate (if fixed) or method of computation (if variable) plus any default rates and other depending on the circumstances. Accordingly, the disclosure may be satisfied by filing a term sheet or by filing the entire document.
4. If the issuer enters into a derivative instrument (e.g., swaps and hedges) relating to a municipal security, that transaction must always be disclosed.
5. The additional disclosure requirement identified in (16) above is limited to those occurrences that reflect financial difficulties. For example, if the issuer enters into a loan modification agreement with respect to a loan (regardless of whether the original obligation has previously been disclosed on EMMA), that event would be required to be disclosed in an event notice.

3. GASB Statement No. 88.
The GASB recently issued its Statement No. 88 — Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placement (March 2018), requiring that additional information related to debt be included in audited financial statements. [8]

This requirement is in effect for reporting periods beginning after June 15, 2018. Accordingly, many issuers are likely developing protocols for identifying the types of information that are now required be disclosed under the amendments to the Rule.

Inclusion of this information in an issuer's financial statement will not, however, satisfy the requirements of the Rule, because the Rule will now require that a separate event notice be filed on a timely basis upon the incurrence of each new the debt or "debt-like" obligation (within 10 business days).

Notes

[1] The SEC directly regulates the issuers of corporate securities, primarily to prevent disclosure-related abuses in the corporate securities market, under the authority of the Securities Act of 1933 and the Securities and Exchange Act of 1934 (together, the "Securities Act"). Municipal securities are exempt from registration under Section 3(a)(2) of the Securities Act, but are subject to the Securities Act's anti-fraud provisions. Municipal securities brokers and dealers are also regulated by the SEC and by the MSRB. When drafting the Securities Act, Congress did not have concerns about abuse in the municipal securities market. Since then, perception of abuses in the municipal securities market have increased with the complexity and volume of the market. The Securities Act's provisions are broadly written, and so federal securities anti-fraud law has evolved primarily through the courts. Court decisions have found the anti-fraud provisions applicable in a number of municipal securities transactions, leading to the development of a framework for municipal disclosure responsibilities, driven as well by the MSRB and the Dodd-Frank Act provisions. The SEC's Office of Municipal Securities has initiated enforcement actions against municipal issuers, municipal employees, and other market participants.

[2] See Exchange Act Release No. 34-26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) ("1989 Adopting Release). For additional information relating to the history of the Rule, see Exchange Act Release No. 34-34961 (Nov. 10, 1994), 59 FR 59590 (Nov. 17, 1994) ("1994 Amendments Adopting Release"), Exchange Act Release No. 34-59062 (Dec. 5, 2008), 73 FR 76104 (Dec. 15, 2008) ("2008 Amendments Adopting Release"), and Exchange Act Release No. 34-62184A (May 27, 2010), 75 FR 33100 (June 10, 2010) ("2010 Amendments Adopting Release").

[3] On December 5, 2008, the SEC adopted amendments to the Rule to provide for the Electronic Municipal Market Access ("EMMA") system. EMMA is established and maintained by the MSRB and provides free public access to disclosure documents. The 2008 Amendments designated the EMMA system as the single centralized repository for the electronic collection and availability of continuing disclosure information about municipal securities. The 2008 Amendments require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide continuing disclosure documents: (i) solely to the MSRB; and (ii) in an electronic format and accompanied by identifying information, as prescribed by the MSRB. See 2008 Amendments Adopting Release; see also Exchange Act Release No. 34-58255 (July 30, 2008), 73 FR 46138 (Aug. 7, 2008) ("2008 Proposing Release"). The 2008 Amendments became effective on July 1, 2009.

[4] See 17 CFR 240.15c2-12(b)(5)(i)(A) and (B).

[5] See 17 CFR 240.15c2-12(b)(5)(i)(C). Under the Rule prior to these amendments, the following events require notice in a timely manner not in excess of ten business days after the occurrence of the event: (1) principal and interest payment delinquencies; (2) nonpayment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue

(IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to the rights of security holders, if material; (8) bond calls, if material and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated person; (13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into an agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material. In addition, Rule 15c2-12(d) provides full and limited exemptions from the requirements of Rule 15c2-12. See 17 CFR 240.15c2-12(d).

[6] See 17 CFR 240.15c2-12(b)(5)(i)(D). Annual filings, event notices and failure to file notices are referred to collectively as "continuing disclosure documents."

[7] See the SEC Report on the Municipal Securities Market, (July 31, 2012) ("2012 Municipal Report"), available at: https://www.sec.gov/news/studies/2012/munireport073112.pdf.

[8] GASB Statement No. 88 is available at: http://www.gasb.org/jsp/GASB/Document_C/Documentage?cid=1176170308047&acceptedDisclaimer=true.

by Scott McJannet & Cynthia Weed

January 29, 2019

K&L Gates LLP

Issuers Not Clear On Upcoming 15c2-12 Amendments.

WASHINGTON — With Rule 15c2-12 amendments set to take effect at the end of February, issuers at the Government Finance Officers Association meeting aired out their confusion over how the changes will affect their continuing disclosure responsibilities.

Issuer officials discussed their concerns during a meeting of the GFOA's Committee on Governmental Debt Management at the group's winter meeting here Monday. The angst is fueled by the Securities and Exchange Commission's August 2018 decision to add two new material events to the list of occurrences that issuers will have to agree to disclose within ten business days of their happening.

Event 15 says issuers have to disclose when they incur financial obligations, if material, as well as agreements to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer that could affect security holders.

Event 16 says that in connection with those financial obligations, issuers have to disclose events which "reflect financial difficulties," such as a default or modification of terms.

Members of the debt committee said they're having trouble pinning down the requirements. It can be hard to determine when financial difficulties start, and the rule doesn't specify it, they said.

Without knowing, issuers will have to turn to their lawyers to figure it out, said Kenton Tsoodle, Oklahoma City's finance director.

"It's thinking through and making that list of what are all the things that have to be included in these two new filings, but also then when," said Tsoodle, who will speak at The Bond Buyer's upcoming Texas Public Finance conference.

The SEC lacks the authority to directly regulate issuers except through the antifraud provisions in the securities laws, so the rule requires underwriters of new issues of $1 million or more to "reasonably determine" that the issuer has entered into a written agreement to provide such disclosures to bondholders.

State revolving fund loans, wherein states make loans to cities for water utilities, may have to be disclosed starting Feb. 27 because they likely fall under Event 15.

Guarantees of lower-rated credits could also be disclosed, committee members said. Tsoodle said he would disclose guarantees.

"It's somewhat broad and it's going to be a lot more work and a lot more things for issuers to monitor, Tsoodle said. "It will remain to be seen if it's a good thing for investors."

A partial government shutdown caused some hiccups for issuers looking for the SEC to answer questions, and Tsoodle said for areas where they don't get clarification, issuers will turn to their bond counsel for answers.

Cindy Harris, chief financial officer at the Iowa Finance Authority said she plans to spend more time with her bond counsel to get more guidance if she doesn't receive more from the SEC.

At the meeting, issuers debated whether or not they would disclose a bank loan document in its entirety, terms and all, on EMMA.

"I think the issue is that you could disclose the entire agreement, so if you have a bank loan, the agreement would have all of the terms of the loan," Harris said. "Sometimes the person you have the agreement with, may not want all of that information for the public to see like the terms, or the rate at which you're borrowing."

Harris worries that at the end of the day, the SEC could take enforcement action against an issuer who comes up short in its disclosure obligations, so wants to cover all bases.

"I think muni issuers are probably struggling with these new amendments," she added.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/28/19 02:38 PM EST

Fitch Ratings Publishes Updated Criteria for US Variable-Rate Demand Obligations & Commercial Paper.

Fitch Ratings-New York-31 January 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External

Liquidity Support Rating Criteria". This report updates the report published on Jan. 22, 2018 titled "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria". The key elements of Fitch's external liquidity rating criteria remain consistent with those of its prior criteria report.

Contact:

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Dennis Pidherny
Managing Director
+1-212-908-0738

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

Additional information is available on www.fitchratings.com

Read About New SEC Rule 15c2-12 Disclosure Obligations and Upcoming Issuer Enhancements to EMMA in the Latest MSRB Newsletter.

Read the Newsletter.

GFOA Releases Primer on Infrastructure Financing.

Understanding Financing Options Used for Public Infrastructure

Report CoverUnderstanding Financing Options Used For Public Infrastructure ("the Primer") provides an overview of tax-exempt bond and other financings used by state and local governments and entities.

The Primer covers numerous issue areas related to tax-exempt financings. These sections include:

- The fundamentals of tax-exempt bonds and other financing tools that are available to state and local governments and related entities;
- The role tax-exempt bonds play in infrastructure financings and as an investment product; and
- Congressional actions over the past fifty years related to this market.

This Primer was prepared in coordination with several members of the Public Finance Network (PFN). The PFN is a coalition of organizations interested in preserving the tax-exempt status of state and local government bonds.

Download the report.

About the Public Finance Network

Formed in 1988, the Public Finance Network is a coalition of organizations united to preserve state and local government use of tax-exempt bonds. The Network represents the wide array of local and state government financing and infrastructure activities. The Public Finance Network is administered by the GFOA and its Director of the Federal Liaison Center, Emily Brock. For information about the Network and financing issues, contact any of its members, call (202) 393-8467 or write to 660 North Capitol St., NW, Suite 410 Washington, D.C. 20001.

GFOA Report: Infrastructure Funding in the New Budget Environment.

Infrastructure Funding in the New Budget Environment

Federal grants have helped maintain a quality standard of living for communities across the country for over a century. There are over a thousand federal grant programs that transfer funds to state and local governments in support of a multitude of policy issues. State and local governments rely on the funds from federal grants to assist in providing what the citizens of their localities need. Over the years, the federal grant system has grown and changed to accommodate the constantly shifting priorities of American communities. Transportation, healthcare and education initiatives are all supported in some way by federal grants. Today, federal and local lawmakers meet the challenges of updating and enhancing our nation's infrastructure through collaborative efforts; underlining the importance of federal transfers to state and local governments.

This report provides information on trends, key issues, and case studies related to infrastructure funding.

Download the report.

The Pros and Cons of 'Target Maturity' Bond Funds.

These new products combine the benefits of a traditional bond fund with a fixed maturity date. They have their critics.

There's a new type of bond fund that aims to solve a shortcoming of traditional bond funds. But the jury is out as to whether they are worth buying.

Bond funds offer investors broad diversification, professional management and regular income—benefits tricky to achieve with a collection of individual bonds. But they also have a downside: no fixed maturity date. Investors can't simply wait out a downturn, knowing the price will move toward face value as maturity approaches, as they can with an individual bond.

To address that perceived shortcoming, some fund providers in recent years have introduced a hybrid product offering the benefits of a traditional fund plus a fixed maturity date. Though some experts disdain these "target-maturity bond funds," others say they can be a good choice for some investors in today's volatile market, especially those looking for steady income and a return of principal for an expected need—such as paying for college, buying a home or starting retirement.

"In today's market, these target-maturity funds are especially appealing," says Jay Srivatsa, chief executive officer at Future Wealth, a wealth-management firm in Los Gatos, Calif. "It takes the volatility and randomness out of the equation and, most importantly, takes out the investor's emotional reactions to the stock-market gyrations. Knowing that X amount will be available on year X gives peace of mind."

Target-maturity funds are easier to research and purchase than individual bonds, he says, and they appeal to investors who don't want to face long-term interest-rate risk.

Older investors may find this option worth a look in today's environment, says Ankur Patel, vice president at Lenox Wealth Advisors' New York office.

"As we continue to see baby boomers enter retirement, an entire generation of investors will be looking to reduce risk, generate income and invest more in bonds," he says.

How they work

Investors who buy individual bonds know that, barring a default, they will receive a predictable income and a return of principal on the maturity date. Earnings in bond funds are less predictable because the fund must constantly buy and sell individual bonds to maintain an average maturity promised investors.

That means the fund can suffer a loss if it must sell bonds when prices are down. That's because rising rates drive down prices of older bonds that pay less than new ones. While falling rates can lift bond prices, they can be harmful if the fund must replace older bonds with new ones that pay less, reducing the fund's yield.

Target-maturity funds—not to be confused with target-date funds, which gradually shift assets from stocks to bonds to increase safety as the target date approaches—tackle these problems by purchasing bonds maturing at about the same time. When the fund's maturity date arrives, the fund closes and investors receive their principal just as they do with individual bonds, though the amount isn't guaranteed up front and can be subject to market conditions. Income is relatively dependable—but, again, not guaranteed—because the fund doesn't need to replace holdings along the way.

The two big players are Invesco, which offers a series of BulletShares corporate and emerging-markets "defined maturity" exchange-traded funds maturing every year from 2018 to 2028, and BlackRock Inc.'s BLK 0.42% iShares, which has corporate and municipal bond ETFs maturing from 2020 to 2028.

Fees are modest, typically below 0.5%, though that can add up over time. Of course, an investor owning individual bonds would have no annual fees. Investors also face commissions on ETF trades, though that can be minor for the buy-and-hold investor these funds are designed to serve.

Critics weigh in

Despite their appeal to some, these funds do have critics. "I do not typically recommend target-maturity bond funds because their annual costs are significantly higher [than index bond funds] for a buy-and-hold investment, and there is a lack of flexibility," says Debra Taylor, founder of Taylor Financial Group, a wealth-management firm in Franklin Lakes, N.J.

“The benefit is that the funds are packaged up in one place, and they do provide diversification for the smaller investor,” she says. “However, the more-sophisticated investor may be better off purchasing the individual bonds and creating their own ladders.” (A ladder is an assortment of bonds with various maturities.)

Most experts seem to agree that these funds are best for investors with an expected cash need at the maturity date, rather than those who will reinvest. The principal may be returned at an inconvenient time for reinvestment—when yields are low, for instance. Because the fund won’t replace its holdings, you can’t expect the fund yield to rise as rates go up, as it would with an ordinary fund that gradually adds new bonds that pay more.

In today’s market, many experts recommend funds with short maturities of under three to five years, since longer-term bonds don’t currently pay enough extra to justify their greater risk.

Young people with long investing horizons are especially unsuited to these funds, Ms. Taylor says, because they can ride out bond-price dips. With maturities out to only 2028, target-maturity funds serve investors who expect to need their money in 10 years or less.

Dennis Shirshikov, a financial analyst at FitSmallBusiness.com in New York, warns that many bonds in these funds will mature months before the fund closes, leaving cash to sit idle. And Mr. Patel of Lenox Wealth Advisors says investors should expect fund yields to drop in the final year to the level of bank savings. Also, many of these funds own bonds that can be called early, worsening the problem of cash buildup even before the year of maturity.

Getting out early

Investors also should know that they can lose money if they unload one of these funds before maturity. That could happen if rising rates drive down bond prices. Also, since these ETFs are traded like stocks, there’s no guarantee an investor will find a buyer if he or she wants to get out early, though experts say lack of liquidity hasn’t been a serious problem.

“These are generally not a great short-term trading option,” Mr. Shirshikov says. “In fact, you will likely be better served with other bond products if you are interested in trading on bond volatility or interest-rate movements.

“However, if you are considering locking your money away in a CD or purchasing government bonds with set maturity with the hope of taking the money out at a later date and earning some interest in the process, this is a great product to invest in,” he says.

The Wall Street Journal

By Jeff Brown

Feb. 1, 2019 4:26 p.m. ET

How Does PG&E Impact California's Municipal Bond Outlook?

Nisha Patel, muni portfolio manager at Eaton Vance, examines California’s municipal bond market. She speaks with Bloomberg’s Taylor Riggs in this week’s “Muni Moment” on “Bloomberg Markets.”

Watch video.

Bloomberg MarketsTV Shows

January 30th, 2019, 9:31 AM MST

PG&E Bankruptcy May Have Wider Ramifications for California.

The municipal bond market has a small amount of direct exposure to the bankruptcy of PG&E (PCG), California's largest utility, though the Chapter 11 filing creates uncertainty for the state and localities where the utility operates.

The company, which provides natural gas and electric service to 16 million people in northern and central California, emphasized in a customer alert that it will not be "going out of business" as it embarked on plans to restructure an estimated $51.7 billion in debts balanced by assets of $71.4 billion.

PG&E Corp. (PCG) and its primary operating subsidiary, Pacific Gas and Electric Co. filed for Chapter 11 Tuesday in the U.S. Bankruptcy Court for the Northern District of California.

All three ratings agencies dropped the utility's ratings to junk after it reported a few weeks ago that it was facing up to $30 billion in liabilities from California wildfires.

The California Public Utilities Commission, the utility's regulator, reported in December it was exploring such options as splitting PG&E's (PCG) gas and electric operations or even requiring that regional companies be created.

San Francisco Mayor London Breed, in a letter to the director of San Francisco's Public Utilities Commission, reportedly requested an analysis of the city's options in the face of PG&E's (PCG) likely bankruptcy, "including the possibility of acquiring and building electrical infrastructure assets."

A California PUC spokeswoman said she did not know if the commission would have the power to move ahead on those plans now that the utility is in bankruptcy, but said the commission would work with the court.

The company signaled earlier this month that it planned to file for bankruptcy in compliance with a recently enacted state law that requires it to provide a 15-day notice before taking that step.

Municipal bonds comprise less than $1 billion of PG&E's outstanding debt. "And $762 million of the $920 million in municipal debt was backed by bank letters of credit, so actual exposure to PG&E (PCG) in the municipal market is quite small," Nuveen analysts wrote in a Jan. 22 report.

The municipal bonds are unsecured general obligations of PG&E (PCG), according to Nuveen.

"The corporate bonds generally have a covenant by which if a lien is granted to other creditors it must be granted to the corporate bonds," Nuveen analysts wrote. "The municipal bonds are exempt from this provision and could be subordinated to the other debt."

The municipal debt was issued through two state conduit issuers, the California Pollution Control Financing Authority and the California Infrastructure & Economic Development Bank.

The conduit issuers provide access to the tax-exempt bond market for private companies and nonprofits and have no responsibility to pay the debt back.

Put simply, the conduit issues the bonds, places the proceeds with the trustee, who then re-lends the money to the borrower, said Tim Schaefer, California's deputy treasurer for public finance. The CPCFA is staffed out of the treasurer's office.

The borrower, in this case PG&E (PCG), has the responsibility to provide disclosure prior to the bond sale and after on the risks for bondholders, Schaefer said.

The risk to bondholders is minimal, because the banks will buy the variable rate demand obligations back from the current bondholders, said Matt Fabian, a partner with Municipal Market Analytics.

A search on the Municipal Securities Rulemaking Board's EMMA site of the CUSIPs indicated the banks had not executed a mandatory tender of the debt as of Tuesday afternoon.

In an earlier interview with The Bond Buyer, Joan Hempel of Moody's Investors Service said that the banks have the right to terminate the letter of credit early and call for a mandatory tender. The banks can make the payment and pay the bondholders off early and then PG&E (PCG) would be obligated to pay the bank back directly.

The bank letters of credit means the bank has an irrevocable and unconditional obligation to make the payments directly to the bondholders, Hempel said. The bank then has a reimbursement agreement under which PG&E (PCG) agrees to pay the bank. So the bondholders look to the bank as the first source of payment of the bonds, she said.

There are five banks with exposure instead of just one with a concentrated position, which helps to spread out the risk, Fabian said. As of last Friday, he said, the liquidity banks were MUFG Union Bank with $149 million, Sumitomo Mitsui Banking Corp. with $165 million, TD Bank with $100 million, Mizuho Bank with $200 million and Canadian Imperial Bank with $149 million.

In conjunction with the bankruptcy filings, PG&E (PCG) also filed a motion seeking interim and final approval of the bankruptcy court to enter into an agreement for $5.5 billion in debtor-in-possession financing with J.P. Morgan, Bank of America (BAC), Barclays (BCS), Citi, BNP Paribas (BNPQF), Credit Suisse (CS), Goldman Sachs (GS), MUFG Union Bank and Wells Fargo (WFC) acting as joint lead arrangers.

The DIP financing, when approved, will provide PG&E (PCG) with capital needed to operate throughout the bankruptcy, according to the company.

The PUC board granted exemptions for the utility to obtain the DIP financing at a heated meeting Monday at which protestors shouted "no bailout for Wall Street" while commissioners discussed the matter. The extensions do not extend to the transfer of ownership of any utility asset that is pledged as part of the DIP finance, however.

PUC President Michael Picker urged his fellow commissioners to approve the exemptions, saying that if PG&E (PCG) were not able to secure the financing and continue to operate it could represent a substantial public safety and health risk because it could compromise hospitals and public facilities.

California Gov. Gavin Newsom said his focus through the bankruptcy remains "protecting the best interests of the people of California."

“My administration will continue working to ensure that Californians have access to safe, reliable and affordable service, that victims and employees are treated fairly, and that California continues to make forward progress on our climate change goals,” Newsom said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 01/30/19 12:08 PM EST

[Puerto Rico Wins Approval of $18 Billion Bond Restructuring.]

Puerto Rico won court approval Monday for a restructuring deal that wipes out one-third of its $18 billion in sales-tax bond debt, a milestone in its quest to fix its broken finances.

U.S. District Judge Laura Taylor Swain confirmed a debt adjustment plan covering the revenue bonds known as Cofinas, marking the largest renegotiation yet of the U.S. territory’s bond and pension obligations.

The write-downs imposed on the Cofina bonds, first issued as rescue financing in 2007, will save the island government $17 billion in interest and principal payments over the coming decades as it tries to reverse a decade of economic decline and out-migration.

Creditors holding more than $14.5 billion in Cofina debt supported the accord, which resolves one of the thorniest conflicts in Puerto Rico’s unprecedented, court-supervised bankruptcy.

The settlement is tied to a negotiated split of the sales taxes pledged to Cofina that releases 46% of the money back to the island’s government — providing $456 million a year on average that otherwise was earmarked for bondholders.

Judge Swain acknowledged that the settlement “commits substantial portions of Puerto Rico’s scarce revenues to bond payments over a period of decades,” while also slashing claims from bondholders, including individual investors who bought Cofina securities for their retirement.

But she concluded the adjustment plan “is essential to ensure that Puerto Rico is on a path that will restore its access to financial markets as it builds a stronger economy.”

The settlement marks the first adjustment plan approved under the quasi-bankruptcy process created by Congress under a 2016 rescue law that also installed an oversight board to manage Puerto Rico’s spending and pilot the debt- restructuring process.

The oversight board was able to wring savings from Cofina’s bondholders in part because of lingering doubts about the strength of their claims on sales-tax revenue. Critics of the Cofina structure have long insisted that sales taxes never should have been transferred out of the government’s control, and other creditors holding Puerto Rico general obligations said they, not Cofina bondholders, had an ironclad claim on the revenue.

First issued in 2007, the Cofina bonds were backed by sales taxes that provided investors a secure source of repayment and lowered Puerto Rico’s financing costs after the municipal bond market lost confidence in the U.S. territory as a borrower.

The Cofina bonds quickly became a go-to financing source that made up roughly 40% of Puerto

Rico's core government obligations when it entered bankruptcy protection in 2017.

Doubts about who owned the sales taxes — the government or Cofina's bondholders — have clouded Puerto Rico's bankruptcy since it entered court protection in 2017. Forcing Judge Swain to decide the issue could have wiped out Cofina's bondholders completely — or guaranteed them a 100% recovery if the pledge was upheld.

The Cofina plan instead relinquishes more than 46% of the pledged sales taxes, supplying cash to correct the government's budget imbalance and ameliorate politically unpopular austerity measures.

BY DOW JONES & COMPANY, INC. | MUNICIPAL | 02/04/19 05:47 PM EST

By By Andrew Scurria

Write to Andrew Scurria at Andrew.Scurria@wsj.com

Puerto Rico Rebound Lures Mutual Funds Back to Island's Bonds.

- **Pimco, AllianceBernstein have boosted holdings since hurricane**
- **Once big buyers, mutual funds sold when fiscal crisis worsened**

Traditional bond buyers are going back to Puerto Rico.

After shunning the U.S. territory for much of the past six years, municipal-bond mutual funds are again buying the government's debt as it recovers from the 2017 hurricane and inches closer to winning a potential court approval to restructure more than $17 billion of sales-tax-backed debt, a major step in its record-setting bankruptcy.

Pacific Investment Management Co. held about $506 million of commonwealth securities as of Sept. 30, nearly 10 times the $52 million held the month before Hurricane Maria, according to data compiled by Bloomberg. AllianceBernstein LP increased its exposure to $347 million, as of Nov. 30, up from $53 million in August 2017. Capital Group and Massachusetts Financial Services Co. increased their exposure by nearly 50 percent.

Continue reading.

Bloomberg Markets

By Michelle Kaske

January 31, 2019, 7:19 AM MST

PG&E Bankruptcy's Ripple Effects Will be Felt Beyond California.

- **Investors, utilities across the U.S. could share the pain**
- **Settlements for wildfire victims may be later and smaller**

PG&E Corp., owner of the largest electric utility in America's most populous state, plans to file for bankruptcy Tuesday, and the ripple effects are likely to stretch far beyond California and the company's stakeholders.

Power-plant operators that sell electricity to its utility are already being downgraded to junk. Federal taxpayers may get stuck with the bill for government loans to renewable-power projects in California if they can't be repaid. And the shape of the Golden State's electricity industry could fundamentally change, with delays to a clean-energy mandate and a bigger role than ever before for public power.

More directly affected, of course, are stockholders, bondholders and thousands of PG&E retirees and their families who are casting nervous eyes on the pension fund. Wildfire victims suing the company — PG&E's stated main reason for bankruptcy -- also risk later, smaller settlements.

Continue reading.

Bloomberg Markets

By David R Baker

January 28, 2019

Shutdown Dashes Wall Street's Hope Trump Would Boost Bond Sales.

- **'You would have to be crazy to think they could help at all'**
- **At conference, little chance seen for infrastructure bill**

If Wall Street's municipal-bond departments are looking for Washington to help them drum up business, the prospects appear bleak.

Big underwriters would have liked for President Donald Trump to make good on his campaign promise to enact a major infrastructure plan, since states and cities would likely issue debt to cover their share of the projects.

But sales of new state and local government bonds tumbled 22 percent last year, and the record-long shutdown that tarnished Trump's relationship with the new Democratic majority in the House of Representatives left those at a Bond Buyer conference in New York pessimistic.

"Can you rely on the federal government for help at all?" asked Howard Cure, director of municipal-bond research at Evercore Wealth Management. "Based on what happened with the shutdown you would have to be crazy to think they could help."

There's certainly a need for help: The American Society of Civil Engineers estimates the country needs to increase its spending by $2 trillion through 2025 to get its roads, schools and other infrastructure in adequate shape. Trump spoke disparagingly of the state of affairs before taking office.

Dan Tomson, co-head of public finance at Citigroup Inc., the second-largest municipal bond underwriter, said it was "unlikely" that a federal infrastructure bill would be passed this year.

So the industry seems to have settled around a much more modest agenda in Congress, like expanding the use of so-called private activity bonds, issued on behalf of businesses, or resurrecting advance refundings, a refinancing tactic that was essentially killed off by Trump's tax bill. That was a big driver of the bond-sales slowdown last year.

“Our agenda as an industry — first and foremost, we have to keep what we have,” said Bob Spangler, co-head of public finance at RBC Capital Markets. He said the preservation of the tax break for municipal bonds is crucial. “It is painfully aware to all of us that Washington’s actions do matter in terms of our marketplace.”

Bloomberg Markets

By Danielle Moran

January 29, 2019, 2:35 PM MST

A Few Lessons About Public-Private Partnerships in Higher Ed.

As many institutions look to public-private partnerships as a financing solution for their biggest and most important projects, Charles G. Renner describes some of the ins and outs.

It has been more than a decade since a report by the Institute for Higher Ed Policy first noted a worldwide shift away from public funding sources and toward private capital to finance higher education projects. The report appeared just months before the eruption of the global financial crisis that left an indelible scar on state and local public finances still seen today. The long-term effects of that crisis have only reinforced the logic that made private capital an attractive financing option in the first place.

The cold, hard fact is that available public funds for higher education have been shrinking. The Center on Budget and Policy Priorities, a Washington-based research and policy institute, reported that 46 of 50 states “are spending less per student in the 2015-16 school year than they did before the recession.” Nine of those states have seen inflation-adjusted spending declines of greater than 30 percent. On average, states are spending 18 percent less per student than before the crisis. This trend has provided little evidence of reversing.

To compensate for the funding shortfall, colleges and universities have a limited range of options. Many have decided to raise tuition, but tuition costs had been outpacing inflation for a generation prior to the crisis, and the market can bear only so much. Indeed, many institutions, particularly private ones, are already offering significant discounts off of their sticker prices to entice students to enroll. Others have opted to curb their academic programs and offerings; over the past year, many have announced downsizing and consolidation initiatives, including the elimination of majors and degree programs, intercollegiate athletic teams, and faculty and administrative positions. But such measures, too, have limited use. An institution can cut only so much without jeopardizing its ability to fulfill its mission and attract students.

Finally, some colleges and universities have increased drawdowns on their endowments, but this is more a short-term act of desperation, not the application of a long-term, sustainable financing solution. Besides, despite the cachet of the larger endowments — Harvard University sports an endowment over $37 billion — most institutions have fairly modest endowments that are little more than rainy-day funds. Last year, in a study by the National Association of College and University Business Officers, the median endowment value of an American higher education institution was $127.8 million, and 44 percent of all endowments were valued at $100 million or less.

One should also consider that the financial and risk profiles of the average American college or university have changed significantly in the past generation. Notably, many institutions have seen their debt-to-endowment ratios increase because of poor investment performance, increased drawdowns on the endowment itself or larger amounts of debt. And even those with the largest endowments are confronting new threats and challenges. For instance, in the spring of 2016, members of the Connecticut Legislature sought to tax Yale University's endowment. The idea was quickly scotched a few weeks later, but the proposal gives context to the discussion over higher education funding — colleges and universities are being squeezed because the states themselves are under financial stress.

These are the factors that have created the difficult circumstances in which higher education finds itself. It is also the reason so many institutions are looking to public-private partnerships as a financing solution for their biggest and most important projects.

The P3 Delivery Model

A public-private partnership, or P3, is long-term agreement between a public entity and a private industry team that is tasked with designing, building, financing, operating and maintaining a public facility. The past decade has seen a steady increase in the use of P3 structures, both inside and outside higher education. In 2016, something of a watershed year for P3, multiple high-profile projects came online in response to a variety of public needs, including a $1-billion-plus water infrastructure project servicing San Antonio, and a $300-million-plus renovation of the Denver International Airport's Great Hall.

The emergence of the P3 option is happening where it matters most: projects that would be otherwise unattainable under the traditional public-improvement delivery models. For instance, 10 years ago, only a handful of higher education P3 projects were up and running; today, we are approaching three dozen such projects.

The biggest challenge is, of course, the financing component, but P3 teams bring much more to the table than money — they give public entities access to expertise and innovation that can add significant value to projects at each phase of development.

Several recent higher education P3 projects demonstrate how the P3 delivery model and team approach can enable colleges and universities to take on projects they might not have otherwise been able to pursue.

Wayne State University student residential facility.

Wayne State sought out private partners for a project to demolish an existing 407-bed apartment building and replace it with new and renovated residential space. It went from issuing a request for proposals to obtaining financing in relatively record time and began leasing new beds in August 2018. To expedite construction, the private partner secured bridge financing as part of the overall capital stack, enabling the project to tap into generally favorable financing for the larger private placement of debt.

The university not only locked in favorable financing terms and paid off existing debt, but it also moved much of the worry and risk from operations onto the private partner by engaging in a full P3 approach. That includes design, construction, financing, operations and maintenance of the project over a 40-year life cycle, freeing up university resources to focus on academic and other needs.

University of California, Merced, 2020 campus expansion.

While residential projects have long been the focal point of higher education P3s, we are beginning to see more ambitious uses of the model. UC Merced 2020 is one example: a campuswide expansion covering some 219 acres and almost two million square feet of new facilities. The $1.2 billion project is likely the largest and most comprehensive P3 in American higher education. The mix of uses features academic learning, administration, research, residential and utilities, among others.

The project includes all project phases and employs an “availability” method of payment whereby the university will compensate a concessionaire directly according to a predetermined formula and schedule for the postconstruction operations and maintenance of the facilities over a 39-year life cycle.

Needless to say, a partnership of this size and scale requires solid relationships, as well as an agreement capable of accommodating changing conditions. The agreement contained flexible provisions to account for a variety of outcomes, including a 50/50 split among partners for any future refinancing gains, as well as a 50/50 split regarding potential cost-saving measures introduced by the developer.

Even when a college or university decides not to use a full P3 model, contemplating such a project often leads to a better result than only considering more traditional options. In 2014, the University of Kansas solicited private partners for a planned $350-million P3 that sought to add some 55 acres of academic, recreational, residential and utilities space to the campus. Ultimately, the university opted to create a nonprofit corporation and borrow the full project outlay from an out-of-state public finance entity rather than tapping private finance. But because the procurement process followed best practices for P3 selections, university stakeholders received the benefit of risk analyses and financial projections from multiple potential private partners, and an innovative debt-only financial approach was selected for the project.

Lessons for Other Institutions

The success of these projects suggests a few lessons for other higher education institutions. First, tapping into the full potential of the P3 model depends greatly on assembling the right partners. A well-rounded P3 team includes people with high-level expertise in private-development equity, architecture, engineering, contracting and law. Aside from the access to innovation and best-in-class skills, the team concept is important because P3 projects are long-term in nature. The relationships on which P3 projects depend will necessarily span many years; therefore, higher education participants need to carefully develop criteria for evaluating potential partners.

Also, few large-scale projects are finished without some kind of unanticipated challenge arising, so it is important to select partners who have demonstrated the stability and commitment required to see projects through to completion. Higher education administrators should study carefully their potential partners’ portfolio of projects and evaluate how each dealt with the inevitable circumstances that challenge a team’s ability to finish a project or to operate and maintain it afterward.

In addition, each of the foregoing projects had institutional champions who advocated for the P3 solution and oversaw the process through to completion. The role of champions in the P3 delivery model cannot be understated. They play a crucial role in securing buy-in for the project at the earliest possible stage and developing strategies to overcome obstacles. Establishing consensus on the campus also provides potential private partners the needed assurance to commit fully to a P3 project and helps to secure the best possible pool of P3 talent.

It is unlikely that the fiscal circumstances facing America’s colleges and universities will improve greatly over the next decade, and the competition for students is fierce. When applied competently and in the right manner, a public-private partnership allows administrators to create solutions that differentiate their campuses and brand them as places capable of getting things done. More institutions should seriously consider this option.

Inside Higher Ed

By Charles G. Renner

January 28, 2019

Bio
Charles G. Renner is a partner in the Kansas City, Mo., office of law firm Husch Blackwell LLP and is the leader of the firm's public-private partnerships practice group.

S&P Global Ratings Clarifies Its Rating Action And Display Of Ratings Following Various Credit Enhancement Rating Withdrawals.

Recently, S&P Global Ratings withdrew various credit enhancement program ratings. In this report, we address frequently asked questions we have received from market participants to provide greater clarity on how we proceeded with the withdrawals.

Continue Reading

Jan. 29, 2018

Report: 63 Out of America's Largest 75 Cities Can't Pay their Bills, Acquired $330 Billion in Unfunded Debt.

According to a recent analysis of the 75 most populous cities in the U.S., 63 of them can't pay their bills and the total amount of unfunded debt among them is nearly $330 billion. Most of the debt is due to unfunded retiree benefits such as pension and health care costs.

"This year, pension debt accounts for $189.1 billion, and other post-employment benefits (OPEB) – mainly retiree health care liabilities – totaled $139.2 billion," the third annual "Financial State of the Cities" report produced by the Chicago-based research organization, Truth in Accounting (TIA), states.

"Many state and local governments are not in good shape, despite the economic and financial market recovery since 2009," Bill Bergman, director of research at TIA, told Watchdog.org.

The top five cities in the worst financial shape are New York City, Chicago, Philadelphia, Honolulu, and San Francisco. These cities, in addition to Dallas, Oakland, and Portland, all received "F" grades.

In New York City, for example, only $4.7 billion has been set aside to fund $100.6 billion of promised retiree health care benefits. In Philadelphia, every taxpayer would have to pay $27,900 to cover the city’s debt; in San Francisco, $22,600 per taxpayer.

TIA analyzes state and city data to make it more accessible and easy to understand for taxpayers and citizens, who TIA argues, “deserve easy-to-understand, truthful, and transparent financial information from their governments.”

By the end of Fiscal Year 2017, 63 cities did not have enough money to pay all of their bills, the report states, meaning debts outweigh revenue. In order to appear to balance budgets, TIA notes, elected officials “have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers.”

In order to determine the “taxpayer burden,” TIA divides the amount of money needed to pay bills by the number of city taxpayers. The Taxpayer Burden equals the amount of money each taxpayer would need to pay to pay off their city’s entire debt. Cities that can’t pay their bills are identified as “sinkhole cities.”

The Taxpayer Surplus is the amount of money left over after all bills are paid, divided by the estimated number of taxpayers in each city. Cities that have a surplus and or can pay their bills are called “sunshine cities.”

This year, there were 63 sinkhole and 12 sunshine cities. The top five cities in the best financial shape are Irvine, Charlotte, Washington, D.C., Lincoln, and Fresno.

Despite the majority of cities’ low rankings, financial conditions improved for most of the cities analyzed, TIA states.

“A favorable investment environment helped improve results, particularly in government pension funds [leading to a lower net pension liability],” Bergman said. “This helps illuminate a need for improving the timeliness of government financial reporting, and we’ve had a reminder in recent months that stocks can go down as well as up.”

One major problem area TIA identifies is that city leaders have acquired massive debts despite the balanced budget requirements imposed on them.

“Unfortunately, some elected officials have used portions of the money that is owed to pension funds to keep taxes low and pay for politically popular programs,” TIA states. “This is like charging earned benefits to a credit card without having the money to pay off the debt. Instead of funding promised benefits now, they have been charged to future taxpayers. Shifting the payment of employee benefits to future taxpayers allows the budget to appear balanced, while municipal debt is increasing.”

As part of the ranking, TIA graded each municipal government with scores of “A” through “F.” Governments that received a C grade came close to meeting their balanced budget requirement. “A” or “B” grades were given to governments that met their balanced budget requirements and have a Taxpayer Surplus. “D” and “F” grades apply to governments that did not balance their budgets and have significant Taxpayer Burdens.

No cities received an “A” grade. Twelve cities received a “B;” 24 a “C;” 31 a “D;” and eight failed.

TIA is a nonprofit, politically unaffiliated organization composed of business, community and academic leaders interested in improving government financial reporting.

By Bethany Blankley | Watchdog.org Jan 30, 2019

America's Largest Cities Are Practically Broke.

Sixty-three, out of America's most populous seventy-five, cities do not have enough money to pay all of their bills. Chicago-based municipal finance watchdog, Truth in Accounting (TIA) revealed these stark news in its third annual, Financial State of the Cities. According to TIA, "This means that to balance the budget, elected officials have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers." TIA divides the amount of money needed to pay bills by the number of city taxpayers to come up with what it calls Taxpayer Burden™.

Based on TIA's grading methodology, for the second year in a row, not a single one of the 75 cities received an 'A'. TIA, however, was unable to rank and grade two of the most populous cities, Newark and Jersey City in New Jersey, because unfortunately, they do not issue annual financial reports that follow generally accepted accounting principles, GAAP.

A grade: Taxpayer Surplus greater than $10,000 (0 cities).

B grade: Taxpayer Surplus between $100 and $10,000 (12 cities).

C grade: Taxpayer Burden between $0 and $4,900 (24 cities).

D grade: Taxpayer Burden between $5,000 and $20,000 (31 cities).

F grade: Taxpayer Burden greater than $20,000 (8 cities)

Continue reading.

Forbes

Jan 29, 2019

by Mayra Rodriguez Valladares
Contributor – Banking & Insurance

TIA 2019 Financial State of the Cities.

On January 29, Truth in Accounting released its third *Financial State of the Cities* report, a comprehensive analysis of the fiscal health of the nation's 75 most populous cities based on fiscal year 2017 comprehensive annual financial reports.

This year, the study found that 63 cities do not have enough money to pay all of their bills, and in total, the cities have racked up nearly $330 billion in unfunded municipal debt. The study ranks the cities according to their Taxpayer Burden or Taxpayer Surplus™, which is each taxpayer's share of city bills after available assets have been tapped. Check out the data for your city at the State Data Lab.

Download the new report here.

January 28, 2019

Senators, House Members Request Clarity from Treasury on OZ Issues.

Seven U.S. senators and nine members of the House of Representatives – all original co-sponsors of the Investing in Opportunity Act, the forerunner of the opportunity zones (OZ) incentive – sent a letter Thursday to Treasury Secretary Steven Mnuchin, calling for further clarity on several issues related to the OZ regulations. Among other things, the letter asks Treasury to remove the requirement that an OZ business derive 50 percent of its gross income from active conduct of a trade or business in the qualified OZ, but simply require that it derive at least 50 percent of total gross income from the active conduct of its trade or business. The letter also seeks more timing flexibility for opportunity funds to make investments; says fund-level activity should not disallow the tax benefit to opportunity fund investors who don't take distributions from the fund or sell their interest before the 10-year holding period, regardless of whether there is "churn" in the opportunity fund's investments; and asks that future regulations include reasonable reporting requirements.

Learn more about OZs at the Novogradac 2019 Opportunity Zones Spring Conference, April 25-26 in Denver.

Friday, January 25, 2019

IRS Reschedules Public OZ Hearing for February 14.

Read the IRS notice.

Novogradac 2019 Opportunity Zones Spring Conference.

Hyatt Regency Denver at Colorado ConvCtr
April 25, 2019 – 8:00am to April 26, 2019 – 12:00pm

In these information-packed days you'll get:

- Exclusive updates on strategy
- Insights into organizational solutions
- Thought leadership on key trends that are shaping the industry
- Exciting networking events

Network with Organization Executives

During the conference you will hear from and be able to network with Novogradac's senior executives alongside our valued co-hosts and sponsors, which are industry-leading companies.

Please complete the online registration form to confirm your attendance and don't forget to book your hotel.

Register

Please recheck the site regularly to view any updates.

We look forward to seeing you!

Novogradac Events Team

events@novoco.com

415-356-7970

Municipal Liability Under the ADA for Website Inaccessibility.

Executive Summary: Many business owners have faced litigation under the Americans with Disabilities Act (ADA) by disabled individuals who claim the businesses' websites are inaccessible. Now, many plaintiffs are turning their attention to municipalities and their websites.

Websites and the Americans with Disabilities Act: The ADA was enacted decades ago, before companies or municipalities even had websites. Yet courts across the country repeatedly have held that the law applies to internet accessibility, resulting in an increasing trend in ADA litigation over websites. Serial plaintiffs visit a multitude of websites and then pick a niche. Some sue art galleries without screen readers that enable the visually impaired to navigate the site, or hotels whose websites do not list their accessible accommodations. Lately, though, these plaintiffs and their attorneys have begun targeting cities, towns, and counties, alleging that their websites are inaccessible, most often for the visually or hearing impaired. Although the ADA offers a plaintiff only injunctive relief, the real damages come in the form of excessive attorneys' fees, which usually make it more prudent to simply settle a case as soon as possible. Yet in New York and California, two of the states with the largest volume of ADA lawsuits, local laws also offer plaintiffs monetary damages.

Implications for Municipalities: As a result, New York, California, and Florida lead the country in volume of website litigation. The trend is spreading to other states. Title II of the ADA prohibits a "public entity" from discriminating against "a qualified individual with a disability," on account of the individual's disability. The ADA regulations state that "a public entity shall take the appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." Further, "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 C.F.R. § 35.160(a). Such auxiliary aids and services may include, but are by no means limited to, qualified interpreters on-site or through video remote interpreting services; real-time closed captioning; and closed caption decoders. 28 C.F.R. § 35.104. The specific type of auxiliary aid needed will vary on a case-by-case basis, as people with various disabilities will need different accommodations.

Among the issues raised by recent lawsuits are a plaintiff's inability to attend or otherwise participate in a town board or city council meeting due to that person's disability, and the need to watch the meeting on the town's website. Without closed captioning, for example, a hearing impaired person would not be able to participate in the meeting. Although there is no explicit requirement to livestream or simulcast a municipality's council meetings, a municipality does have a duty to provide auxiliary aids to disabled persons attempting to take part in the meetings.

In Minnesota, a disability advocate who suffers from autism has brought multiple website lawsuits against towns and counties in that state. He alleges that, as a result of his condition, he has muscular problems that impede his use of a mouse to navigate a website. Serial plaintiffs in Florida have filed dozens (if not more) of lawsuits alleging website inaccessibility, including against municipalities. One plaintiff frequently claims that videos on municipalities' websites are inaccessible to people such as himself who are hearing impaired. Still other serial plaintiffs have begun virtually crossing state lines. For example, one Florida serial plaintiff has sued Nassau County, New York over the alleged inaccessibility of its website.

Bottom Line: In sum, although there is no blanket requirement that every city needs to livestream and provide real time captioning for their meetings, or to provide any specific auxiliary aides to use its website, the proliferation of municipal website lawsuits presents a real risk of liability. Municipalities are advised to work with their IT departments or otherwise to take proactive steps to ensure that their websites are accessible to those with visual, hearing, and muscular impairments.

January 30, 2019

FordHarrison

SEC Is Ready To Execute Its 2019 Examination Priorities.

The U.S. Securities and Exchange Commission's Office of Compliance Inspections and Examinations published its 2019 examination priorities on Dec. 20, 2018. Since this occurred just prior to the implementation of a partial government shutdown, OCIE has had little chance to demonstrate how it will execute on these priorities.

With furloughed staff back in place, however, registered investment advisers, registered funds and broker-dealers can be certain that OCIE staff will quickly begin examinations focused on these identified priorities.

Please see full Issue for more information.

by Kelley A. Howes

February 1, 2019

Morrison & Foerster LLP

FINRA Announces 2019 Regulatory Priorities.

On January 22, 2019, the Financial Industry Regulatory Authority, Inc. ("FINRA") released its annual priorities letter highlighting its regulatory program's points of emphasis for the coming year. The most immediately recognizable difference between this year's edition and previous ones is that its traditional title, "Examination Priorities," has been updated to include "Risk Monitoring," the process by which the self-regulatory organization initially identifies problem areas through surveillance, firm reporting, surveys, questionnaires, and examination findings.

FINRA's 2019 "Risk Monitoring and Examination Priorities Letter" (the "Letter") also discusses three entirely new priorities: online distribution platforms, fixed income mark-up disclosure, and regulatory technology. Finally, the Letter lists ongoing areas of focus, and alerts firms that it will continue to assess protocols to handle the risks posed by "bad actors" with problematic regulatory histories.

New Priorities

Online Distribution Platforms

FINRA expressed concern that member firms increasingly engage with online platforms that distribute securities through Rule 506(c) of Regulation D and Regulation A under the Securities Act of 1933, yet incorrectly fail to treat such engagements as the sale or recommendation of securities that would trigger FINRA's rules.

An online platform is a web-based marketplace for securities that automatically displays orders, executes trades, and provides transaction data. If a platform meets the definition of an "exchange" under the federal securities laws, it must register as a "national securities exchange" or operate under an exemption, such as the one available in Regulation ATS requiring registration as a broker-dealer. Although some platform operators are not broker-dealers, many FINRA members support these platforms by acting as selling agents or brokers of record, or performing custodial, escrow, back-office, or financial technology-related functions.

FINRA made clear that even when its members do not act as operators, such support constitutes the sale or recommendation of securities and falls within the scope of FINRA's jurisdiction. Accordingly, FINRA intends to evaluate how firms conduct reasonable basis and customer-specific suitability analyses, supervise communications with the public, and meet AML requirements with respect to this business. In addition, as these platforms are often widely accessible to the public via the internet, FINRA will evaluate how firms address the risks of offering documents or other communications that omit material information, contain false or misleading statements, or promise high returns.

Regulations D and A set forth exemptions to the 1933 Act's requirement that all offerings of securities be registered with the Securities and Exchange Commission ("SEC"). Rule 506(c) of Regulation D permits broadly-advertised private offerings, but only if all investors qualify as "accredited investors" under Rule 501 (i.e., high net worth individuals, banks, insurance companies, brokers, and trusts). As such, FINRA will look closely at how member firms involved with online platforms distributing these offerings verify that all investors are accredited.

Regulation A exempts registration of public offerings that do not exceed $50 million in any one-year period, as long as issuers file offering statements with the SEC and provide investors documentation called offering circulars, similar to prospectuses (more information on offering circulars available here). Crucially, such offerings need not be limited to accredited investors, and increasingly take place via online platforms. When member firms assist with such offerings online, FINRA will evaluate the risk of excessive or undisclosed compensation arrangements between members and issuers.

Fixed Income Mark-Up Disclosure

This year, FINRA will also focus on ensuring compliance with the newest version of FINRA Rule 2232, "Customer Confirmations." Amended in May 2018, Rule 2232 now requires a member to disclose the amount of mark-up or mark-down applied to a trade in fixed income securities with a retail customer, if the member also executes an "offsetting" principal trade in the same security on the same trading day. "Offsetting" occurs when the customer's order must be satisfied out of the member's prior inventory, rather than securities that the member gained through principal transactions that day. The purpose of the amendment is to ensure disclosure of transaction cost information with respect to bond trades to parallel the existing, comparable requirement set forth in Exchange Act Rule 10b-10 for equity trades. FINRA has further encouraged consistent disclosure regarding bond trades by working with the Municipal Securities Rulemaking Board to establish similar requirements through Rule G-15. In light of these goals, FINRA has pledged to monitor any changes in firms' behavior to avoid triggering these mark-up and mark-down obligations altogether.

Regulatory Technology

Lastly, FINRA will monitor firms' use of technological tools meant to streamline compliance with the securities laws, to catch any risks arising from supervision and governance systems, third-party vendor management, safeguarding customer data, and cyber security.

Ongoing Priorities

In addition to these three new areas, the Letter also discussed ongoing areas of focus. These include Sales Practice Risks, Operational Risks, Market Risks, and Financial Risks. Although these areas have long held FINRA's attention, the Letter emphasized aspects of these topics that will be particularly important in 2019.

Sales Practice Risks

Within Sales Practice Risks, FINRA highlighted the importance of monitoring protection of senior investors, as well as controls related to outside business activities and private securities transactions. In light of the increasing number of "baby boomer" customers who are seniors, FINRA will assess firms' supervisory systems to ensure that they exercise heightened scrutiny over these types of accounts to prevent conflicts of interest and financial exploitation. In particular, FINRA will examine how firms stop representatives who act as fiduciaries to elderly clients outside of their employment—i.e., by holding power of attorney or acting as trustee—from using their broker roles to direct funds to themselves. FINRA will also review controls instilled to meet the requirements of new FINRA Rule 2165, which permits a member to temporarily hold disbursements of funds or securities from the account of a "specialized adult" if the member believes that the client is being exploited.

FINRA continues to keep eye on outside business activities and private securities transactions, and particularly cited situations in which associated persons raise funds from their customers for outside entities beyond the reach of their firms' supervision. The Letter emphasized this scenario is especially concerning when an associated person controls or has an interest in such outside entity, and when the entity has a potentially misleading name similar to the name of an established issuer. FINRA also pointed readers towards proposed FINRA Rule 3290, which would replace its current rules regarding outside business activities and private securities transactions. FINRA is currently considering public comments to this proposal.

Operational Risks

Among Operational Risks, FINRA will focus on customer due diligence and supervision of digital assets. FINRA plans to monitor compliance with FinCEN's Customer Due Diligence Rule, which became effective last year, requiring firms to identify the beneficial owners of customers that are legal entities, and monitor their accounts to recognize and report suspicious activity.

As digital assets are increasingly transacted in the securities marketplace, FINRA is particularly focused on how member firms handle these assets in compliance with the securities laws. The Letter prioritizes review of the approach firms use to determine whether a particular digital asset is a security, and whether firms have appropriate protocols in place to mitigate the risks of these transactions. FINRA pledged to pursue these goals in close coordination with the SEC.

Market Risks

One prominent market risk FINRA continues to monitor is market manipulation. This year, FINRA will do so with attention to correlated exchange-traded products and correlated options that track broad market indices. FINRA will use pattern exploration to better identify the exploitation of unique characteristics of these products through machine learning.

Financial Risks

Finally, FINRA will continue to evaluate firms' business models, particularly with respect to liquidity funding and plans in place to address potential financial crisis. The Letter specified that firms may need to update their stress test assumptions, in light of increased volatility in the market last year. Additionally, as the government securities repurchase agreement ("repo") market experienced significant rate spikes in 2018, FINRA will check whether firms whose liquidity plans rely on government repo funding have established protocols to account for similar disruptions in the future.

In Step with the SEC

Some of FINRA's concerns overlap with the SEC's priorities for the coming year, which were released in December by the Office of Compliance Inspections and Examinations ("OCIE"). OCIE is a department within the SEC that examines market participants to ensure compliance with the securities laws and monitor risk.

Like OCIE's letter, FINRA's Letter flagged digital assets and potential conflicts of interest arising from an advisor's fiduciary status as critical areas for regulatory focus. Given the recent uptick in use of digital assets in the securities space, for the first time, OCIE considered digital assets important enough to be its own prioritized category in the coming year. FINRA also echoed OCIE's attention to potential abuse when an advisor acts as a fiduciary to a client.

Conclusion

As the foregoing reflects, FINRA's 2019 regulatory slate is a mix of the old and new, reflecting the Wall Street watchdog's intent to remain true to its core regulatory mission while simultaneously staking out fresh ground. FINRA's three new priorities represent an effort to keep pace with today's ever-evolving technological landscape, and to warn its member firms this landscape is not without regulatory risk.

by Jeff Kern & Kate Ross

January 31, 2019

Sheppard Mullin Richter & Hampton LLP

Airbnb Still Isn't Collecting Local Taxes Everywhere.

While the company has stepped up collection efforts in recent years, a new report argues that local lawmakers should ensure Airbnb collects all lodging taxes.

More and more, when booking to stay in a house or apartment through Airbnb, a visitor will be charged a local or state tax, just like when staying at a hotel.

But this collection effort by the popular online hosting company isn't universal. A new report that weighs the economic benefits and costs associated with short-term rentals through Airbnb argues it should be, saying local governments should insist that the tax regimes—and other regulations—are the same as for the hotels they compete with.

"If the lodging tax in a city is X percent, Airbnb should have to pay that full amount in a transparent way," said Josh Bivens, research director at the Economic Policy Institute, in an email. "And if a building is zoned for residential units and not short-term travel accommodations, then Airbnb shouldn't be allowed to offer full-apartment rentals in it."

Continue reading.

Route Fifty

By Laura Maggi,
Managing Editor

JANUARY 31, 2019

The Economic Costs and Benefits of Airbnb.

No reason for local policymakers to let Airbnb bypass tax or regulatory obligations

Summary
"The sharing economy" refers to a constellation of (mostly) Silicon Valley–based companies that use the internet as their primary interface with consumers as they sell or rent services. Because this term is "vague and may be a marketing strategy" (AP 2019), we refer to these firms less poetically but more precisely as "internet-based service firms" (IBSFs).

Economic policy discussions about IBSFs have become quite heated and are too often engaged at high levels of abstraction. To their proponents, IBSFs are using technological advances to bring needed innovation to stagnant sectors of the economy, increasing the quality of goods and services, and providing typical American families with more options for earning income; these features are often cited as reasons why IBSFs should be excused from the rules and regulations applying to their more traditional competitors. To skeptics, IBSFs mostly represent attempts by rich capital owners and venture capitalists to profit by flouting regulations and disguising their actions as innovation.

The debates about whether and how to regulate IBSFs often involve theories about their economic costs and benefits. This report aims to inform the debate by testing those theories. Specifically, it assesses the potential economic costs and benefits of the expansion of one of the most well-known of the IBSFs: the rental business Airbnb.

Continue reading.

Economic Policy Institute

By Josh Bivens • January 30, 2019

Did You Know That the Site of the Super Bowl, Mercedes-Benz Stadium in Atlanta, Georgia, Was Partially Financed Through Municipal Bonds?

Read more on EMMA.

Along the Coasts, Communities Gird for Rising Seas.

Facing the threat of extreme weather, coastal regions of the U.S. are stepping up protection efforts

BOSTON — State officials along the East and Gulf Coasts are pushing for projects worth billions of dollars to protect populous coastal regions from rising oceans and extreme weather.

In Maine, Democrats are seeking a public vote on a $50 million bond to fund a steel waterfront infrastructure to protect against rising sea levels. Florida's new Gov. Ron DeSantis, a Republican, recently proposed investing $2.5 billion to protect the Everglades and the appointment of a chief science officer to address environmental concerns. Louisiana's Democratic Gov. John Bel Edwards pledged $55 million in state surplus and about $300 million in offshore oil revenue for coastal and levee improvements.

In Massachusetts—where a tidal surge last year pushed the water level at Boston Harbor to the highest ever recorded, causing flooding—Republican Gov. Charlie Baker proposed raising the tax on real-estate transfers by 50% in much of the state to generate more than $1 billion over the next decade. The funds would help local communities fortify infrastructure from sea walls to flood-control systems.

Continue reading.

The Wall Street Journal

By Jennifer Levitz and Cameron McWhirter

Feb. 3, 2019 11:00 a.m. ET

New York Set to Cut 30-Year Bond Sales Amid Buyer 'Resistance'

- **Longest-dated yields have edged up this month, hurting returns**
- **NYC official 'exploring ways to move down the yield curve'**

The demand for 30-year municipal bonds is weakening, so New York City is reducing the supply.

The nation's most-populous city, one of the biggest borrowers in the $3.8 trillion state and local government debt market, is planning to sell fewer of the longest-dated bonds because of investor "resistance" amid concerns about higher interest rates and price volatility, Marjorie Henning, the city's deputy comptroller for public finance, said at a Bond Buyer Conference in New York.

She said that marks a shift from past years, when investors were moving away from intermediate-maturity debt.

30-year yields have edged up while others were little changed
The yields on 30-year municipal bonds have edged up this month while those on 10-year securities have been little changed, according to Bloomberg's benchmark indexes. That's driven securities that mature in 2022 or longer to the worst performance in the market, according to Bloomberg Barclays indexes.

New York plans to issue just over $10 billion of bonds for projects in fiscal year 2020, which begins July 1, $11.5 billion in 2021 and $12.6 billion the year after.

"One of the things that we're exploring is ways to move down the yield curve," she said.

Bloomberg Markets

By Martin Z Braun

January 29, 2019, 11:51 AM MST

Commentary: Super Bowl's Mercedes-Benz Stadium Has That New-Subsidy Smell.

Sunday's Super Bowl, a rematch 17 years in the making, harkens back to a thrilling 2002 title game between Tom Brady's underdog New England Patriots and the high-flying St. Louis (now-Los Angeles) Rams. But the host of this year's game, Atlanta's sparkling new Mercedes-Benz Stadium, reminds us of something less thrilling: the $1 billion or so that politicians give away in unnecessary public handouts to professional sports every year.

The $1.6 billion stadium was underwritten by $248 million in local bonds. Once taxpayers pay those off, they'll then write the NFL's Atlanta Falcons an annual check for stadium operations and upkeep. Our calculations suggest taxpayers will pay around $1.02 billion over the course of the deal. Combined with $77 million in sales tax rebates, infrastructure investments, and city-provided land, locals could be on the hook for over five times the initial $200 million estimate.

The story is the same in most other sports cities. And like other sports teams, the Falcons rake in buckets of money: corporate sponsorships ($900 million) and personal seat licenses ($267 million) could have paid for 75 percent of the stadium cost alone, not to mention annual revenue from season ticket sales ($550 to $3,850 per ticket), TV revenue and merchandise licensing ($256 million), stadium concessions, and other events held in the stadium.

There are only so many tax dollars to go around. Misspending them to enhance sports industry profits means that public services must be cut, taxes have to be higher, or both. Atlanta will spend about as much on the stadium as it would cost to employ an additional 300 Atlanta police officers or educate 2,900 public school students for 30 years.

Perhaps even worse, Americans from coast to coast share the burden. The income that lenders earn on the municipal bonds typically used to finance stadium construction is exempt from federal income taxes. That means the rest of us have to pay higher taxes (or see the federal deficit climb even higher) to make up for the shortfall.

A tax exemption for stadium subsidies may sound like small potatoes, but Brookings Institution researchers estimated the loophole was responsible for $3.7 billion in lost federal revenue between 2000 and 2014. President Obama tried to end it, as did House Republicans in last year's tax reform, but the sports industry won each time.

Lately there have been encouraging examples of taxpayers and principled political leaders standing up to the sports industry. Last fall local citizen groups in Austin and Seattle gathered signatures to force public referenda that would require popular votes on future stadium subsidies — which is meaningful, since 70 percent of Americans say they're against giving money to sports teams.

Meanwhile, a group of Atlanta taxpayers are challenging another tax exemption. Their lawsuit argues that even though the Falcons' stadium is built on publicly owned land, the fact that the team controls all events and revenue it generates means it should pay local property taxes. That could amount to $700 million over 30 years.

And in the Washington, D.C. area, Virginia Delegate Michael Webert has for the past two years partnered with Maryland Delegate David Moon and D.C. Council member David Grosso to advance perhaps the best idea of all: an "interstate compact" that would prohibit subsidies for a new Washington Redskins stadium. This would prevent their three governments from engaging in a taxpayer-funded bidding war to attract the team.

If all 50 states were to sign on to a similar agreement, we could permanently end the subsidy war for sports teams. As a bonus, it would eliminate a major reason that leagues restrict the number of teams, so new franchises could expand into more cities.

Fans may be excited to experience the Super Bowl at Atlanta's new state-of-the-art facility, but they should remember that the money that subsidizes stadiums could go to much better purposes. Sunday's spectacle will show yet again that the NFL doesn't need — or deserve — public money.

By Michael Farren and Anne Philpot Tribune News Service (TNS)

Jan 28, 2019 Updated Jan 28, 2019

GFOA Members Lobby Congress on Muni Exemption.

WASHINGTON — Members of the Government Finance Officers Association are asking House lawmakers to sign onto a bipartisan letter seeking an assurance that any infrastructure legislation enacted this year won't jeopardize the tax exemption for municipal bonds.

More than 100 GFOA members who are attending their organization's winter meeting here are expected to visit members of Congress Tuesday. GFOA's goal is to get more than 218 House members, a majority of the chamber, to sign on to the letter, written by House Municipal Finance Caucus co-chairs Reps. C.A. "Dutch" Ruppersberger, D-Md., and Steve Stivers, R-Ohio.

The letter is addressed to House Ways and Means Committee Chairman Richard Neal, D-Mass., and ranking member Rep. Kevin, Brady, R-Texas.

Neal has been a longtime member of the Municipal Finance Caucus, but Brady has not and in late 2017 shepherded through his chamber legislation that proposed terminating tax-exempt private activity bonds and advance refundings as part of the Tax Cuts and Jobs Act.

The exemption for PABs was saved during conference negotiations with the Senate over the final tax bill, but the elimination of advance refundings remained in the final bill.

Emily Brock, director of GFOA's federal liaison center, told members of the debt committee Monday that preservation of the muni tax exemption should be their starting point in discussions with lawmakers.

GFOA also is asking its members — who represent local governments in places ranging from San Bernardino, Calif., and Rock Hill, S.C. — to ask House members to join the bipartisan Municipal Finance Caucus.

Legislatively in the muni bond area, GFOA's priorities include reinstatement of advance refundings and enhancement of what is being described as "bank eligible" bonds to lawmakers and their staffers.

Bank eligible bonds refers to what has been known in the muni industry as bank qualified or BQ debt.

The lobbying seeks to raise the limit for bank eligible bonds to $30 million per individual borrower and link the limit to inflation so that smaller borrowers such as small airports and rural public cooperatives can finance their bonds through local banks.

The current limit for bank qualified debt is $10 million and it applies to conduit issuers rather than the individual borrowers.

The 2009 American Recovery and Reinvestment Act economic stimulus bill temporarily increased the bank eligible bonds limit to $30 million for borrowers so GFOA has examples of how it was used.

However, in the last Congress there was no House sponsor of a bill on bank qualified loans or bank eligible bonds. Two Democrats on the Senate Finance Committee — Sens. Robert Menendez of New Jersey and Ben Cardin of Maryland — sponsored a Senate version of the bill. Their bill also would allow individual small borrowers who are part of a larger pooled debt issue to place $30 million in bank eligible debt.

As part of the new legislative push, a three-member GFOA delegation was scheduled to meet Tuesday with the staff of Senate Finance Committee Chairman Charles Grassely, R-Iowa, to explain how an increase in the limit on bank eligible bonds might benefit small borrowers in Iowa.

GFOA also wants its members to ask lawmakers to support permanent repeal of the excise tax on so-called Cadillac health plans enjoyed by member of some public employee unions. A bipartisan bill introduced last week, H.R. 748, by Rep. Joe Courtney, D-Conn., to do that already has 41 cosponsors, including 18 Republicans.

The Cadillac tax was one of the revenue raisers included in the Affordable Care Act.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/28/19 01:27 PM EST

[SEC Recommends No Action Against Former Babylon Town Finance Adviser.]

Jacob assisted Babylon Town with annual bonding by acting as a "liaison between the town, the brokerage firms, and bond counsel," according to a town spokesman.

The U.S. Securities and Exchange Commission has concluded its investigation into Babylon Town's former municipal finance adviser and is taking no further action.

Sheldon Pollock, assistant regional director for the SEC's Division of Enforcement, sent a letter to the town in November that stated the SEC had finished its investigation of Doug Jacob, a subcontractor for the town. "Based on the information we have as of this date, we do not intend to recommend any enforcement action by the Commission against the Town," the letter stated.

However, according to SEC guidelines, the notice "must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation," Pollock noted. An SEC spokeswoman declined to comment to Newsday.

On June 30, 2017, the SEC sent a letter to the town asking employees to preserve documents related to municipal bonding work by Jacob because the SEC believed the information was "relevant to an ongoing investigation." For more than a decade, Jacob assisted the town with annual bonding by acting as a "liaison between the town, the brokerage firms, and bond counsel," according to town spokesman Kevin Bonner.

The SEC's letters did not detail the nature of the investigation but town Supervisor Rich Schaffer has said they were looking into whether Jacob's dual roles as finance adviser and subcontractor with the town had violated the federal Dodd-Frank Act by not putting the municipality's interests ahead of his own. Jacob did not respond to a request for comment.

Jacob owns Red Hill, a general services company founded in 2007 that provides more than two dozen nonunion workers for various departments through a contract the town has with Herbert L. Greene, a solid waste consultant who lives in Williamsburg, Virginia. In the town's latest contract with Greene, which took effect in December, Greene earns $85 per hour, while Jacob, listed as a subconsultant, earns $93.50 per hour.

After the SEC announced the investigation, Jacob, who lives in Pelham in Westchester County, stepped down as finance adviser, in what the town called a temporary move pending the outcome of the investigation. Since 2017 the town has been using Capital Markets Advisors LLC of Great Neck for its annual bonding. Bonner said yesterday that the town will continue to use the company.

In a statement, Schaffer said the investigation result did not surprise him. "Doug Jacob always does what is best for the Town of Babylon," he wrote. "He has spent the last three decades helping improve the town's finances and is a big reason for our Triple-A bond rating."

Newsday

By Denise M. Bonilla
denise.bonilla@newsday.com @denisebonilla

Updated January 29, 2019 9:59 PM

Infrastructure – Stays In the USA (Please Help)

According to the Federal Trade Commission's website, only products made with "all or virtually all" U.S. parts that are processed in the U.S. may bear the cherished *Made in the USA label*. In addition, according to the FTC's guidelines, products that include foreign parts, but that are assembled in the U.S., may bear an *Assembled in the USA* label. Although the FTC does not appear to have guidelines on a *Stays in the USA* label, or a *Comprises the USA* label, we can think of at least one sort of item that might qualify – our country's infrastructure – its roads, airports, hospitals, schools and utilities. (And if we tried to print up labels to slap on all of those, we would need to add "labelmakers" to that list, too.)

It will not surprise you that this blog will then make what is for you, our readers, an obvious progression – in order to have solid infrastructure, however, we will need for the #1 financing tool for infrastructure – tax-exempt bonds – to be strong. For more than a century, tax-exempt municipal bonds have provided a significant portion of all infrastructure financing. Let's keep it that way. In an effort to nip in the bud any future flirtations with the idea of eliminating or taking a road-grader to tax-exempt bonds (if you need a reminder of what happened in the fall of 2017 click here, here or here), Rep. Dutch Ruppersberger (D-MD) and Rep. Steve Stivers (R-OH), who are the co-chairs of the Municipal Finance Caucus, drafted a letter to the House Committee on Ways and Means highlighting the benefits of tax-exempt municipal bonds. There's something for everyone in the letter ("an expression of fiscal federalism . . . freeing up resources for other needs. . . "), which is all of one page (clear ideas don't require too many words, after all). We ask that you (yes, you) contact your Congressional representatives and ask them to sign onto the letter and, if you are feeling ambitious, also ask them to consider joining (if they are not already a part of) the Municipal Finance Caucus.[1]

Letter to House Committee on Ways and Means

[1] Extra credit for artistic renderings of your favorite local infrastructure with the "Stays in the USA" label.

The Public Finance Tax Blog

By Cynthia Mog on January 28, 2019

Squire Patton Boggs

National Association of State Treasurers (NAST) 2019 Legislative Conference.

February 10, 2019 – February 12, 2019

MSRB board members and staff will discuss "three burning questions" at the Mayflower Hotel in Washington, D.C.

Click here to learn more and to register.

TAX - LOUISIANA

Board of Supervisors of Louisiana State University v. 2226 Canal Street, L.L.C.

Court of Appeal of Louisiana, Fourth Circuit - December 19, 2018 - So.3d - 2018 WL 6683220 - 2018-0254 (La.App. 4 Cir. 12/19/18)

Owners of properties, that had been expropriated by a university and Veterans Administration for construction of new medical facilities following Hurricane Katrina, moved to release monies remaining in registry of the court pursuant to a settlement agreement and city opposed contending that the monies were owed as property taxes.

The District Court granted the release. City appealed.

The Court of Appeal held that the property owners were entitled to withdraw the funds from court registry under settlement agreement.

Property owners were entitled to withdraw funds from court registry under settlement agreement; property owners had settled after expropriation of their properties to build medical facilities, and only remaining monies were those earmarked for alleged property taxes, but settlement provided that property owners were entitled to withdraw any remaining funds to the extent permitted by law, and there was no express exclusion pertaining to taxes.

TAX - INDIANA

Daw v. Hancock County Assessor

Tax Court of Indiana - December 5, 2018 - N.E.3d - 2018 WL 6498872

Property owners filed petition for review of Indiana Board of Tax Review's determination that declined to address their annexation and storm-water claims and that they failed to show that assessment of their property should be changed.

The Tax Court held that:

- Town's storm-water charges were taxes, rather than user fees;
- Board's decision was a final determination;
- Claims arose under Indiana's tax law; and
- Property owners failed to establish a prima facie case for a reduction of assessment of their property.

Town's storm water charges were taxes, rather than user fees, as required for property owners' appeal from Indiana Board of Tax Review's determinations on their annexation and storm-water claims to be an original tax appeal within the jurisdiction of the Tax Court; town imposed storm-water charges on nearly all the real property within its corporate boundaries, owners of that property received bills for the charges either on a monthly basis with the billing statements for their other town services or biannually with their property-tax bills, and property owners could not decline the service or control the extent to which the service was used.

Indiana Board of Tax Review's decision with respect to property owners annexation and storm-water claim was a final determination, as required for property owners' appeal from the decision to be an original tax appeal within the jurisdiction of the Tax Court, even though Board determined that it lacked the statutory authority to address the claims; decision ended the administrative process with respect to those claims and ultimately compelled the property owners to challenge that determination by filing an appeal with the Tax Court.

Property owners annexation and storm-water claims arose under Indiana's tax law, as required for property owners' appeal from Indiana Board of Tax Review's determinations on the claims to be an original tax appeal within the jurisdiction of the Tax Court, even though claims did not challenge the collection of taxes directly; claims could arise under Indiana tax laws if they challenged earlier steps in the taxation or assessment process.

Property owners failed to establish a prima facie case for a reduction of assessment of their agricultural property, even though they applied an alternative valuation methodology as allowed under the guidelines of the Department of Local Government Finance; property owners failed to show that they actually converted property's decreased crop production capacity into a value or that their valuation method comported with generally accepted appraisal principles

---

'Green Bonds' May Be Our Best Bet for Environmental Damage Control.

The popularity of green bonds as a way to finance environmentally friendly projects is on the upswing, say Malcolm Baker and George Serafeim.

Municipalities have been selling bonds to pay for public works projects—fire stations, parking garages,s ewage treatment systems—for 200 years. It's only in the past decade or so, however, that they've been selling them with an extra perk: helping the environment.

In the absence of a global carbon pricing scheme, bond markets will be central to financing climate change and other environmental interventions. So-called green bonds appeal to investors who are looking for a safe place to park their money, as well as doing a little bit of good for the world.

Harvard Business School professors George Serafeim and Malcolm Baker have long been interested in investor motivations that go beyond pure financial return to include environmental, social, and governance (ESG) criteria. With the recent uptick in green bonds, they wondered how that might improve municipalities' ability to help the environment by accessing finance at better terms.

"The whole idea of ESG investing is predicated on the notion that by tilting their portfolios towards securities that have better ESG properties, investors might be able to change who has access to lower-cost capital," says Baker, Robert G. Kirby Professor of Business Administration at HBS. "In the process, they jump-start investing in areas that might be important for the environment."

They examine the phenomenon in a new paper for the National Bureau of Economic Research, Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds, written with Daniel Bergstresser of Brandeis University and Jeffrey Wurgler of NYU's Stern School of Business.

While green bonds have been issued by banks and corporations as well, the researchers focused on municipal bonds, which are the most ubiquitous green bonds historically in the United States, and the easiest to track thanks to the availability of government data.

For starters, determining what bonds truly qualify as green—as opposed to just greenwashing—wasn't straightforward.

"There isn't a crisp definition about what is a green bond and what isn't," says Serafeim, a professor in the Accounting and Management Unit. "The test we used was to look at how the money from the bond flows into actual projects, and whether those projects are going to deliver environmental benefits."

The projects include efforts to create alternative energy by building solar panels and wind turbines, as well as projects to improve water efficiency, control pollution, create sustainable agriculture and forestry, or provide infrastructure for electric vehicles.

While not all projects have a climate-change benefit, many help reduce future carbon emissions or even remove carbon emissions from the atmosphere. In addition to looking at bonds self-labeled as green by municipalities, the researchers also considered certification by the nonprofit Climate Change Initiative, which provides a Climate Bond Standard (CBS) rating.

Green bonds priced at a premium

In the past eight or nine years, they found, the green bond market has gone from nonexistent to $160 billion. (The first green bond was issued in 2007 by the European Investment Bank.) When the researchers compared green bonds with other bonds issued by the same municipality, they found a slightly lower yield of 6 basis points (.06 percent) for self-identified green bonds, and up to 20 basis points (.2 percent) for certified green bonds.

That means that investors are placing a premium on green bonds and are willing to accept a lower rate of return in exchange for the environmental benefits. Given the typical duration of municipal bonds, this yield difference amounts to a green bond price that is in the range of 0.6 percent to 2 percent higher than a comparable brown bond.

"The story is supply and demand," says Baker. "If there is an element of a security that the investor desires for nonfinancial reasons, it will trade at a higher price than other securities."

In addition, the researchers found that green bonds were more concentrated in their ownership in a small group of investors—reflecting the smaller subset of investors who place value on environmental benefits, such as funds that have some green or social investing orientation.

While the difference in return is admittedly small, it could be a factor in tipping the scales for municipalities favoring green bonds.

"One way to make them more appealing to issuers is to offer them at more favorable terms," Baker says. "If I'm an entrepreneur or state government and I have to choose between a project that is green and one that isn't, one factor in that decision will be the terms at which I can finance it. That is the sense in which green bonds can theoretically push firms and municipalities in the direction of doing something environmentally friendly."

That would make green bonds attractive as part of the solution to improving the environment and combatting climate change. "It's one of the many different actions in a larger menu of potential solutions, that would include investor engagement with corporate management and more powerful political interventions such as regulation and taxation," Serafeim says.

As green bonds continue to gain in popularity, the researchers are interested to see if they continue to command a premium price. As more green bonds are issued, especially by government entities in Europe and China, their price could fall due to an increase in supply. On the other hand, as they continue to gain in popularity, more investors could value green bonds, pushing up price due to increased demand.

"It is a bit of a battle between the number of investors who place extra value on green bonds versus the total supply of these types of bonds," Baker says. Either way, the positive trend towards seeing more interest in green bonds from both municipalities and investors can only help in the battle to address climate change.

29 JAN 2019 | by Michael Blanding

Harvard Business School

Infrastructure Must Be the Top Priority for Congress this Year.

With fresh crops of lawmakers on Capitol Hill, infrastructure is a popular topic again. Will the conversation change or will urgent infrastructure needs knotted with unending debate over failed delivery plans continue to go unaddressed? Lasting positive economic benefits require aligning public financial incentives with compelling projects. Thoughtful dialogue is necessary on risks, returns, operations, maintenance, state and local responsibilities, and the mix of sector funding for the coming decades.

Infrastructure is a broad subject area with a leading purpose to increase nationwide economic productivity and social welfare. Our occasional infrastructure disruptions offer blunt reminders that essential services cannot be taken for granted. It is easy to project the long term fallout of critical infrastructure failure when it results in depressed productivity, stunted economic growth, and perhaps lower quality of life. Reducing federal regulatory red tape may no longer be the largest impediment.

While the federal government plays an important role, state and local governments are best positioned to advance new innovative solutions. Reinvigorating our infrastructure can be achieved through introduction of an updated process for the value over a full life cycle of the project including design, building, finance, operation, and maintenance. Better interagency coordination is also required. The challenges remain the same today as they always are with voluminous needs spread across multijurisdictional projects with far ranging levels of financial flexibility.

Greater consumption of data driven insights combined with changing economics, glaring upfront costs, dangling phantasmagoric federal incentives and impediments, and insufficient government interagency coordination make it virtually impossible to craft good policy addressing the nationwide needs in the short term. Finding the balance within legal and business frameworks to bring the best value to all regions, parties, citizens, and investors will be evolutionary rather than revolutionary.

Ideas embrace more than transportation, renewable energy, or water projects. Social infrastructure is ripe with opportunities such as health care, housing, and education. New construction is not required for every project. Years of pent up demand combined with innovative materials, engineering, and information can allow a publicly sponsored enterprise to provide a quality product while exhausting possibilities of each revenue stream, along with creating and capturing some value previously lacking.

Information technology can now precisely measure operational services including toll road use and electricity consumption. Many elements run under separate public agencies or governance structures. Exploiting value from existing operations through analytics can help achieve optimal utilization. Innovative financing strategies will also surface, but public private partnerships are establishing a strong beachhead. Diverse capital is available with many investors seeking to finance or take on projects.

In a public private partnership, the government transfers economic risks to the private sector for a set period while maintaining the ownership of public assets. Significant capital is available to finance viable projects through public private partnerships. Incentives are needed for projects with unclear economics such as rural broadband. Traditional municipal bonds remain reliable vehicles for financing costs. Publicly sponsored enterprises can create value previously lacking, but advancements offer their own challenges such as cyber threats to advanced infrastructure.

Public policy must keep the focus on cyber protections as we modernize our infrastructure. Incentives should include performance contracts and maintenance plans. Projects should use time tested financing options such as municipal bonds and incorporate public private partnerships. Regional initiatives may prove to be better investments than shovel ready multijurisdictional national projects. Lawmakers should streamline and expand interagency coordination and employ new technology to operate and maintain infrastructure. The process of aligning incentives must be updated to refocus on value over a full life cycle of the project. Congress should take up this important work. The conversation needs to change.

THE HILL

BY ROBERT AMODEO, OPINION CONTRIBUTOR — 02/01/19 06:00 PM EST

Robert Amodeo is the head of municipal investments at Western Asset Management, which is a subsidiary of Legg Mason. His opinions are not meant to be viewed as investment advice or a solicitation for investment.

State of the States 2019: Getting America Connected.

The nation's governors are laying out policy priorities for the coming year — some for the first time. Many are focused on technology-driven economic and workforce development as paths to prosperity.

The influx of new governors across the country cast a slightly different tone in this year's State of the State addresses. Typically the most notable policy speech given by each state's top elected official, veteran governors often make the address equal parts retrospective and prospective, pointing to their successes during their terms thus far, while hinting at their plans to take on issues that continue to need attention. But new governors don't have a record to point to just yet, so their speeches tend to be more forward-looking. Government Technology editorial staff reviewed each speech and rated it from 1 to 5 based on the strength of its technology initiatives.

Based on early speeches, common themes predominate, with most governors laying out plans to strengthen state education systems with a parallel focus on job creation. Technology factors heavily into both. Many speeches refer to specific programs aimed at injecting more resources into things like coding and other science, technology, engineering and math (STEM)-related curriculum. Likewise, luring and growing tech-related industry to their states is high on the list of many leaders who are eager to rattle off the names of new investments from familiar tech giants with footprints throughout the country.

In easily the most often discussed tech-related priority, about half of governors got specific about the importance of continuing to work on extending the benefits of high-speed Internet to every corner of their state. Incoming Virginia Gov. Ralph Northam said it was the top issue identified by his constituents, while many others included specific budget requests for broadband in their speeches. Colorado Gov. Jared Polis offered a familiar sentiment on connectivity: "In the 21st-century economy, broadband is critical infrastructure that everyone must have access to," he said, asking the Legislature to join him in delivering for Coloradans.

Connecticut Gov. Ned Lamont lamented the state's budget shortfall, and pointed to some specific ways technology could help address it. Advocating for a one-stop-shop-style experience for citizens interacting with government, he called on policymakers to support the creation of "the first all-digital government" in Connecticut, with an emphasis on shared services and tech-powered efficiencies throughout the enterprise. North Dakota Gov. Doug Burgum again delivered a tech-heavy speech, asking lawmakers to support nearly $200 million in IT infrastructure improvements to strengthen cybersecurity and modernize key programs with updated tools. Burgum was also one of a few state leaders to specifically talk about the potential of emerging technologies, asking for an additional $30 million for infrastructure to support the development of the drone industry in North Dakota.

See our analysis of how the rest of the nation's governors fared below. Evaluations will be added as additional speeches are delivered.

Continue reading.

GOVTECH.COM

BY NEWS STAFF / JANUARY 31, 2019

Policy and Politics Program Director Talks Effectiveness of Public-Private Water Systems.

On Monday, the Ford School of Public Policy hosted an event featuring Manny Teodoro, director of the Policy and Politics Program and associate professor at Texas A&M University, who has conducted significant research on the nation's water systems. The event, titled "Water System Finance: the Political Pitfalls of Public-Private Partnerships," covered the effects of public-private partnerships on water systems.

Teodoro started his talk by introducing a unique caveat in the water market — the disparity in the visibility of the price of water and its quality in the market.

"With water, the cost is much more visible than quality," Teodoro said. "Most of the contaminants in water are invisible to us. However, the price of water is very easily and readily observable."

As such, Teodoro argued if a water system is run by the local government, then it will naturally focus on reducing the price of water to appease residents — a stance that will also inadvertently lead to lower water quality.

"The goal of every politician who wants to get re-elected wants to minimize price and maximize quality," Teodoro said. "However, because of how much more visible prices are than quality for water, the long-run outcome is low prices and low quality."

Alternatively, in private-run water systems, the price companies are allowed to charge for water is limited by how much they invest in their water infrastructure, which is a limit enforced by the public utilities commission. Because of this, they are incentivized to over-invest in their water infrastructure, which will lead to high quality water but also high prices.

“The goal of every company is to make profit,” Teodoro said. “As such, they are incentivized to maximize investment so that the public utilities commission will allow them to raise prices in conjunction with their higher investments. As such, private water tends to be high price and high quality.”

However, Teodoro also argued public-private partnerships are not the solution to this dilemma.

“In public-private partnerships, the local government sets the price for the water and the private company has to figure out how to maximize its profits within that,” Teodoro said. “As such, the incentive for these private companies is to reduce operating costs. This results in low-priced water but also low-quality water.”

Furthermore, Teodoro disputed the perception that public-private partnerships are a solution for financially constrained water markets, emphasizing how they are a mechanism, not a self-sufficient source of revenue.

“Privatization of public partnerships are not sources of capital. In the end, the money’s coming from the same people,” Teodoro said. “The rate increases are still going to be needed to upgrade infrastructure, or else they will continue to fail.”

After the talk, Sheny Puspita, a Public Policy graduate student, reflected on her views of the water systems and her main takeaways from the talk.

She discussed how more successful systems tend to be small, privately-owned water plants, but improvements are needed in larger, public water systems.

“The private-owned model only works with small-scale water plants, but we need to improve number of larger-scale water plants,” Puspita said.

Puspita also acknowledged private water plants do tend to produce higher quality water and operate more efficiently.

“I believe that private water plants will enhance the quality of water and efficiency of water plants,” she said.

Puspita spoke of her concern of how politicians would use public-private partnerships to shield themselves away from their responsibility for their constituencies’ water systems.

Marc Jaruzel, a Public Policy graduate student, echoed some of the skepticism for public-private water system partnerships.

“Public-private partnerships aren’t necessarily the fix-all,” Jaruzel said. “There is some evidence that it may be beneficial, but we just can’t say definitively whether P3s will be beneficial or not.”

Jaruzel commented on how having competing public water systems would not be a feasible solution either.

“I think public competition would be really challenging because you would have to have different pipes laying in the ground from different companies,” Jaruzel said. “I think it would take a really creative solution to get utilities to compete in a similar way as other businesses.”

THE MICHIGAN DAILY

MICHAEL ZHANG
Daily Staff Reporter

Monday, January 28, 2019 – 8:38pm

In the Zone.

A new federal program may be a boon to distressed cities – if it targets the right ones.

York, Pa., grew up making things. The brick smokestacks that break up the skyline are inescapable reminders of its industrial past. Buildings that once housed factories employing hundreds of workers have now been converted into warehouses that employ only a handful of people, at wages that don't come close to rivaling those of their industrial predecessors.

Mayor Michael Helfrich grew up in York. He remembers when middle-class jobs were only a short walk away from the homes of the men and women who produced everything from Pullman cars to Pfaltzgraff dinner plates to York Peppermint Patties. Those companies are gone. Pullman succumbed to competition from Detroit automakers. Hershey's bought the York candy factory and moved production to its own plants, which eventually landed in Mexico in 2009. Pfaltzgraff was purchased in 2005 and its operations moved to China.

But most of the jobs haven't left because of competition or consolidation as much as they've left to escape York's taxes, which are almost three times the rate in surrounding York County. The taxes have led to a vicious cycle — innovation, development and flight — that has persisted for decades. "We used to build wealth in the city of York," Helfrich says. "In almost 50 years, we have not seen that. Our growth has been, 'Can you come here and give us some jobs?' Meanwhile, the wealth was going somewhere else. It wasn't building in York."

Along with the commercial exodus came an exodus of residents. York's population declined by almost a third from 1950 to 2000. It has since inched back up as families pushed out by rising rents in New York and Philadelphia, or those fleeing crime in Baltimore, have landed in the city. But with unemployment approaching 9 percent, York is now a place with epidemic levels of poverty. More than one-third of the city's residents live in poverty, a higher rate than in Baltimore or Philadelphia and twice the poverty rate in New York City.

Nonetheless, Helfrich has high hopes that a new federal incentive package might bring business back to York. So-called opportunity zones, an incentive with bipartisan support, were included in the 2017 federal tax law to lure capital from Wall Street to struggling cities and towns across the country. The Economic Innovation Group (EIG), a D.C. think tank launched by Sean Parker, the founder of Napster and former president of Facebook, worked for four years on the incentive, which is meant to fix a problem that has been evident to economists and mayors for years but has eluded a solution.

That problem worsened when the recession officially ended in mid-2009. The ensuing recovery was uneven. The economic expansion was led by a handful of urban hubs, the rock stars of the recovery. Austin, Los Angeles, New York City, San Francisco, Washington, D.C., and their surrounding metro areas were far outpacing most of the country in job growth. From 2010 to 2017, nearly half of the job growth occurred in the nation's largest 20 metro areas. About half of the net increase in business establishments across the country from 2007 to 2016 took place in either D.C. or New York City. A generation ago, the opposite was the case. Job growth in the 1990s was led by rural and suburban counties, not urban centers. What the post-recession economy has favored — an educated workforce, density and an established startup culture — has left places like York far behind. “The rising tide,” says John Lettieri, president and CEO of EIG, “isn’t lifting all the boats.”

Lettieri, Parker and their colleagues created a blueprint they hoped would help even out jobs and wealth creation across the country. Investors had gotten fat on Wall Street bets. Much of their newfound money was sitting idle. If those funds could be shielded from capital gains, EIG theorized, they could be moved off Wall Street and invested in new ventures in other places.

Their idea was to allow investors to reduce their capital gains exposure in exchange for investment in certain low-income Census tracts to be designated as opportunity zones. For a place to qualify as an opportunity zone, at least 20 percent of its residents have to live in poverty, or the earnings of the residents have to be below 80 percent of the area’s median income. In return for their money, investors would be able to reduce the capital gains tax liability on their investment by 10 percent if they left their money in the zone for five years. If they didn’t move the money for seven years, they would receive a 15 percent reduction in capital gains taxes. If they kept it there 10 years, they would receive a 15 percent reduction in capital gains taxes and escape any liability on gains that came from investment in the zone. Congress bought into the idea. U.S. Treasury Secretary Steven Mnuchin estimated that $100 billion in capital would move off Wall Street as a result of the program.

Governors were allowed to mark 25 percent of the qualifying Census tracts in their states as opportunity zones. In June, the Treasury Department certified more than 8,700 zones across the United States and Puerto Rico. The exact rules are still being set, but investors needed to have their money in the opportunity zone funds by Dec. 31 to take full advantage of the benefit.

Helfrich pounced on the chance to leverage the tax incentives in opportunity zones, hoping they would be enough to overcome the high taxes in the city. He worked closely with Gov. Tom Wolf, himself a York native, to designate five city Census tracts as opportunity zones. As the deadline approached in December, only a handful of investors showed interest in York’s opportunity zones, and most of those weren’t large private equity firms from outside the city, but local investors.

York’s problem attracting outside investment to its opportunity zones has been even more frustrating considering where capital was moving. An opportunity zone fund targeting Chicago raised $105 million in 17 hours in November. When Amazon announced it had picked Long Island City, in the New York borough of Queens, as one of two sites to host the company’s second headquarters, investment sprinted to the opportunity zone that would be adjacent to the tech giant. Goldman Sachs, for example, announced it was putting $83 million into a real estate deal nearby.

Like York, Long Island City was once an industrial hub. The red neon Pepsi-Cola sign on the banks of the East River lit up the front of a bottling plant that churned out thousands of sodas each day. In the 1920s, the boom from industry lured the Bank of Manhattan to build a tower in Long Island City at the foot of the newly constructed Queensboro Bridge. When the bank opened in 1927, it was the tallest building in the borough, a title it would hold for 63 years. The surrounding square near the foot of the cantilever bridge was dubbed the Times Square of Queens.

Long Island City’s fortunes turned, just as they did in York. The bottling plant closed in 1999. The Bank of Manhattan branch was abandoned. The hands on the tower clock stopped ticking. And the slow and steady economic decline took its toll on the residents. As the factories emptied out, the demographics of the surrounding neighborhood shifted. The neighboring housing project went from a mix of white and black working-class people to largely poor residents, according to New York City’s own estimates, and almost exclusively black and Latino.

But unlike York, Long Island City has recovered in the last decade. With Manhattan and Brooklyn rents choking the wallets of the city's young professionals, it has become one of the hottest places in the city for renters, especially affluent white renters. From 2010 to 2015, Long Island City was tied for first place among neighborhoods in New York in its influx of white residents. Median home prices went up 51 percent in the last six years. And rents in the neighborhood are the highest in Queens, according to the real estate firm Zillow.

The old Bank of Manhattan tower is slated to be transformed into office and retail space with a luxury apartment complex right next door. Amazon will make an area already attractive to affluent professionals even more attractive. The company is kicking in $2.5 billion in real estate investment in the neighborhood. But since poverty persists in Long Island City, especially in the housing projects, the area was certified as an opportunity zone in June. The designation allowed Goldman Sachs to cash in on its real estate deal. The company called the timing of its announcement, on the same day as Amazon declared that it would move to Long Island City, a coincidence. And perhaps it was, but analysts see a trend in the actions of major investors. "If you look at the behavior of the real estate industry," says Timothy Weaver, an urban policy assistant professor at the University at Albany, "it is amassing vast amounts of money and directing money to take advantage of the policy." To critics, opportunity zones are threatening to bestow huge grants on communities that don't really need them.

Opportunity zones are the latest in a long series of efforts by the federal government to direct investment to impoverished areas. Since the New Deal, the government has been trying to jumpstart economic growth in portions of the country where the economy was faltering. In the 1970s, the Department of Housing and Urban Development launched Community Development Block Grants and Urban Development Action Grants to revive struggling cities. Those programs were popular with the progressive administrations and congresses that dominated federal politics during that period.

Also in the 1970s, Republicans, led by U.S. Rep. Jack Kemp, began proposing market-driven solutions to the same problems, referring to them most often as enterprise zones. Nearly all of these solutions were based on tax incentives or the loosening of economic regulations. Slightly different versions, under different names, were created and enacted by Democrats in the Clinton and Obama years. But the percentage of Americans living in poverty remained nearly unmoved through all the decades. Equally troubling was the increase in those living in extreme poverty. The number of Americans whose earnings equal less than 50 percent of the federal poverty line has more than doubled in the last 40 years, according to the Census.

Opportunity zones borrows a bit from the playbooks of the previous plans. But there are some significant changes. The market-driven solutions of the last 40 years have been in line with conservative supply-side economic policies. Investment, goes the theory, drives the economy. Cut taxes and investors will use their capital to make more money and, in turn, create jobs. Democrats in the 1980s and 1990s were largely skeptical of supply-side economics. The party insisted that market-driven programs include local hiring and local contracting provisions to make sure jobs were created in the community and the gains made by investors were shared with local businesses. For example, the empowerment zones that were established under the Clinton administration gave businesses a tax credit for hiring employees who lived in the zones. No such provisions exist in the opportunity zone program, despite backing from some prominent Democrats. Urban policy analysts see the program as an unbridled supply-side program. "It's almost a purer version of the original vision," Weaver says. "What happened with the empowerment zones and the enterprise zones is that Congress made compromises that watered them down."

While companies aren't required to hire a certain number of local employees, firms must have 70 percent of their tangible assets (property, materials and goods for sale) within the zone, a regulation designed to keep large retailers such as Amazon and Walmart from cashing in on the tax break. Even so, critics still characterize the program as too wide and unrestricted, noting that hot markets such as Chicago, Los Angeles and New York have already shown the most visible successes. Even their poorer neighborhoods are seen as better bets. That's why Long Island City, not York, Pa., is attracting so much investment. And what critics fear is that the feverish investment in hot markets will lead to displacement of low-income residents. "If these investments are going to be luxury hotels and real estate investments it's not going to help low-income people," says Chris Edwards, director of tax policy studies at the Cato Institute. "It's more likely to displace them."

When EIG designed opportunity zones, the drafters expected that real estate would be — and in their estimate, should be — the first place for investors in the zones to put their money. Businesses would need offices, and workers would need housing. Gentrification was a concern, so the program included a condition that a developer buying a piece of real estate must make an equal investment in improving the property. If developers paid $1 million for a property in a city, they were required to make $1 million in improvements.

However, in the rules released by the IRS in October, the value of the land was taken out of the calculation for necessary improvements on a property. So only the structure, if there is one, will be factored into the amount of improvement necessary to qualify under the program. In York, Helfrich is worried that investors might see his city as a place to buy up real estate and not invest in businesses. Developers have long been buying factories in the city and converting them to condominiums and loft apartments. "We are very aware of the potential pitfalls of this program," Helfrich says. "Our city wants to attract job-providing businesses and discourage those who want to gentrify the neighborhoods in our city."

Despite the market-driven underpinnings behind opportunity zones, libertarian-leaning conservatives are critical of the plan. For one thing, they insist, allowing governors to pick the areas of investment politicizes the program. The original zone map proposed for York included residential neighborhoods. But a lobbying effort by elected officials convinced the governor to move the zones to commercial areas where city leaders wanted the investment to go.

Another concern is that by lumping cities like Chicago, New York and Washington, D.C., with places such as Akron, Ohio; Clarksdale, Miss.; and York, the program is only encouraging more investment in superstar cities. "If you look in Los Angeles and New York City, many of the places that are labeled opportunity zones are places where investment is already happening," says Weaver, the urban policy professor. "And investors are going to get tax breaks on investments that were going to happen anyway."

Not only are the zones in the less attractive markets forced to compete with places such as Long Island City for investment, but the smaller markets are also competing with each other. "There are more than 8,000 Census tracts with the same tax advantage," says Brett Theodos of the Urban Institute. It'll be hard for these eager supplicants to distinguish themselves from one another. It would be simpler, he says, to play it safe and invest in Chicago, New York or Seattle.

Then there's the issue of the Treasury Department rules. One of them states that 50 percent of the gross income generated by a business in a qualified opportunity zone must result from sales made within the zone. That would essentially disqualify all but retail and real estate investment. Lettieri of EIG has been critical of the 50 percent gross revenue rule, saying that if it remains in effect, opportunity zones will fail to spur the kind of economic activity that can revive the areas the program was designed to serve. "The No. 1 outcome we should be driving for here is to support new businesses," Lettieri says. "The gross income rule is damaging to businesses unless you are a laundromat or hardware store who doesn't sell anything online."

The public comment period for the Treasury rules closed Dec. 14. EIG submitted comments in opposition to the 50 percent rule, but as of publication, it was still in the tax code.

The combined result of all this is that Helfrich is fielding only a handful of calls from outside investors. Still, there is some interest. John McElligott is the founder and CEO of York Exponential, a robotics firm that programs, designs and constructs its robots in York. On the day Governing visited the robotics plants, McElligott was set to meet with angel investors about the company's expansion. McElligott wants to construct a $136 million robotics campus on a parcel of land called the Northwest Triangle. Gov. Wolf gave the company $6 million toward the project, but York Exponential is looking to investors for the rest of the capital to create what the CEO believes will transform York into a tech hub for hardware and manufacturing. "We are not going to be a research and development community," McElligott says. "York is going to be less Facebook and more Ford."

The campus, McElligott hopes, will be the tipping point in York's renaissance. Once the new facility is operating, he believes other firms will come to York to compete either in building robots or building the materials to support his businesses' growth. As the opportunity zone program was being developed, McElligott traveled to Washington, D.C., at least once a month to lobby on behalf of York's interest.

The proposed York Exponential campus won't die if the 50 percent gross revenue rule remains in place. McElligott is confident his investors will stick with his vision whether or not they reap the benefits of a tax break. But that might not be the case for the tech firms Helfrich and McElligott would like to see orbiting the campus when it is complete. "The program under the 50 percent rule encourages you to create a pizza shop," McElligott says. "We are trying to create jobs." McElligott and Helfrich want what they describe as middle-income jobs, not retail or restaurant employment. In 2017, retail paid an average of $14 an hour, or roughly $30,000 a year, if the employee worked 40 hours a week and received paid leave, according to the Bureau of Labor Statistics.

Even if the Treasury Department removes the 50 percent rule, investors will need some handholding if they are to see places such as York as genuinely appealing targets. None will want to lose the gains made on Wall Street in a risky business proposition. "Naturally the capital in this program is going to flow to real estate," says Steve Waters, founder and CEO of SMB Intelligence, a firm that provides local government with data and information on how to grow their small business sectors. "It's only going to flow to businesses if it's directed."

Many potential investors are looking to the Treasury right now to finalize the rules governing the program. "Investors are champing at the bit to invest in opportunity zones," says Rebecca Mitich, a partner with Husch Blackwell, a law firm that specializes in using tax credits to develop real estate. "There are huge New York private equity funds and giant fund managers who are ready to go but still want additional guidance to proceed.

Lettieri believes the rules for the program are not set in stone. He and others expect more rules, perhaps a revision of the 50 percent gross revenue rule, to come in the spring. And even as the real estate activity around opportunity zones has been red hot, at what appears to be the expense of commercial business applicants, Lettieri and other backers of the opportunity zone idea believe business capital will begin to come off the sideline in 2019 as the program is better defined. If that doesn't happen and the zones remain largely a benefit for real estate development, their creators believe they won't reinvigorate communities like York. "Real estate is the floor, not the ceiling," Lettieri says. "If the road ends with real estate, that is a big shortcoming."

GOVERNING.COM

BY J. BRIAN CHARLES | FEBRUARY 2019

S&P Webcast Replay: 2019 Global Not-for-Profit Higher Education Outlook

Jan. 31, 2019 | New York, NY

S&P Global Ratings U.S Public Finance team held a live, interactive webcast on Thursday, January 31st at 2:00 pm Eastern Standard Time, for a discussion on the Global Not-for-Profit Higher Education sector Outlook, which covered both the U.S. Not-for-Profit Higher Education sector as well as International Not-for-Profit Higher Education conditions.

View The Webcast Replay

Tracking the Unequal Distribution of Community Development Funding in the US.

Abstract

There are clear winners and losers in the competition to attract this capital, including resources coming from the federal government, with some areas drawing more capital than others, even after adjusting for relative needs. Using our recently developed tool, Community Development Financial Flows, we measured flows of federally sponsored or incentivized community development capital to all US counties with more than 50,000 residents. We found that large counties received disproportionately more funding than small counties, and that the level of distress a county experiences does not directly relate to level of funding.

Download report.

The Urban Institute

by Brett Theodos & Eric Hangen

January 31, 2019

- Skadden's 2019 Insights: Political Law: What to Consider When Providing Investment Fund Services to US State and Local Government Entities.
- MSRB to Discuss SEC's Concerns on Disclosure at Quarterly Meeting.
- Hawkins Advisory: Final TEFRA Hearing & Approval Regulations
- FINRA Bond Facts.
- Adviser: EPA Letter to IRS on Opportunity Zones Merits Attention
- Save the Date: Upcoming BDA Infrastructure Events
- *Lake Ridge New Tech Schools v. Bank of New York Mellon, Trust Company, N.A.* – After indenture trustee processed fraudulent pay affidavit, District Court holds that corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds failed to

adequately allege that exculpatory clause in agreement was contrary to public policy and failed to adequately allege duty of indenture trustee independent of agreement, and thus failed to state negligence and gross negligence claims.

- And finally, Great Moments in Pedagogy – Eugenics Division is brought to us this week by *Brewington v. City of Philadelphia*, in which the kindly physical education teachers at Walter G. Smith Elementary School sent nine-year-olds crashing head-first into an unpadded concrete wall during a relay race, resulting in some serious head trauma. At first glance, tragic. But on second thought… Might it make sense to select the uh, (in)appropriate children, and speed up the inevitable via concrete wall? 'Cuz singling out the mentally/physically enfeebled for special treatment has always worked out well, right? Right? Hey, where's everyone going?

PUBLIC UTILITIES - CALIFORNIA

San Diego Gas & Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - January 15, 2019 - F.3d - 2019 WL 190306

Public utility that provided energy services in California petitioned for review of Federal Energy Regulatory Commission (FERC) declaratory order applying FERC's cancelled or abandoned electricity transmission facilities incentive, which encouraged new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, only prospectively, to investment that had yet to occur, and declining to apply the incentive to $31 million in costs that the utility had already incurred over four-year period, prior to the obtaining the declaratory order.

The Court of Appeals held that:

- Utility was aggrieved by FERC's declaratory order, and thus Court of Appeals had jurisdiction to review utility's petition challenging the declaratory order, and
- FERC's declaratory order was consistent with FERC's incentive rule and supported by substantial evidence.

Public utility that provided energy services in California was aggrieved by declaratory order of Federal Energy Regulatory Commission (FERC), that FERC's cancelled or abandoned electricity transmission facilities incentive, which encouraged new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, did not apply to $31 million in costs that utility already incurred on project, and thus Court of Appeals had jurisdiction to review utility's petition challenging the declaratory order; even though abandonment of the project might never occur, FERC's determination made the utility's project a less attractive investment for outside funders and partners, increasing costs to the utility.

Federal Energy Regulatory Commission's (FERC) declaratory order that public utility failed to establish requisite nexus between abandonment incentive, which encourages new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, and $31 million in costs utility already incurred before it sought declaratory order, was consistent with FERC's incentive rule and supported by substantial evidence; order aligned with FERC's longstanding policy that rate incentives must be prospective and that there must be a connection between the incentive and the conduct meant to be induced, and there was no evidence that the utility's four years' worth of investment in the project was beneficially affected by any assurance provided through the abandonment incentive.

SCHOOLS - FLORIDA

Citizens for Strong Schools, Inc. v. Florida State Board of Education

Supreme Court of Florida - January 4, 2019 - So.3d - 2019 WL 98253

Public school students, parents, and citizen organizations brought action against State Board of Education and various state officials for declaratory judgment that Board violated its paramount duty to provide uniform, efficient, and high quality system of free public schools, as required by Florida Constitution.

Following bench trial, the Circuit Court ruled in favor of defendants. Plaintiffs appealed. The District Court of Appeal affirmed. Plaintiffs' application for review was granted.

The Supreme Court of Florida held that challenge to adequacy of entire K-12 system failed to present any manageable standard by which to avoid judicial intrusion into legislature's powers.

Blanket constitutional challenge to adequacy of entire K-12 system failed to present any manageable standard by which to avoid judicial intrusion into legislature's powers in suit alleging low achievement and wide disparities, particularly for children experiencing poverty or attending school in poorer districts; term "high quality" in constitutional amendment requiring adequate provision for "high quality education" lacked straightforward content and could reasonably be viewed as "puffing," and basing measurement of "high quality" solely on assessment results for legislature's core content standards would constitutionalize those standards, could have perverse effect of weakening curriculum standards, and ignored legislative revision of standards.

UTILITY CONNECTION FEES - IDAHO

North Idaho Building Contractors Association v. City of Hayden

Supreme Court of Idaho, Boise - August 2018 Term - December 28, 2018 - P.3d - 2018 WL 6817041

Building contractors association filed action to have city's sewer connection/capitalization fee declared unlawful because as an impermissible tax, rather than a fee for services.

The District Court held fee was lawful and dismissed complaint. Association appealed. The Supreme Court of Idaho vacated and remanded. On remand, the District Court entered summary judgment that fee was impermissible tax, treated the taking as regulatory taking and denied equitable defenses and awarded compensation and attorney fees and costs. City appealed, and association cross-appealed.

The Supreme Court of Idaho held that:

- Study on reasonableness of fee was relevant and should have been considered before trial court granted summary judgment on remand;
- Allowing city to present the evidence would not offend notions of fair play and justice;
- Association's failure to file notice of claim under Idaho Tort Claims Act (ITCA) did not bar its federal takings claim;
- Association's failure to seek review under Regulatory Takings Act did not bar its federal takings claim;
- Factual issues as to whether city conferred a benefit on association as result of sewer connection

fee precluded summary judgment on city's equitable defense of unjust enrichment; and
- Simple interest, rather than compound interest, applied to federal takings claim.

Study on reasonableness of city sewer connection/capitalization fee was relevant and should have been considered, after remand from Supreme Court, before trial court granted summary judgment to building contractors association that fee was impermissible tax; trial court misread Court's reversal of prior summary judgment.

Allowing city to present evidence of reasonableness of city sewer connection/capitalization fee in response to building contractors association's summary judgment motion following remand from Supreme Court decision would not offend notions of fair play and justice; city was not required to conclusively establish fee's purpose when imposed, its evidence, construed in its favor, established case for reasonableness, and allowing determination to stand could lead to a windfall to developers at taxpayer expense.

Genuine issues of material fact arising from consulting study on city's $2,280 sewer connection/capitalization fee precluded summary judgment for building contractors association that fee was impermissible tax.

Building contractors association's failure to file notice of claim under Idaho Tort Claims Act (ITCA) did not bar its federal takings claim arising from city's sewer connection/capitalization fee.

Building contractors association could not seek compensation under Regulatory Takings Act for city's sewer connection/capitalization fee, and, thus, association's failure to seek review under the Act did not bar its federal takings claim.

Genuine issues of material fact as to whether city conferred a benefit on building contractors association as result of sewer connection fee precluded summary judgment on city's equitable defense of unjust enrichment in association's suit challenging fee.

Simple interest, rather than compound interest, applied to federal takings claim, as post-judgment interest was a procedural matter governed by state law.

INDENTURE TRUSTEES - INDIANA

Lake Ridge New Tech Schools v. Bank of New York Mellon, Trust Company, N.A.

United States District Court, N.D. Indiana - November 13, 2018 - F.Supp.3d - 2018 WL 5982136

Corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust brought Indiana state court action against indenture trustee, alleging breach of contract, negligence, and gross negligence after indenture trustee allegedly processed fraudulent pay affidavit.

Following removal, trustee moved to dismiss for failure to state a claim.

The District Court held that:

- Corporation failed to adequately allege post-agreement conduct which could have modified terms of agreement, and thus failed to state breach of contract claim based on alleged breach of such

conduct;
- Corporation failed to state claim for breach of agreement provision prohibiting misconduct and gross negligence;
- Corporation failed to adequately allege that exculpatory clause in agreement was contrary to public policy;
- Corporation failed to adequately allege duty of indenture trustee independent of agreement, and thus failed to state negligence and gross negligence claims; and
- Corporation failed to adequately allege that economic loss doctrine did not bar negligence and gross negligence claims.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege post-agreement conduct which could have modified terms of agreement, and thus failed to state breach of contract claim against indenture trustee based on its alleged breach of such conduct; corporation alleged that indenture trustee, in processing what allegedly turned out to be fraudulent pay affidavit, had breached protocol which had developed following agreement, but protocol was consistent with agreement, which provided minimum framework for processing pay affidavits, and none of protocol evinced bargained-for-exchange between corporation and indenture trustee for something of value.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege misconduct or gross negligence by indenture trustee, and thus failed to state breach of contract claim against indenture trustee based on agreement provision prohibiting misconduct and gross negligence; corporation alleged that pay affidavit sent from e-mail account of authorized officer and processed by indenture trustee had actually been fraudulent, but trust indenture agreement provided that indenture trustee would conclusively presume that directions purporting to have been sent by authorized officer had been so sent by such officer.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to allege imbalance in bargaining power sufficient to render against public policy exculpatory clause in agreement which absolved indenture trustee of liability for processing fraudulent pay affidavit submitted through e-mail, and thus corporation failed to state breach of contract claim based on alleged processing of such affidavit; corporation did not allege that it had only been able to negotiate with indenture trustee, and no other party, for administration of trust, or that any supposed weaker bargaining position had prevented it from negotiating away exculpatory clause.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege separate duty of indenture trustee independent of indenture trust agreement, and thus failed to state negligence or gross negligence claims against indenture trustee based on its alleged processing of fraudulent pay affidavit; corporation alleged that indenture trustee was liable for failing to select agents and employees in manner which would have prevented alleged unauthorized payment from trust account, and because its agents and employees had acted in grossly negligent manner in processing alleged fraudulent pay affidavit.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege injury distinct from injury resulting from indenture trustee’s alleged breach of agreement, and thus, under economic loss doctrine, corporation failed to state negligence or gross negligence claims against indenture trustee based on its alleged processing of fraudulent pay affidavit; only injury alleged by corporation was that resulting from alleged processing of fraudulent pay affidavit, a process governed by trust indenture agreement.

Under Indiana law, the economic loss doctrine does not include the relationship involving an indenture trustee as one that falls outside the scope of the economic loss doctrine.

EMINENT DOMAIN - MICHIGAN

Lumbard v. City of Ann Arbor

United States Court of Appeals, Sixth Circuit - January 10, 2019 - F.3d - 2019 WL 150856

Homeowners filed § 1983 action against city alleging that ordinance requiring them undergo structural renovations to their homes to alleviate storm water drainage problems amounted to taking without just compensation.

The United States District Court dismissed complaint, and homeowners appealed.

The Court of Appeals held that:

- Homeowners waived prudential requirement of exhaustion of state remedies, and
- Final judgments entered in homeowners' prior state court actions precluded them from asserting federal takings claims.

Homeowners waived prudential requirement of exhaustion of state remedies for ripeness in federal court with regard to their claim that city ordinance requiring them undergo structural renovations to their homes to alleviate storm water drainage problems amounted to taking without just compensation by obtaining remand to state court after city removed homeowners' state court action to federal court on ground that federal claims were unripe.

Under Michigan law, final judgments in homeowners' prior state court actions adjudicating their takings claims under state law precluded them from asserting federal takings claims in their § 1983 action against city; if Takings Clauses in Michigan and federal constitutions were coextensive, then issue preclusion barred subsequent litigation of federal takings claim after litigation of state takings claim on merits, and if Takings Clauses were not coextensive, then claim preclusion barred subsequent litigation of federal takings claim because it should have been brought in first instance in state court.

EMINENT DOMAIN - MISSISSIPPI

Alford v. United States

United States Court of Federal Claims - January 10, 2019 - Fed.Cl. - 2019 WL 171560

Owners of property on an oxbow lake brought action against United States Army Corps of Engineers for allegedly effecting a Fifth Amendment taking of their property by raising the water levels in the lake, in order to preserve a nearby levee along the Mississippi River.

The Court of Federal Claims held that:

- Doctrine of necessity did not apply to preclude compensating property owners;

- Doctrine of relative benefits did not apply to preclude compensating property owners;
- General benefit that came from the levee did not offset compensation owed by the government to property owners;
- Just compensation would be calculated based on value of the property immediately before the flooding of the lake;
- Property owners could not recover their business's lost profits as just compensation for the taking;
- Loss and enjoyment of owner's property was not compensable; and
- Owner could not recover for cost of having to evacuate her home pursuant to evacuation orders issued by county.

Doctrine of necessity did not apply to preclude compensating owners of property on an oxbow lake for the taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses, where the Corps considered its options carefully and deliberately over a period of more than a year, it chose the most effective and cost-efficient way of dealing with the problem of sand boils undercutting the levee, and the flooding of the lake served as a temporary stay of the danger while a more permanent solution at a cost of $2.7 million occurred after the Mississippi River's flood stage abated.

Doctrine of relative benefits did not apply to preclude compensating owners of property on an oxbow lake for taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses; although in the hypothetical world in which a levee breach occurred, the property owners would have been far worse off, along with 10,000 other citizens whose properties would have been flooded, in the real world, all 10,000 other citizens were unaffected, while the owners' properties were significantly damaged, after the Corps determined that flooding their land was an efficient way to solve the problem of sand boils undercutting the levee.

The general benefit that came from either the federal government's building of the levee system along the Mississippi River or the operation of bayou control structure did not offset compensation owed by the government to owners of property on an oxbow lake for taking their land when United States Army Corps of Engineers raised water levels in the lake, in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses; although the levee and control structure benefited the owners, as well as most of the Mississippi Delta population and the region's economy, if the benefits citizens got from federal government were to be put on the scale in a taking case, the citizen would always lose, particularly anywhere along the several thousand miles of the Mississippi River system.

Under the before-and-after method for calculating just compensation to owners of property on an oxbow lake for the taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses, the "before" calculation should not rely on the hypothetical expectation that the levee would have breached, but, instead, the "before" calculation was the value of the property immediately before the flooding of the lake.

The $36,404 in lost profits that property owners' business allegedly sustained from the flooding of their lakeshore property by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, fell under the purview of consequential damages, and thus, the owners could not recover lost profits as just compensation for the taking.

The $19,350 property owner sought from the government, which represented the valuation of the loss and enjoyment of his lakeshore property as a result of the flooding of the property by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, were consequential damages, and thus, the owner could not recover that amount as just compensation for the taking.

The owner of property on an oxbow lake could not recover from the federal government for the cost of having to evacuate her home, as just compensation for the taking of her property that resulted when United States Army Corps of Engineers raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, where the county, and not the federal government, issued evacuation orders.

ZONING & PLANNING - NEW YORK

Stengel v. Town of Poughkeepsie Zoning Board of Appeals

Supreme Court, Appellate Division, Second Department, New York - December 12, 2018 - N.Y.S.3d - 167 A.D.3d 754 - 2018 WL 6519204 - 2018 N.Y. Slip Op. 08489

Residential neighbors of site of proposed motor vehicle service facility brought article 78 action seeking to annual determinations of town zoning board of appeals granting area variances and special use permit to site’s owner.

The Supreme Court, Dutchess County, denied petition. Neighbors appealed.

The Supreme Court, Appellate Division, held that board’s decision to grant area variances had a rational basis and was not arbitrary and capricious.

Town zoning board of appeals’ decision to grant application for area variances in connection with proposed motor vehicle service facility had a rational basis and was not arbitrary and capricious, even though the proposed variances were substantial and the applicant’s alleged difficulty was self-created; evidence supported board’s findings that proposed construction would not produce undesirable change in character of neighborhood, have adverse impact on physical or environmental conditions, or otherwise result in detriment to health, safety, and welfare of neighborhood or community, and board rationally concluded that benefit sought by applicant could not be achieved by feasible alternative method.

IMMUNITY - PENNSYLVANIA

Brewington v. City of Philadelphia

Supreme Court of Pennsylvania - December 28, 2018 - A.3d - 2018 WL 6815459

Parent, as guardian for her son, brought action against school district alleging negligence arising out of injuries to son when he hit his head on a concrete wall during a relay race in gym class.

The Court of Common Pleas granted school district’s motion for summary judgment. Parent appealed. The Commonwealth Court reversed. District appealed.

The Supreme Court of Pennsylvania held that school was not entitled to governmental immunity, disapproving *Rieger v. Altoona Area School District*, 768 A.2d 912.

Under real property exception to governmental immunity, public school was not immune from negligence claim arising from injury that student suffered when he ran into unpadded wall during gym class; student's mother alleged that school negligently failed to apply padding, and concrete walls constituted real property.

Personalty alone may not serve as the basis to trigger the real property exception to governmental immunity; disapproving *Rieger v. Altoona Area School District*, 768 A.2d 912.

PUBLIC UTILITIES - RHODE ISLAND

In re A&R Marine Corp.

Supreme Court of Rhode Island - January 16, 2019 - A.3d - 2019 WL 209648

Town petitioned for a writ of certiorari for review of an order from Public Utilities Commission (PUC) which denied town's request for discounted rate for ferry service.

The Supreme Court of Rhode Island held that PUC was not legally authorized to act upon town's request.

Public utilities statute does not give the Public Utilities Commission (PUC) the power to impose a discounted rate on a public utility; rather, it grants a public utility the power to propose a discounted rate for a town if the public utility chooses to make such a proposal.

LIABILITY - TEXAS

Jefferson County, Texas v. Farris

Court of Appeals of Texas, Houston (1st Dist.) - December 28, 2018 - S.W.3d - 2018 WL 6844046

Widow of retired county judge brought wrongful death and survival action against county in its capacity as premises owner and employer, claiming judge was exposed to asbestos while working in county courthouse and annex and then died from mesothelioma.

The 11th District Court denied county's plea to the jurisdiction. County filed interlocutory appeal.

The Court of Appeals held that:

- Cancer diagnosis, or manifestation of symptoms, was an incident giving rise to cause of action, thus triggering provision of the Texas Tort Claims Act (TTCA) requiring notice of the claim against a governmental entity within six months of the day that the incident giving rise to the claim occurred;
- Widow adequately pleaded a premises liability claim under TTCA; and
- Action was not barred by exclusive-remedy provision of the Texas Workers' Compensation Act (TWCA).

Retired county judge's cancer diagnosis, or manifestation of symptoms, was an incident giving rise to cause of action for his injury and death brought by judge's widow, arising from judge's alleged exposure to asbestos while working in county courthouse and his subsequent diagnosis of mesothelioma, thus triggering provision of the Texas Tort Claims Act (TTCA) requiring notice of the claim against a governmental entity within six months of the day that the incident giving rise to the claim occurred.

Retired county judge's widow adequately pleaded a premises liability claim against county in connection with judge's death from mesothelioma under provision of the Texas Tort Claims Act (TTCA) waiving governmental entity's immunity for personal injury and death caused by a condition or use of tangible personal or real property if governmental unit would, were it a private person, be liable to the claimant according to Texas law; petition alleged that judge had worked around asbestos-containing materials for many years, that county exposed judge to asbestos-containing materials that were disturbed or installed during courthouse renovations, and that county knew that asbestos products used in proximity of judge contained dangerous and harmful substances but that county failed to warn him, instruct him in proper safety precautions, or adopt or enforce a safety plan.

Wrongful death and survival action against county brought by retired county judge's widow, alleging that judge was exposed to asbestos while working in county courthouse and annex and then died from mesothelioma, was not barred by the exclusive-remedy provision of the Texas Workers' Compensation Act (TWCA), absent any evidence of last date of judge's injurious exposure to asbestos and whether county's election to provide workers' compensation coverage to elected officials continued during time judge was exposed to asbestos.

CONSTITUTIONAL LAW - VIRGINIA

Davison v. Randall

United States Court of Appeals, Fourth Circuit - January 7, 2019 - F.3d - 2019 WL 114012

County resident brought § 1983 action against official who served as chair of county board of supervisors, alleging that the chair violated his First Amendment and due process rights by blocking him from chair's social media page.

Resident sought injunctive and declaratory relief. The United States District Court for the Eastern District of Virginia dismissed resident's procedural due process claims and granted county's motion for summary judgment on claims asserted against it, but entered judgment in resident's favor on his free speech claims against the board chair, and parties cross-appealed.

The Court of Appeals held that:

- Chair of county board of supervisors acted under color of state law in maintaining government official webpage on social networking website, and in banning county resident from page;
- Government official webpage on social networking website qualified as public forum, for First Amendment purposes;
- Chair of county board of supervisors engaged in viewpoint discrimination in violation of the First Amendment by banning county resident from posting on webpage;
- County could not be liable under § 1983 for a one-off, unilateral decision by chair of the county board; and
- District court did not abuse its discretion in denying, on grounds of prejudice, the resident's motion for leave to amend his complaint.

Chair of county board of supervisors acted under color of state law in maintaining government official webpage on social networking website, and in banning county resident from page based on his past criticisms of the chair and other board members, such that the chair's actions were subject to constitutional restraints under § 1983; while the chair's enumerated duties did not include maintenance of webpage was used as a tool of governance, was categorized as government official webpage, and the specific actions giving rise to county resident's claim, the banning of resident from webpage, were linked to events which arose out of the chair's official status.

Government official webpage on social networking website, which the chair of county board of supervisors established and clothed with the trappings of her office by choosing to list her official contact information on webpage, and which she used to post public announcements and messages and to solicit comments thereon by any resident of county on any issues, qualified as public forum, for First Amendment purposes, whether a traditional public forum or only a limited or designated public forum.

POLITICAL SUBDIVISIONS - WYOMING

Wyoming Jet Center, LLC v. Jackson Hole Airport Board

Supreme Court of Wyoming - January 15, 2019 - P.3d - 2019 WL 192338 - 2019 WY 6

Requestor filed petition for access to records held by airport board.

The District Court entered summary judgment for the board, and requestor appealed.

The Supreme Court of Wyoming held that:

- Special District Act did not operate to limit the records airport board was required to retain or make available for public inspection, but rather, required that certain documents be made readily accessible for public review, and
- Airport board was a political subdivision subject to the Wyoming Public Records Act (WPRA).

Special District Act did not operate to limit the records airport board was required to retain or make available for public inspection, but rather, required that certain documents be made readily accessible for public review, providing options for ensuring that such review was possible; record retention was governed by a separate set of statutes that defined what constituted a public record for retention purposes, and the Special District Act directed that the Wyoming Public Records Act (WPRA) would control the obligations of disclosure of listed documents, incorporated the WPRA, and declared its requirements controlled in the event of a conflict.

Airport board was a political subdivision subject to the Wyoming Public Records Act (WPRA); the board was created to perform a single public function under statutory authority of municipalities and counties to operate a local airport, which made it a special district over which the WPRA controlled.

FINRA Bond Facts.

How much do you really know about buying and selling bonds? Although "bond" seems like a simple word, trading bonds is anything but simple, and vastly different from trading stocks. Wouldn't it be nice if there were a tool that could give you the most important facts about a particular bond in an easy-to-digest package? FINRA has you covered.

To educate investors about their bond investments, FINRA recently introduced a new investor tool: FINRA Bond Facts. The tool helps investors understand common bond terminology and provides bond-specific information about corporate and agency bonds, including recent trade data. Bond Facts also provides sample questions that can help investors start a conversation with their brokers so they are in a position to make informed investment decisions.

What Bond Facts Will Tell Me

Bond Facts lays out the essential facts to know about any corporate or agency bond you are considering purchasing (or have already purchased) in a section called "This Bond at a Glance." For example, who is issuing the bond? What is the maturity date? What are the coupon rate and yield? What is the credit rating? Is the bond callable-and when?

However, these essential facts don't mean much to an investor who doesn't have a basic understanding of what these key terms mean. To some bond investors, these terms might be new or unfamiliar. So, Bond Facts provides straightforward explanations to help educate investors to make informed decisions.

For example, investors might wonder what a 4.122% yield to worst means for their investment. Bond Facts provides a brief definition of the term yield (total return on the money you invested) and describes the differences between three common types of yield as shown below.

Talk To Your Broker

Bond Facts also creates an important action step for investors who use the tool. All of the key bond term explanations are followed by sample questions to ask your broker. In the yield example, Bond Facts provides three questions an investor can pose to their broker, such as "what is the yield for this bond and what type of yield is it?" You can use these questions to start a conversation with your broker and make sure you understand important information about your investment. You should never hesitate to ask questions about investments a broker is recommending to you.

Getting To Bond Facts

FINRA rules require that brokers include a link to Bond Facts on the trade confirmation you receive following a corporate or agency bond transaction. This means you can click on a link to the Bond Facts site on an electronic trade confirmation or type in the URL from a paper confirmation. If you are accessing Bond Facts from your trade confirmation, the link will take you directly to information about the specific bond involved in your transaction.

If you want to research bonds before making a trade, you can use the bond's 9-digit CUSIP on the Bond Facts search page to pull up information about a particular bond. If you type in a CUSIP for a municipal security, Bond Facts will redirect you to the Municipal Securities Rulemaking Board's EMMA website, which provides investors with similar information to that available in Bond Facts.

For investors who want more information, Bond Facts provides a link to FINRA's Market Data Center where you can find additional information about a bond, including an extended trade history. Bond Facts also directs investors to more detailed investor education resources on FINRA's website for each of the key concepts covered.

January 25, 2019, 03:45:00 PM EDT By FINRA Staff (FINRAInvestorEducation@finra.org)

FINRA is dedicated to investor protection and market integrity. It regulates one critical part of the securities industry – brokerage firms doing business with the public in the United States. FINRA, *overseen by the SEC, writes rules, examines for and enforces compliance with FINRA rules and federal securities laws, registers broker-dealer personnel and offers them education and training, and informs the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers a dispute resolution forum for investors and brokerage firms and their registered employees. For more information, visit www.finra.org .*

Save the Date: Upcoming BDA Infrastructure Events

As the 116th Congress kicks off in early 2019, attention will turn to major policy initiatives that were unfinished in the previous session and at the top of this priority list will be infrastructure.

The BDA is planning events in the coming months to further its position as a thought leader on infrastructure finance – from a Main Street perspective. As key details continue to emerge, the BDA will provide updates.

Background
The House Transportation and Infrastructure Committee released a discussion draft this summer, outlining at a very high-level, priorities for a future package. A focus of the draft was innovative financing mechanisms, including public-private partnerships. The BDA views this as an opportunity to advance member priorities: PAB's, advance refundings and continued protection of tax-exempt municipal bonds.

These events will not only help drive the narrative for the need of a sweeping infrastructure overhaul but allow the BDA to position itself as a policy expert for this discussion.

Continue reading.

Bond Dealers of America

January 24, 2019

S&P U.S. Public Power And Electric Cooperative Utilities 2019 Sector Outlook: Ratings Stability Persists In A Difficult Era

S&P Global Ratings expects that public power and electric cooperative utilities will continue facing significant uncertainties in 2019. Nevertheless, we believe that these utilities will maintain sound credit quality, as they have in recent years.

Continue Reading

Jan. 22, 2019

Adviser: EPA Letter to IRS on Opportunity Zones Merits Attention

The Tax Cuts and Jobs Act of 2017 introduced the concept of Opportunity Zones (OZs) to promote long-term investment in qualifying areas. Since the law was passed, the IRS has designated some 8,700 Qualified Opportunity Zones (QOZs) across the United States, including many in key parts of the city of Cleveland.

The OZ program has garnered significant attention in the real estate community, both locally and nationwide, as it essentially allows for a) deferral of capital gains, upon reinvestment of gains in QOZ areas, until the earlier of the sale of the asset or Dec. 31, 2026; b) a partial exclusion (up to 15%) of original capital gains deferred, based on the term of ownership of the asset through 2026; and c) a 100% exclusion of capital gains through 2047 on further appreciation of qualified assets held for at least 10 years — sometimes referred to in the industry as the "juice." The juice provides enormous potential for tax savings of appreciated property.

The Treasury Department issued initial OZ program regulations on Oct. 19, 2018. The regulations provide a variety of parameters to qualify for favored tax treatment under the law, including deadlines for reinvestment of capital gains and deployment of funds. Among other things, the regulations and accompanying revenue ruling state, in effect, that as to real estate investments, either a) the investor must "substantially improve" the real estate, which may be done by doubling the tax basis of the building only, without regard to the value of the land; or b) the "original use" of the subject property must "commence" with the applicable investment.

In the context of "substantial improvements" to property, the land value is not counted. Based on the foregoing, the cost of environmental remediation of land would likely not be taken into account and the funds applied to remediation would not qualify for special treatment under the OZ program.

The "substantial improvement test and the "original use" test have garnered much comment and attention from industry and lobbying groups, as well as from inside the administration, in order to allow investors more direction and leeway in qualifying under the program.

Of perhaps greater interest, on Dec. 18, 2018, the U.S. EPA, through its Office of Brownfields and Land Revitalization (OBLR), issued a letter to the IRS asking for clarification of the above tests, primarily in the context of brownfields remediation. The purpose of the OBLR request is to spur redevelopment of brownfield and other underutilized sites by expanding the breadth and impact of the OZ program.

Specifically, the EPA submitted the following requests:

1. Allow remediation costs to be counted toward substantial improvements. The OBLR recommended that final IRS guidance should clarify that funds applied to environmental remediation (including assessment, cleanup and other site preparation costs) should qualify under the program and should be considered when evaluating the "substantial improvement" test under the regulations.

2. Allow deployment of funds over time. The OBLR asked the IRS to take into account the extended time period necessary for remediation projects and to allow for deployment of funds during the entire period of cleanup. Specifically, the EPA suggested the "stacking" of a 30-month window for cleanup, in addition to the 30-month window for vertical construction in the existing regulations.

3. Allow carryover of gains. The OBLR asked the IRS to enable gains realized from the sale of remediated property to be carried over into other QOZ property. This would allow an investor to complete remediation, sell the remediated property to a vertical developer and reap the ongoing benefits of the OZ program.

4. Allow brownfields cleanup to constitute “original use.” The OBLR also asked that the term “original use” be defined so it automatically applies to properties that are characterized as brownfield sites under the CERCLA. This would go a long way toward simplifying the analysis for investors as to whether the OZ program applies to a project.

5. Allow reuse of vacant, underutilized or land bank property to constitute “original use.” Beyond brownfields, the OBLR also recommended that the definition of “original use” should include property that is underutilized or vacant for a period of one year or more and property foreclosed upon and held by a local government or land bank. OBLR further suggested that the underutilized test may apply to the entire property or to “a portion thereof … which is used only at irregular periods or intermittently.” This would provide flexibility as to qualified redevelopment of partially shutdown facilities.

These recommendations, if adopted, would have important implications for real estate investors. For example, an investor could qualify under the program, under the original-use test, based on “underutilization” of the asset for at least one year. Also, an investor who purchases impacted properties and performs remediation and site preparation could take advantage of the program without conducting their own vertical or other redevelopment. Rather, the investor could complete sufficient remediation activities, sell the remediated property and reinvest the proceeds in other QOZ property, with a carryover of tax advantages. In addition, a redeveloper who performs both remediation and vertical development could count the remediation costs toward satisfying the “substantial improvement” test.

At this time, the real estate community awaits further IRS guidance, which has been delayed by the partial government shutdown. Many other important issues concerning the regulations persist. The final regulations will significantly alter the financial analysis of investment in sites located within OZ areas.

Crain’s Cleveland Business

Thomas J. Coyne

January 19, 2019 04:00 AM

Coyne is practice group leader of the National Real Estate Practice Group of Thompson Hine LLP.

S&P Global Not-For-Profit Higher Education 2019 Sector Outlook: Credit Pressures Proliferate

S&P Global Ratings’ outlook for the U.S. not-for-profit higher education sector in 2019 is negative. Supporting the negative outlook is rating performance over 2018 that showed a significantly higher level of downgrades (20) and ratings placed on negative outlook than upgrades (three) versus prior years.

Continue Reading

Jan. 24, 2019

S&P Health Care Credit Beat: It's Looking Like Another Down Year For Ratings

Happy New Year! We hope everyone had a good holiday season. The past year, 2018, was an active one for corporate health care ratings in terms of ratings activity. Following two years in which health care rating downgrades outnumbered upgrades (3 to 2 in 2018 and 5 to 1 in 2017), 2019 is already looking like another year of credit quality deterioration in the sector.

Continue Reading

Jan. 18, 2019

Skadden's 2019 Insights: Political Law: What to Consider When Providing Investment Fund Services to US State and Local Government Entities.

With heightened attention to investment and depository rules as well as increased enforcement of federal and state pay-to-play rules, registered investment advisers (RIAs) and broker-dealers should address the unique legal considerations that may arise when a firm provides or seeks to provide services to U.S. state and local government entities.

Investment Rules

Jurisdiction- and government entity-specific rules apply to firms that manage, hold or invest money for the government. A government entity with significant funds will often adopt a policy specifying how the funds may be invested or what securities may be purchased — delineating the types of investments that are permissible (e.g., prohibitions on swaps, equities, or investments in certain countries and industries), how the government entity views risk, how a portfolio must be diversified and the standard of care required for managers. Agreements with investment advisers or broker-dealers may even incorporate these policies by reference. Additionally, similar restrictions contained in a jurisdiction's statutes or ordinances may apply to the investments of a particular government entity or to all government funds in the jurisdiction.

> Similar restrictions contained in a jurisdiction's statutes or ordinances may apply to the investments of a particular government entity or to all government funds in the jurisdiction.

How restrictive they are often depends on whether the money is designated for investment, held by a retirement system or dedicated for some other particular purpose. Although government entities are less diligent about alerting investment advisers and broker-dealers to these restrictions, they can in some cases impose direct liability on the firm if it invests government funds in a manner that is not permitted by the applicable rules.

Depository Rules

The laws of many jurisdictions specify custodial requirements, such as that all government funds be maintained with approved depositories. In some jurisdictions, this means all funds must be held in banks rather than brokerage accounts. Moreover, firms typically need to go through a formal application and review process to become approved depositories.

Federal Pay-to-Play Rules

Under these rules, political contributions made by a company or its covered donors prohibit a covered company from engaging in, or receiving compensation for, certain business with state or local government entities. Importantly, federal pay-to-play rules are strict liability in nature, meaning criminal intent is not needed to trigger their prohibitions. Current federal pay-to-play rules are:

- The Municipal Securities Rulemaking Board's Rule G-37, which covers broker-dealers that underwrite municipal securities and municipal advisers who solicit investment advisory business for third parties, or provide advice to or on behalf of a government entity or obligated person with respect to municipal financial products or the issuance of municipal securities.
- The Securities and Exchange Commission's (SEC) Rule 206(4)-5, which covers registered investment advisers and exempt reporting advisers that provide investment advisory services to state or local government entities either directly (e.g., via a separate managed account) or through a covered investment pool. Covered investment pools include unregistered investment funds in which a government entity invests directly, as well as registered mutual funds that are selected as an option for a participant-directed plan sponsored by a government entity.
- The Commodity Futures Trading Commission's Rule 23.451, which covers swap dealers that offer or engage in commodities-based swaps with state or local governmental counterparties.
- The Financial Industry Regulatory Authority's (FINRA) Rule 2030, which covers FINRA members engaged in soliciting investment advisory services covered by the SEC rule from state or local government entities.

State and Local Pay-to-Play Rules

Certain states and localities have laws that automatically prohibit a company from having government contracts if a covered donor makes a political contribution or solicits one for a covered official or political committee. Common categories of covered donors include:

- the firm itself;
- any affiliate or the affiliate's political action committee;
- senior officers of the firm (e.g., management committee);
- members of the firm's board of directors;
- employees who solicit or manage state or local contracts; and
- in some cases, the spouses and dependent children of the individuals listed above.

These bans on business can, in some cases, last for more than five years. These laws also may impose disclosure requirements regarding political contributions. It is very common for government contracts and requests for proposals (RFP) in these jurisdictions to require a company to certify its compliance with these laws.

Lobby Laws, Placement Agent Policies and Contingent Fee Restrictions

What Triggers Lobbyist Registration

In 31 states and many localities, attempting to obtain the award of government business meets the definition of lobbying and may give rise to an obligation to register as a lobbyist. These laws vary, and many contain useful exemptions, such as for formally responding to an RFP or for in-house employees of the company who act as salespersons. In addition, some lobby laws have a threshold for triggering registration that may be based on the amount of time spent lobbying in the jurisdiction (*e.g.,* North Carolina's threshold is 5 percent of one's working time in a month), the compensation received for lobbying in the jurisdiction (*e.g.*, Indiana's threshold for executive branch lobbying is $1,000 per year) or number of contacts with covered officials (*e.g.,* San Francisco's threshold is five lobbying contacts in a month). In some jurisdictions, registration may be triggered when gifts and entertainment are provided to public officials and employees. Importantly, some jurisdictions aggregate all firm activity for these thresholds, so while a single action may not give rise to an obligation to register, it could when combined with other activities at the firm.

Requirements Once Registration Is Triggered

If registration is triggered, the individual lobbyist and/or company will need to register and report on a periodic basis. These reports typically require the disclosure of gifts and entertainment provided to public officials in the jurisdiction, compensation for lobbying and the issues lobbied. Some jurisdictions impose training requirements and special gift and political contribution restrictions on lobbyists.

Placement Agent Policies

Separate from lobby laws, government entities (particularly public pension funds) have increasingly adopted policies with respect to the use of placement agents by external investment managers. The policies range from requiring investment managers to disclose who is soliciting business to imposing outright prohibitions on investment managers' use of third-party solicitors. The rules may apply even when a firm is using in-house marketing employees to solicit business.

Contingent Fee Prohibitions

Some lobby laws prohibit the payment of contingent fees — any payment (such as a commission or formulaic bonus) that is in whole or in part attributable to a government decision (such as the decision to engage the firm). In addition, some jurisdictions (e.g., Illinois, South Carolina) prohibit contingent fees paid for soliciting certain government business, even if the solicitor does not trigger lobbyist registration. Placement agent policies also can prohibit contingent fees.

Gift Laws

When providing a thing of personal value to an official or employee of a government entity, one must consider the gift rules of that jurisdiction. These restrictions apply to personal benefits such as meals, entertainment, travel and gift items as opposed to political contributions, which may be subject to pay-to-play restrictions as described above. Most jurisdictions have some restriction on gifts and entertainment for public officials, whether it be an absolute ban regardless of value, a fixed dollar limit per occasion or per month or year, or a prohibition on providing gifts that might reasonably tend to influence an official. These gift laws often extend to things of value provided to the official's spouse or dependent children. In some instances, state and local gift laws, such as those in the state of New York, can include gifts given to a third party, such as a charity, at the request or behest of a public official. As noted above, lobbyists and companies employing lobbyists often need to report the gifts or entertainment they provide. Government entities also may have policies requiring vendors or contractors to disclose gifts they provide to their officials.

Legal liability for a violation of these laws can attach to the donor, donee or both, depending on the law. This is especially important to keep in mind in light of the fact that government entities increasingly require certifications of compliance with applicable gift laws. For example, the New

York City comptroller requires firms managing city pension fund money to certify they have not given anything of value to employees of the comptroller's office.

Conflicts of Interest

Dual-Hatted Situations

To the extent employees also hold positions with a government entity (such as serving on an unpaid government board), government conflict-of-interest restrictions may apply. Conflict rules frequently prohibit a government official from participating in a decision (such as that to award a contract) involving his or her private employer. In some rare cases, prohibitions can apply to contracts with that government entity even if the official fully recuses. Although legal liability for violations of these laws is typically limited to the official or former official, contracts that are entered into in violation of these conflict laws may be void or voidable by the government entity.

Post-Employment Rules

State and local laws typically restrict former public officials from appearing before their former agency for a period of time (often one or two years) after leaving government office and permanently restrict someone from working on a particular matter (such as a contract or procurement) that he or she personally worked on while in government. Thus, when vetting a prospective or new hire who is a former government official, a firm may want to consider whether the firm does or may seek to do government business in the jurisdiction where the official serves or served.

Takeaways

In addition to the ever-increasing risk of an enforcement action, potential legal violations can bring negative media attention. As such, broker-dealers and RIAs must continue to develop and refine compliance programs to address laws regulating government procurement activities. Common elements among these programs include implementing tailored policies, preclearing certain activities, providing protocols to ensure that registration and ongoing reporting requirements are met, offering training programs for certain officers and employees, and establishing procedures for keeping abreast of the latest developments in this area of law.

by Ki Hong and Tyler Rosen

January 23, 2019

Skadden, Arps, Slate, Meagher & Flom LLP

Chapter 9 Bankruptcy: An Overview

As investors familiarize themselves with their respective issuer's credit profile, they are essentially looking to ensure that the debtor is financially strong enough to pay back its obligations in a timely manner. Now, what happens when a municipality is unable to meet its financial obligations? The simple answer is the reorganization of municipalities, which includes cities, towns, counties, taxing districts, municipals utilities and school districts, under Chapter 9 of the Bankruptcy Codes.

Although Chapter 9 cases are rare and the restructuring laws can be very different for every state, recent local government's bankruptcies like Detroit, Michigan (2013); Jefferson County, Alabama (2011); Stockton, California (2012); and San Bernardino, California (2012), were few of the major examples in recent times that served as a rude awakening for many municipal debt investors who originally thought that municipal debt was the safest investment option out there and showed full faith in the taxing power of each local government.

In this article, we will take a closer look at the purpose of municipal bankruptcy, the eligibility requirements for municipalities, plan of adjustment and, finally, how it impacts the bondholders.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jan 23, 2019

Hawkins Advisory: Final TEFRA Hearing & Approval Regulations

The Internal Revenue Service has issued final regulations amending and modernizing the so-called TEFRA public notice, hearing and approval requirements applicable to tax-exempt private activity bonds.

The attached Hawkins Advisory discusses these final regulations.

Brookings Institution Seeks Wide Range of Muni Research.

WASHINGTON — The organizers of The Municipal Finance Conference are seeking research papers on a broad variety of topics related to state and local fiscal policy and finance in advance of the conference this summer, they announced Wednesday.

The 8th annual Municipal Finance Conference is slated to take place July 15-16 at the Brookings Institution in the nation's capital. It is a joint venture of Brookings, Brandeis University, Washington University in St. Louis, and The University of Chicago. The conference "aims to bring together academics, practitioners, and state and local government officials to discuss recent research on municipal finance," and frequently draws prominent members of the muni research community.

The deadline for proposals is March 1, and papers that have been presented elsewhere are eligible. Last year's conference featured, among many works, a paper examining municipal advisors in the wake of the Dodd-Frank Act by Brandeis Professor Dan Bergstresser and another examining life without advance refundings by Andrew Kalotay of Kalotay Analytics.

Papers will be chosen for inclusion by April 5, and drafts of the selected papers will be due by June 7, the organizers announced.

The conference agenda has not been announced. Registration will open in April.

By Kyle Glazier

New House Budget Chair Champions Bond Proposals.

WASHINGTON – The new Democratic chairman of the House Budget Committee wants Congress to consider two proposals that would have a significant impact on the municipal bond industry.

Rep. John Yarmuth of Kentucky wants to end automatic across-the-board budget cuts that include a reduction in the subsidy for direct-pay Build America Bonds, he told The Bond Buyer this week.

He also favors creating a new category of 40-year Treasury bonds to capitalize a new national infrastructure bank with an infusion of $300 billion.

Both proposals are big lifts politically. But Yarmuth – a former Republican turned Democrat – thinks they are worth consideration.

"Nobody likes sequestration," Yarmuth said in an interview, referring to the automatic spending cuts that are part of the Budget Control Act of 2011. This forced austerity on federal spending is disliked by members of both major political parties.

The Bipartisan Budget Act of 2018 suspended many of the automatic spending cuts for fiscal 2018 and 2019, but not the BABs cuts which are 6.2% in fiscal 2019.

"The absolute elimination of the risk of sequestration of direct pay bonds would be a step in the right direction," said Emily Brock, director of the federal liaison center for the Government Finance Officers Association. "I think his statement goes a long way to show that lawmakers understand the next iteration, if successful, should fully address the risks that accompanied Build America Bonds for issuers as a result of sequestration."

Yarmuth also plans to introduce legislation next month to fund a national infrastructure bank with a new category of bonds he is calling Rebuild America Bonds.The $300 billion in 40-year bonds would be sold by the federal government at a two percentage point premium over Treasuries for purchase by only pension funds to help them reduce their underfunding problems. The bonds would have to be held a minimum of 10 years.

The idea for Rebuild America Bonds came out of a discussion Yarmuth said he had with a businesswoman in his hometown of Louisville about infrastructure and the crisis faced by state pension funds. Kentucky's state pension plan is among the 10 most underfunded in the nation.

The biggest problem in creating the bonds, according to Yarmuth, will be the cost. "Legislatively the one big problem we face is that in our initial talks with CBO Congressional Budget Office they would score it as a huge cost," he said.

Build America Mutual released a one-page commentary on Jan. 7 saying that the attractiveness of Rebuild America Bonds will vary based on the status of each pension fund.

"While the option to invest in higher-yielding risk-free securities could improve the average risk profile of public pension funds nationwide, it would not be a universal benefit," wrote Les Richmond, BAM's vice president and actuary. BAM would still view the holding of the new RABs "in the context of an individual plan's investment risk and liquidity needs," he wrote.

How much support it will get among lawmakers in Congress is unknown. Much of the initial attention on infrastructure financing has been on House Transportation and Infrastructure Committee Chairman Peter DeFazio's attempt to build political support for an increase in the federal gasoline tax.

Mayor Steve Benjamin, of Columbia, S.C., who is president of the U.S. Conference of Mayors and the Municipal Bonds for America Coalition, said he wants to learn more about Yarmuth's proposal.

"We encourage innovation, but not to the detriment of tax exempt municipals," Benjamin said, adding that he "would be happy to provide advice and counsel" to Yarmuth on his proposal.

The House Budget Committee will begin work in the coming weeks on a fiscal 2020 budget resolution which Yarmuth hopes will include an end to sequestration and also will include fiscal 2021.

Yarmuth earlier this month told the newspaper Roll Call the budget resolution will call for raising the corporate tax rate to 28% from 21% to claw back some of the tax revenue lost under the 2017 Tax Cuts and Jobs Act.

Yarmuth said he expects his fellow Kentuckian Mitch McConnell, the Senate Republican Majority Leader, to support a two-year budget resolution. But Senate Republicans are virtually certain to oppose a budget resolution calling for partial repeal of their tax cuts.

A spokesman for Senate Budget Committee Chairman Mike Enzi, R-Wyo., declined comment on the sequestration issue.

Budget resolutions are a blueprint for spending that are used by the appropriations committees in the House and Senate to set budgets for each department and agency.

The last round of negotiations over a joint congressional budget resolution involving both the House and Senate began in 2017 didn't end until early 2018.

His proposal is under the jurisdiction of the Ways and Means Committee and is expected to compete with other proposals for improving the nation's infrastructure.

Yarmuth said he wants to pattern the infrastructure bank component of his Rebuild America Bonds bill after a bill authored by Rep. Rosa DeLauro, D-Conn., which had 87 cosponsors in the previous legislative session. All of the sponsors were Democrats and the Republican-controlled House did not consider it.

DeLaurore introduced her bill earlier this month. It's modeled after the European Investment Bank and would leverage private sector investment from institutional investors and pension funds. The infrastructure bank would issue Public Benefit Bonds to fund projects, and make payments to help states and localities cover their bond interest payments.

Earlier bipartisan discussions about capitalizing a national infrastructure bank centered on using the revenue from the repatriation of overseas profits made by U.S. companies. But that possibility was eliminated when Republicans used the repatriation revenue to help pay for the 2017 tax cut.

Yarmuth hopes his Rebuild America Bonds will be considered as an alternative financing option.

By Brian Tumulty

MSRB to Discuss SEC’s Concerns on Disclosure at Quarterly Meeting.

WASHINGTON — The Municipal Securities Rulemaking Board will begin preliminary conversations to address Securities and Exchange Commission Chair Jay Clayton’s comments about improving the timeliness of issuer disclosures at the board’s quarterly meeting next week.

The MSRB announced the meeting’s agenda Thursday in advance of the meeting, which will be held Jan. 29-31 at the board’s Washington headquarters.

The impetus for the discussion comes at least in part from Clayton’s statement at a December 2018 SEC conference that the SEC may be interested in taking additional regulatory action to improve municipal market disclosure.

Clayton said in prepared remarks that he has asked the commission’s Office of Municipal Securities to work with the MSRB to improve transparency and improve the timeliness of the filing of issuer financial information under continuing disclosure agreements.

The SEC does not have the authority to force issuers to file annual financial information or other continuing disclosure documents more quickly, but Clayton has said he believes there are steps the SEC can take to at least make investors aware that information filed on EMMA might be stale.

“The first step in improving it is to make sure that investors understand that the financial statements they are looking at in some cases are 18 months old,” Clayton told a Senate panel last month.

The quarterly meeting will be the first time the board will have met with the SEC since December.

“There’s a lot of conversation around the best way to bring more transparency to this issue,” said Lynnette Kelly, MSRB CEO and president. “There’s certainly a lot of very interested constituencies in the municipal market who care a lot about this issue, so very preliminary discussions at this point.”

At the meeting, Kelly said MSRB staff will present data to the board illustrating the difference between when issuers promise to file their financial statements on EMMA to when they’re actually filed.

The board will also discuss next steps on the issue of pennying. Pennying occurs when a dealer places a retail client’s bid-wanted out to the market and determines the winning bid, but rather than executing the trade with the winning bidder marginally outbids the high bid and buys the bonds for its own account.

The board has expressed concern that widespread pennying could disincentive participating in the bid-wanted process, discourage bidders from giving their best price in a bid-wanted and “may impact the efficiency of the market.” The board last year requested comment on interpretive guidance that stated that using the bid-wanted process solely for the purposes of price discovery, whether via a brokers’ broker or an alternative trading system, could be a violation of the board’s Rule G-17 on fair dealing.

The board could decide not to take next steps or could direct staff to get more information, do more economic analysis or decide to move and issue guidance, Kelly said.

As for Rule G-17, the board will address comment letters received earlier this month regarding proposed amendments to the 2012 interpretive guidance of the rule.

That 2012 guidance established obligations for underwriters to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. But those disclosures have in many cases become too lengthy and boilerplate to be as useful as intended, according to many in the market.

The MSRB has proposed amending the guidance to among other things require dealers to disclose only actual rather than potential conflicts of interest. Dealers said in comment letters to the board that they supported that idea. But the MSRB hasn't had much time to mull all the comments, as market groups submitted them fewer than two weeks ago.

"We've not had the sufficient time to do an in-depth analysis of the comment letters, we've had no time to go back to the commentators so that we really understand what their concerns are," Kelly said.

She added more outreach needs to happen and afterwards expects to go back to the board in the next three to four months with a firmer recommendation on next steps.

At the meeting, the board will meet with members of the Securities Industry and Financial Markets Association, National Association of Municipal Advisors and Government Finance Officers Association to discuss engagement and future outreach events in 2019. This is part of a new initiative to expand the board's stakeholder engagement efforts.

Other items on the agenda include the board's ongoing retrospective review of its existing rules, an update on the MSRB's data plan, and a discussion of the MSRB's financial management.

Also this week, the board released its Series 54 Examination Guide for municipal advisor principals, who must eventually pass the exam to be qualified. The 13-page guide has sample multiple choice questions and a "road map" with links to rules and concepts.

The permanent exam will be available in the fall, and at that time municipal advisor principals will have a one-year grace period to become qualified. Municipal advisor principals can take a voluntary Series 54 pilot, offered from March to July 2019.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/24/19 07:02 PM EST

Potential Flaws of Opportunity Zones Loom, as Do Risks of Large-Scale Tax Avoidance.

The 2017 tax law created a new tax break to encourage investment in low-income areas ("opportunity zones") but, as high-profile Wall Street, Silicon Valley, and real estate investors rush to profit from it, critics are raising sensible concerns about the policy:

- The law enabled state policymakers to designate relatively affluent areas as opportunity zones,

which could divert investment from truly disadvantaged communities.
- While the new tax break enables investors to accumulate more wealth, it includes no requirements to ensure that local residents benefit from investments receiving the tax break. Thus, this tax break could amount to a "subsidy for gentrification" in many areas instead of, as intended, for providing housing and jobs for low-income communities.[1]
- Potential loopholes in the law and an initial set of proposed Treasury regulations — which investors are now lobbying to re-shape — could enable investors to secure the tax benefits while generating little real economic activity in the opportunity zones. The scope of potential tax avoidance — an issue that hasn't received enough attention to date — will become clearer as Treasury finalizes its first set of regulations and releases additional guidance on how to comply with the law.
- The new tax break will cost an estimated $1.6 billion in lost federal revenue over ten years, according to Congress' Joint Committee on Taxation,[2] but the costs could be significantly higher after the first decade because, as explained below, some of the most generous tax benefits extend far into the future.[3] Moreover, the extent to which the $1.6 billion figure accounts for large-scale tax avoidance isn't clear.

Continue reading.

CENTER ON BUDGET AND POLICY PRIORITIES

BY SAMANTHA JACOBY

JANUARY 11, 2019

Guide to Understanding an Official Statement for Municipal Debt.

Prior to structuring or issuing any form of debt, the municipal issuer (local government) typically forms a team of experts to assist them with complying with all the legal requirements and structuring the issuance. While each issuance can be unique, this team typically includes an underwriting firm, bond counsel, financial adviser, rating agency, an insurer, etc.

One of the important tasks of the issuance process is preparing an Official Statement – which is prepared by or on behalf of a state or local government in connection with a new issue of municipal securities. This statement is quite comparable to a fund prospectus that is often used in the sale of equities of mutual fund sales.

In this article, we will take a closer look at the use of an Official Statement in debt issuances and how investors can use this information in their investment decisions.

Continue reading.

municipalbonds.com

Jayden Sangha

Jan 09, 2019

Fitch Ratings: Teacher Labor Actions Hamper Spending Flexibility

Fitch Ratings-New York-24 January 2019: Recent and ongoing labor actions by teachers in California, Colorado and Illinois highlight the challenges facing school districts in maintaining flexibility over their most significant expenditure, says Fitch Ratings. Material erosion of spending flexibility caused by protracted labor disputes can affect a school district's credit profile.

A six-day strike by teachers in the Los Angeles Unified School District (LAUSD) ended on Tuesday with an agreement that appears to be a compromise between the district's offer and the union's demands. The terms of the contract have yet to be clarified but once they are, we will evaluate whether they have a meaningful negative impact on the district's already limited expenditure flexibility. Fitch's Issuer Default Rating (IDR) on LAUSD is 'A' with a Negative Rating Outlook.

Oakland Unified School District's teachers' union has also been gearing up for a potential strike. The district and its teachers are in a fact-finding stage that is expected to conclude at the end of the month. Teachers are then expected to vote on whether to authorize a strike rather than accept the recommendations of a neutral fact-finding panel, as did teachers in Los Angeles.

Recent 'sick outs' by teachers in Oakland highlight a trend for labor, with or without the backing of unions, to challenge management. The sick outs, in which a subset of teachers participated, were not sanctioned by the union. As in Los Angeles, teachers in Oakland are demanding both increased pay and additional personnel to reduce class sizes and increase support services. This is despite the district's announcement that it intends to cut $30 million in the fiscal 2020 budget. The district's 'BBB+'/Stable IDR reflects solid spending flexibility but only adequate gap-closing capacity owing to a lack of control of revenues and limited financial reserves.

Teachers at Denver School District No. 1, known as Denver Public Schools (DPS), have voted to strike after negotiating with the district for over a year. DPS' teachers are seeking pay hikes above the amount the district is offering and changes to the district's incentive compensation system. The district and union leaders are reportedly seeking the state's intervention in resolving the strike. While state intervention could help resolve the impasse, we believe it would reduce the district's control over the outcome. Fitch's IDR of 'AA'/Stable reflects the district's very strong gap-closing capacity, including solid expenditure flexibility and sound reserves.

Unionized teachers at four Chicago charter schools affiliated with Chicago International Charter School and managed by Civitas Education Partners announced last week that they plan to strike on Feb. 5 if no agreement with management is reached. This would follow the first-ever charter school teacher strike, a four-day strike by teachers at the Acero charter school network in December that resulted in increased pay and smaller class sizes. Fitch does not rate any of the schools threatening to strike.

Unionized charter school teachers are unusual. A study by the National Alliance of Public Charter Schools indicates that 11% of charter school teachers were bound by collective bargaining agreements in the 2016-2017 school year.

Contact:

Amy Laskey
Managing Director, USPF
+1 212 908-0568
Fitch Ratings Inc.
300 West 57th Street

New York, NY 10019

Jose Acosta
Senior Director, USPF
+1 512 215-3726
111 Congress Avenue Suite 2010
Austin, TX 78701

Karen Ribble
Senior Director, USPF
+1 415 732-5611
1 Post Street Suite 900
San Francisco, CA 94104

Justin Patrie, CFA
Senior Director, Fitch Wire
+1 646 582-4964

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

Additional information is available on www.fitchratings.com

$400 Billion Is Looking For A New Home In Muni Land (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on PG&E and muni flows. Hosted by Abramowicz and Paul Sweeney.

Listen to Audio.

January 25, 2019

Citi Announces Inaugural Green Bond Issuance.

NEW YORK–(BUSINESS WIRE)–Citi today announced the issuance of the firm's first green bond, further enhancing its commitment to environmental and climate finance. The bond will fund renewable energy, sustainable transportation, water quality and conservation, energy efficiency and green building projects financed as part of Citi's $100 billion Environmental Finance Goal.

In the deal, which priced on 22nd January 2019, Citi issued €1 billion 3-year fixed rate notes. The transaction marks the first green bond offering from Citigroup Inc.

"We are proud to start the year with the launch of our inaugural green bond," said Jamie Forese, President of Citigroup and Head of the Institutional Clients Group. "This transaction represents an important next step in expanding Citi's commitment to sustainable growth. This bond also further enhances our green bond expertise, strengthens our partnerships with clients around the world and responds to increasing investor interest in sustainable finance."

In 2015, Citi announced a $100 Billion Environmental Finance Goal to finance and facilitate $100 billion within 10 years to support environmental solutions and accelerate the global transition to a low-carbon economy. Citi also recently announced that it will source renewable power for 100 percent of its global energy needs by 2020. Both initiatives are part of Citi's contribution to advancing the United Nations Sustainable Development Goals (SDGs). They are also key goals of Citi's Sustainable Progress Strategy, which sets out Citi's guiding principles, priorities and ambitions in environmental finance, environmental and social risk management, and the firm's own operations and supply chain.

"Since we co-founded the Green Bond Principles in 2014, Citi has played a leading role in the development of the green bond market, and we look forward to maintaining our commitment as this market continues to grow," said Michael Verdeschi, Treasurer of Citi.

Under Citi's Green Bond Framework environmentally eligible criteria have been defined as renewable energy, energy efficiency, sustainable transportation, water quality and conservation, and green buildings. The consultancy Sustainalytics has reviewed Citi's Green Bond Framework and has confirmed in their Second Party Opinion that it is aligned with the overall sustainability objectives of Citi and with the ICMA Green Bond Principles.

Citi

Citi, the leading global bank, has approximately 200 million customer accounts and does business in more than 160 countries and jurisdictions. Citi provides consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, transaction services, and wealth management.

January 22, 2019

Another Study Blames Uber and Lyft for Public Transit's Decline.

Ride-hailing services drive down bus and rail ridership in urban markets, a new University of Kentucky paper claims.

When Uber and Lyft arrived on the urban scene a decade ago, they claimed to pair well with buses and trains. By shuttling riders to train stations, guaranteeing late-night returns, and plugging in as paratransit, on-demand transportation could encourage travelers to abandon private cars and use public modes, they said. A lot of people believed them.

But now, transit systems are in crisis. Some 31 of 35 major metropolitan areas in the United States lost passengers in 2017, including the cities with largest ridership bases. There are numerous factors at play, but a small mountain of research singles out the rise of Uber and Lyft. A new paper by University of Kentucky scholars piles on: For every year after ride-hailing companies enter an urban market, rail ridership can be expected to fall by 1.3 percent, and bus ridership by 1.7 percent, it shows.

"We are starting to piece together multiple parts to the story," said Gregory Erhardt, a University of Kentucky civil engineering professor and the lead author of the study. "For a long time it's been about ride-hailing complementing transit in different ways. That is true to a degree. But it's a question of whether it's happening enough."

Continue reading.

CITYLAB

LAURA BLISS JAN 24, 2019

BlackRock Can Blame One Investor for Record Muni ETF Outflow.

- **After-hours trade yanked $163 million from biggest muni ETF**
- **Outflow contrasts with mutual funds, which have seen big gains**

BlackRock Inc. can blame one investor for a record outflow from the largest municipal-bond exchange-traded fund.

The company's $11.5 billion iShares National Muni Bond ETF, which trades off the ticker MUB, saw an outflow of $163.6 million on Wednesday, the most since the fund launched in 2007.

The culprit? One investor who sold 1.5 million shares worth about $163 million in after-hours trading yesterday, accounting for all but a tiny fraction of the big pullback from the fund.

This year hasn't been off to a good start for the BlackRock fund. It has recorded $393 million in outflows so far in 2019, more than any other municipal-bond ETF tracked by Bloomberg.

The identity of the investor hasn't been disclosed. At least 11 firms held more than 1.5 million of the ETFs shares by the end of September, according to regulatory filings compiled by Bloomberg.

The pullback is curious, given that state and local debt is headed for a positive monthly return, and may be more about routine portfolio adjustments than a judgment call about the fund. There are no signs of a larger investor exodus from the $3.8 trillion municipal-bond market, with mutual funds reporting the biggest weekly inflow in a year, according to the Investment Company Institute.

Bloomberg Markets

By Amanda Albright

January 24, 2019, 7:24 AM MST Updated on January 24, 2019, 8:26 AM MST

— With assistance by Carolina Wilson

California Sues Huntington Beach for Snubbing Affordable Housing.

- **Governor alleges Huntington Beach isn't following state law**
- **Former GOP stronghold opposed immigrant sanctuary policy**

California's leaders sued the seaside city of Huntington Beach over claims that it worsened the state's housing shortage by refusing to cooperate with a plan for more affordable units.

The unusual legal action by the most populous U.S. state against of one of its own municipalities — a historically red-voting place dubbed Surf City, USA, for the breaking waves along its 9.5-mile (15.3-

kilometer) stretch of sandy Pacific Ocean beach — was brought Friday by Attorney General Xavier Becerra at the behest of new Governor Gavin Newsom.

The case is being touted as the first test of a law that allows California officials to revoke a city's housing plan that's out of compliance with state standards. The suit was filed in Orange County Superior Court but couldn't immediately be verified in electronic records.

"Cities and counties are important partners in addressing this housing crisis, and many cities are making herculean efforts to meet this crisis head on," Newsom said in an emailed statement. "But some cities are refusing to do their part to address this crisis and willfully stand in violation of California law. Those cities will be held to account."

No other state faces a housing shortage as deep and wide as California. Fees, regulations and delays have pushed building costs to among the highest in the nation, and the state adds far fewer new units than it needs each year to meet demand. As a result, median home prices have about doubled since the end of the Great Recession, to $558,000. Two in five households in the state are considered "cost-burdened," paying more than 30 percent of their income on housing. Homelessness has reached crisis proportions.

Huntington Beach is in Orange County, once a Republican stronghold that has seen its edge slip after the 2018 elections. The Republican congressman representing the city, Dana Rohrabacher, lost to a Democrat. Becerra and Newsom are Democrats.

In Friday's complaint, the state's housing agency said the Huntington Beach city council voted unanimously in March 2016 to defeat a proposal that would have committed the city to more affordable housing. When the state told the city in November 2018 that it still wasn't in compliance, city officials said they wanted to first resolve a 2015 lawsuit brought by affordable housing advocates.

"The time for empty promises has come to an end," according to the complaint. "The city should not be allowed to avoid its statutory obligations any longer."

Huntington Beach officials didn't immediately respond to a request for comment on the suit.

This isn't Becerra's first court showdown with Huntington Beach. The city sued the attorney general and Newsom's predecessor, Jerry Brown, last April over a 2017 law that bars local police from telling federal officials when immigrants subject to deportation are about to be released from custody.

Huntington Beach supported a legal challenge by then-U.S. Attorney General Jeff Sessions to California's immigrant sanctuary laws that was largely rejected by a federal judge in Sacramento.

The case is California Department of Housing and Community Development v. City of Huntington Beach, California Superior Court, Orange County.

Bloomberg Politics

By Peter Blumberg and Romy Varghese

January 25, 2019, 1:18 PM MST Updated on January 25, 2019, 2:00 PM MST

— With assistance by Noah Buhayar, and Edvard Pettersson

[Fourth District Rejects CEQA Challenge To San Diego's Use of Existing Facilities Categorical Exemption For Mission Beach Amusement Park Lease Amendment and Extension.]

In an opinion filed December 27, 2018, and later ordered published on January 15, 2019, the Fourth District Court of Appeal (Div. 1) affirmed the trial court's judgment rejecting CEQA and other challenges to the City of San Diego's (City) approval of an amended and restated lease of City-owned land containing an oceanfront amusement park in its Mission Beach neighborhood (Belmont Park), which restated lease potentially extends the prior lease term for a significant period. *San Diegans For Open Government v. City of San Diego (Symphony Asset Pool XVI, LLC, Real Party in Interest)* (2019) ___ Cal.App.5th ___.

Relevant Factual Background

Belmont Park, developed in 1925, contains original amusement attractions including the Plunge (an indoor swimming pool) and the Giant Dipper roller coaster. Upon its developer's death, it was granted to the City, which thereafter in the early 1970's dedicated it along with adjacent land (collectively named Mission Beach Park) for public park and recreational purposes. In 1987, to renovate and revitalize the aging Belmont Park, the City entered into a 50-year Lease and Development Plan for Belmont Park (excluding the Roller Coaster) providing for the demolition and construction of various facilities, including restaurants, shops, and parking, for recreational and visitor-serving commercial uses. The 1987 Lease gave the lessee/operator (Belmont Park Associates) the right of first refusal to enter into a new lease upon terms within City's sole discretion upon City's finding of a continuation of the property's uses to be in the public's best interest.

A few months after execution of the 1987 Lease, City's electorate passed Proposition G limiting commercial development of Mission Beach Park to preserve its recreational and visitor-serving parkland uses and its amusement park's historical remnants. Proposition G provided exemptions for certain development and redevelopment projects or proposals which had obtained vested rights under its standards as determined by the City Council after an application and noticed public hearing. The City subsequently determined the Roller Coaster and Belmont Park Associates Project had vested rights to continue operation and complete development. In 1989, the Mission Bay Precise Plan was amended to recognize Mission Beach Park development would be guided by the Council-approved Lease and Development Plan until the lease expired on March 31, 2037, but recommended that future development thereafter be limited to public and recreational uses with commercial uses restricted to the Plunge building.

City's Resolution Approving The Restated Lease And The Litigation Challenging It

Following a number of lease assignments, in late 2012 Symphony became the lessee under the 1987 Lease and also acquired the entity that was lessee/operator of the Roller Coaster lease. In 2015, the City approved and entered into an amended and restated lease with Symphony encompassing both Belmont Park and the Roller Coaster. That Restated Lease recognized Symphony had already invested $18 million in capital improvements and upgrades to the property (and planned to additionally invest $5.9 in Plunge pool refurbishment); required Symphony to maintain and operate the Plunge and Roller Coaster and pay City annual rent; and provided it an opportunity for an extended lease term (of from 40 to 50 additional years) if it completed the contemplated improvements, made additional City-approved capital improvements, and paid the City a lump sum of $500,000. The Restated Lease specified numerous allowed uses of the premises and provided City could approve additional uses in its sole discretion, subject to all applicable laws.

City determined its approval of the Restated Lease was categorically exempt from CEQA under Guidelines § 15301's exemption for existing facilities. Petitioner SDOG challenged City's resolution approving the Restated Lease, alleging it violated Proposition G, CEQA, and a City Charter provision requiring actions authorizing "contract[s], agreement[s], or obligation[s] extending for a period of more than five years" be taken by ordinance with notice published in City's official newspaper. The trial court rejected all three arguments, and the Court of Appeal affirmed.

The Court Of Appeal's Decision On the Non-CEQA Issues

Reviewing the matter as challenging legislative action and thus subject to ordinary mandamus review (Code Civ. Proc., § 1085), the Court of Appeal held (with respect to the non-CEQA arguments) that: (1) the Restated Lease fell within the vested rights determined by the City Council in 1988, and that the broad language of the 1987 Lease encompassed all the uses specifically set forth in the Restated Lease (e.g., restaurant, full service and fast foods, and recreational); (2) the Restated Lease's extension provision was permissible because the 1987 Lease contemplated possible extensions and did not mandate a fixed inflexible term, and the Mission Beach Precise Plan did not address vested rights (which were not limited in time) and its recommendations regarding future development were not legally binding; and (3) the City Charter provision was ambiguous when considered in context with surrounding provisions, but was properly construed (consistent with City's long-standing interpretation, the legislative history, and established rules of construing charters) only to restrict City's authority to enter into long-term contracts and projects that would require it to expend funds, not agreements (like the Restated Lease) under which it received revenues.

The Court Of Appeal's Holdings On The CEQA "Existing Facilities" Exemption Issues

With respect to the CEQA claim, the Court reviewed it under Public Resources Code § 21168.5, which provides the standard of review in CEQA challenges where no evidentiary hearing is required, and under which a prejudicial abuse of discretion is established where the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. Guidelines § 15301's existing facilities exemption from environmental review under CEQA applies to the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing *at the time of the lead agency's determination*." (Emph. added.) SDOG's argument that Symphony's willingness to pay over $25 million in construction costs proved the Restated Lease exceeded the exemption's "negligible or no expansion of [existing] use" provision failed because, as reflected by the Restated Lease, "the $18 million in improvements… had already been completed and, accordingly, were existing facilities" at the time of City's exemption determination; SDOG did not argue that the contemplated $5.9 million for future Plunge refurbishment fell outside the exemption. The Court also rejected SDOG's attempt to rely on case law addressing whether *CEQA litigation* becomes moot when a challenged project is completed during that litigation; here, per the Court, "the existing facilities exemption applied from the time that the Restated Lease was approved, and the City made its CEQA determination because all the structures at issue were already completed."

Finally, the Court rejected SDOG's argument that Guidelines § 15300.2(c)'s "unusual circumstances exception" to the exemption applied. It noted that the party challenging the exemption has the burden of producing evidence supporting an exception. Per the Court: "SDOG has not identified any unusual circumstances due to which there may be a significant effect on the environment." While SDOG argued "that the single unusual circumstance present here is that the electorate passed Proposition G to govern the development of Mission Beach Park," and that a "fair argument" existed that the Restated Lease would result in increased environmental impacts (i.e., significant noise and traffic) that Proposition G sought to avoid, this "undeveloped and conclusory argument" failed for two reasons. First, the Court found it "entirely speculative" that the "sole fact cited by SDOG" – over $100 million in City revenues over the course of the lease – would result in significant visitor increases and increased traffic and noise.

Second, it held that "even if there was evidence to support SDOG's contention that the Restated Lease will result in increased traffic and noise, SDOG has made no attempt to show that the increased traffic and noise would be due to the unusual circumstances it cites, namely the existence of Proposition G." The Court observed: "In order for the unusual circumstances exception to apply, the significant environmental effect must be *due to* the unusual circumstance. [citations.] No such causal connection has been identified." (Emph. Court's, citing Guidelines § 15300.2(c) and *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.)

by Arthur F. Coon

January 23, 2019

Miller Starr Regalia

Fitch Ratings: California Municipalities Brace for Next Downturn

Fitch Ratings-San Francisco-23 January 2019: California credits, specifically the state, counties and cities and school districts, are all better prepared to manage through the next economic downturn; however, some school districts throughout the state may feel its effects more acutely, according to a new Fitch Ratings report.

California school districts face a challenging budget environment during the next recession due to what Fitch Senior Director Karen Ribble describes as "scheduled teacher pension contribution increases, limited to no control over revenues, relatively low reserves compared to elevated revenue volatility due to reliance on volatile state funding."

School district reserves are higher than in fiscal 2008, which will help to some extent. Also important to consider is that California school districts have essentially no ability to raise revenue without voter approval.

Conversely, most Fitch-rated California counties appear to be the most well-positioned out of the three local governments to weather cyclical declines while maintaining financial flexibility. For one, counties have the least volatile revenues. Much of it comes from relatively stable property tax revenues and counter-cyclical intergovernmental revenues instead of more cyclical revenue streams like sales taxes and transient occupancy taxes. However, cities are also well-positioned. "California cities and counties will likely trim service levels, negotiate labor concessions and temporarily curtail discretionary spending so its expenditures are more closely better aligned with temporary lower revenues," said Ribble.

The state as a whole is very susceptible to revenue volatility since it is reliant on two economically sensitive revenues (personal income taxes and sales and use taxes). Additional risk exists because California contains some of the more overvalued housing markets in the nation. On the positive side, California has paid back the debt it borrowed during the last two recessions and has a rainy day fund that will equal 10% of revenues by the end of fiscal 2019. These excess funds will help mitigate revenue volatility.

Drilling down into the ratings themselves, Fitch expects the vast majority of them to remain stable throughout a moderate downturn since the expected stresses have been factored into the ratings. Only unforeseen policy decisions or an unusually long and/or severe economic downturn would result in rating changes.

"How Prepared Are California Credits for the Next Recession?" is available at www.fitchratings.com.

Contact:

Karen Ribble
Senior Director
+1-415-732-5611
Fitch Ratings, Inc., 650 California Street
San Francisco, CA 94108

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

Additional information is available on www.fitchratings.com

New Data Suggests Regulated Water Companies Deliver Higher Quality Water Than Publicly-Run Systems.

An expanded analysis of the largest and most comprehensive study conducted on Safe Drinking Water Act (SDWA) compliance suggests that community water systems owned by regulated water companies are less likely to violate the SDWA than water systems owned and run by local governments. The new analysis was funded by the National Association of Water Companies (NAWC), which represents regulated water companies.

The original study, published in the Proceedings of the National Academy of Sciences in February 2018, reviewed U.S. Environmental Protection Agency (EPA) data from 1982 to 2015 and found that "private ownership" of a water system was "significantly associated with higher compliance." The dataset included the compliance records of 17,900 community water systems from across the continental United States. The full study is available here.

A further analysis of the dataset was conducted by Dr. Justin Adams of Encina Advisors, an economics research and statistical analysis consultancy based in California. The finding that water companies have higher rates of SDWA compliance was evident both nationally and in each of the four states analyzed: California, Texas, Pennsylvania and New Jersey.

This marks the first time a state-level analysis comparing drinking water compliance records of regulated water companies and local governments has been conducted using this dataset.

"We wanted see how the ownership of water systems impacted drinking water compliance rates in different states," said Adams. "The data show very clearly that water systems owned by regulated companies strongly outperform water systems owned and run by local governments on Safe Drinking Water Act compliance."

"Flint provides an unfortunate example of how a government-run system was unable to ensure the delivery of safe water to its citizens. As a former state utility regulator, I have seen firsthand the harsh realities of what happens when communities are unable to properly manage their water systems, jeopardizing public health and safety," said Robert Powelson, CEO and president of the National Association of Water Companies. "The results of this study further confirm that regulated water companies nationwide are doing a better job than their municipal counterparts in delivering the highest quality water possible.

"Local governments across America face urgent water system infrastructure and operations challenges," continued Powelson. "That is, no doubt, one of the key contributors to what we see in this study as some small and midsized municipalities struggle to provide safe water to residents. NAWC member companies are well-positioned to bring the expertise and investment troubled systems need to ensure Americans can count on safe and reliable water service."

The initial study published in the Proceedings of the National Academy of Sciences was authored by Dr. Maura Allaire, University of California Irvine; Haowei Wu, Columbia University; and Dr. Upmanu Lall, Columbia University. The state-level analysis of EPA data conducted by Encina Advisors was funded by the National Association of Water Companies.

The National Association of Water Companies (NAWC) represents regulated water and wastewater companies, as well as ones engaging in partnerships with municipal utilities. NAWC members provide 73 million Americans with safe and reliable water service every day and have an exceptional record of compliance with federal and state health and environmental regulations. Ensuring this high standard of quality requires extraordinary amounts of capital investment. NAWC estimates that its six largest members alone are collectively investing $2.7 billion each year in their water and wastewater systems. For more information about NAWC, please visit NAWC.org or follow on Twitter, Facebook and YouTube.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

JANUARY 16, 2019

Mayors Express Support for Incentives.

Menino Survey of Mayors asked 110 US mayors for their opinions on economic development, recruitment competition and financial incentives.

- 84% stated that "recruiting economic investments with financial incentives is good policy."
- 44% believe that incentives are unpopular with constituents but are good for the city.
- 40% believe that incentives are popular with constituents and are good for the city
- Yet 61% believe other cities offer too many incentives, and 62% believe it would be good for cities to refrain from offering incentives.

> "Essentially, most mayors see their own cities' use of incentives as measured and effective, while also seeing others' use as excessive."

- 55% agree that cities see net benefits in the long run when they recruit a company or facility; 23% disagree.

- Cities promote workforce skills and perceived quality of life when recruiting new investment; only 16% mayors primarily emphasize incentives.
- 59% would prefer a new employer within the city's borders even if it employs people who live outside the city (prioritizing tax base), while 41% would prefer a new employer outside the city that employs people who live in the city (prioritizing jobs).

While we are not surprised that most mayors see incentives as a good policy, it is interesting that so many perceive incentives as unpopular. Many surveys have shown high levels of popular support for incentives, including a recent poll in Virginia indicating 68% of registered voters support the announced Amazon HQ2 deal.

It is also not surprising that incentives play a secondary role in recruitment strategies. All good efforts focus first on location-specific factors that support company operations and strategy, with incentives playing a valuable but supporting role.

The most intriguing finding is that 84% consider financial incentives to be good policy, yet only 55% believe cities see "clear net benefits" from recruitment. Given the question's wording, city leaders may believe it is the other cities that fail to see clear net benefits. It may also point up the political disconnect between the immediate gains perceived from a successful recruitment versus the difficulties of documenting actual longer-term economic benefits when new investment occurs.

The Menino Survey of Mayors is conducted by the Boston University Initiative on Cities with support from Citi Community Development and the Rockefeller Foundation. You can download the Summary of Findings or access the full report here.

SMART INCENTIVES

by Ellen D. Harpel | Jan 22, 2019

The MSRB Adds New BondWave AA Yield Curve to EMMA®

Learn more.

Mayors Eye Two-Pronged Attack on FCC's Preemptive 5G Order.

The latest effort is a new bill in Congress that would overturn the agency on its rule that strictly limits how much local governments can charge providers and how long officials can take to process applications.

WASHINGTON — Mayors expressed optimism Thursday a new House bill could provide an alternative path to overturning a Federal Communications Commission order preempting local authority over fifth-generation wireless deployments.

H.R. 530, authored by U.S. Rep. Anna Eshoo, a California Democrat, would undo rules that went into partial effect on Jan. 14 requiring cities to move on wireless providers' small cell applications within set timeframes while capping fees to access public rights of way.

FCC restrictions on the aesthetic limits cities can impose on providers take effect April 15, unless

Congress acts or cities led by Portland, Oregon, are successful in their lawsuit against the commission pending in the 9th U.S. Circuit Court of Appeals asserting irreparable harm.

Portland Mayor Ted Wheeler told his U.S. Conference of Mayors colleagues at their winter meeting in D.C. that the city's right of way—access to which is at the heart of its lawsuit—was its largest asset, costing taxpayers millions of dollars to establish and millions more to maintain and manage. Companies shouldn't just be able to take advantage of this public property without paying their fair share, he said.

"[Digital equity] can't be achieved without reliable, high-speed broadband to access essential services like education, employment opportunities and health care," Wheeler said. "But I will never ask Portland residents to subsidize multi-billion-dollar companies, who currently have no obligation whatsoever to serve low-income communities."

While the suing cities' attempt to stay the FCC order failed in the 10th Circuit, their cases were shifted to the 9th Circuit. The move should give cities "home-field advantage" because the FCC order overturned two long-standing rulings by that court, said Gerry Lederer, partner at the law firm Best Best & Krieger.

If the order is overturned, the FCC would be back to square one, said Alex Hoehn-Saric, chief counsel with the House Subcommittee on Communications and Technology.

U.S. Rep. Frank Pallone, a New Jersey Democrat, is the newly appointed chairman of the House Energy and Commerce Committee and believes in swift 5G deployment in collaboration with state and local officials, Hoehn-Saric said.

"Congress did not authorize or empower the FCC to trample on localities and effectively usurp our property rights, yet this is what they've done," said Piscataway, New Jersey Mayor Brian Wahler, whose city is in Pallone's district.

The FCC commissioners who backed the order, all Republicans, argued it would save $2 billion in the U.S.'s race to deploy 5G, the faster wireless service expected to boost economic opportunity, before other countries—thereby dictating the technology's applications.

Route Fifty

By Dave Nyczepir,
News Editor

JANUARY 24, 2019

States See a Slip in Tax Collections That's Not Totally Unexpected.

The federal tax overhaul and stock market volatility help to explain some recent income tax revenue trends.

Income tax collections in December were short of expectations and prior year levels in New York, California and other states, Moody's Investors Service noted in a brief last week.

The trend is not entirely surprising and underscores the uncertainty state revenue forecasters face as taxpayer behavior changes in response to the 2017 federal tax overhaul, and recent stock market volatility potentially shakes up collections tied to capital gains.

“We expected to get a lower number in December,” John Hicks, executive director of the National Association of State Budget Officers, said by phone on Friday as he discussed income tax collections. “As to whether it’s so low that it’s a problem: Don’t know yet.”

“Revenue estimators will say, particularly with personal income tax, there’s a lot of uncertainty around taxpayer behavior,” he added.

States in December 2017 saw personal income tax revenues swell. The uptick has been widely attributed to high-income taxpayers making early payments so they could claim tax breaks that would be curtailed under the changes to federal tax law enacted that year.

So, in other words, because income tax revenues in December 2017 were unusually high, it makes sense that December 2018 collections would be lower by comparison.

At the same time, how the 2017 federal tax overhaul will affect state income tax revenues in the long run is still coming into focus.

In New York gross personal income tax collections were not only $2.8 billion less than a year earlier, according to the Moody’s brief, but also $500 million shy of the state’s revenue forecast. Total gross personal income tax revenues in New York through December were down about 1.6 percent for the same period during the prior year.

State income tax collections around December are generally seen as a barometer of how income tax receipts will stack up when they’re totaled up in April, Moody’s points out.

NASBO has said previously that in fiscal 2018 states funded on average nearly 46 percent of their budgets with income taxes.

California, Massachusetts and New Jersey were among the other states that reported lower than anticipated income tax collections in December, according to Moody’s. In California, for instance, receipts for the month were down $4.7 billion from the prior year.

Hicks said that running up to December, personal income tax growth was generally strong across the country. “It’s not to say that people aren’t watching closely,” he added.

A key factor affecting state income tax revenues in the December-January timeframe are what’s known as “estimated payments,” which are typically made by taxpayers with sizable income from sources other than wages—like stock market gains.

Moody’s says January collections could make up for the slide in December income tax revenue in some states, but also highlighted that New York reduced its personal income tax forecast for its current budget cycle and future years.

“We expect continued uncertainty to cloud state revenue forecasts in fiscal 2020,” the brief from the ratings agency says. Analysts there added: “It will take the passage of time and more missed revenue forecasts for state revenue analysts to capture new trends.”

Route Fifty

By Bill Lucia,

Senior Reporter

JANUARY 27, 2019

Disputes Over State Taxes on Railroad Fuel Simmer Before Supreme Court.

The court on Monday asked for the U.S. government to submit views on an Alabama case.

Alabama for about a decade now has been battling in court over whether a tax the state levies on the diesel fuel that railroads purchase to power their locomotives discriminates against the industry and is therefore in violation of federal law.

In the latest chapter of this long-running dispute, two linked petitions concerning the same case are pending before the U.S. Supreme Court. So far, the high court hasn't decided to hear the matter. But on Monday justices asked for the Trump administration to submit views on it.

Alabama's lawyers describe the case as the "de facto bellwether" for other related disputes.

They add that state and federal courts across the federal 11th Circuit, which covers Alabama and Georgia, have stayed over 30 actions in the two states for tax refunds and injunctions while awaiting resolution in the case, which pits Alabama against CSX Transportation, Inc.

The Alabama legal fight hinges on claims by CSX, one of the nation's largest rail carriers, that the state discriminates against it by requiring railroads to pay a 4 percent sales and use tax on diesel purchases. In contrast, trucks and interstate water carriers are exempt from the tax.

Alabama says eight railroads have sued seeking refunds for tax payments on fuel totaling about $24 million, not including interest, and that CSX stopped paying the state tax in 2011. Most of the state's sales and use tax revenue goes to fund public schools, the state adds.

It also notes that CSX is seeking to clawback similar taxes in Georgia totaling upwards of $34 million.

CSX agrees there are public dollars at stake.

But the company says the state "ignores the victim of its illegal taxing scheme" and that "the railroads have been in the past, and continue to be, beleaguered by what Congress determined was 'widespread, long-standing and deliberate' discriminatory state and local taxation."

Claims Under the '4-R Act'

The federal law at the center of the controversy is the Railroad Revitalization and Regulatory Reform Act, or "4-R Act."

Enacted in 1976, it prohibits three types of state tax practices related to property taxes. The law also contains a clause that blocks states from imposing other types of taxes that discriminate against rail carriers under the jurisdiction of the federal government.

On two other occasions, Alabama's fuel tax feud with CSX has reached to the Supreme Court—most recently in late 2014.

That time around, the court sent the case back to the 11th U.S. Circuit Court of Appeals to determine whether Alabama could justify the tax exemptions for trucks and water carriers, like barges.

In the wake of the ruling, Alabama now says the Supreme Court should hear the case to "definitively" clarify whether and when sales and use tax exemptions violate the 4-R Act.

The state's petition asking the court to take up the case describes how railroads, citing the federal law, began bringing litigation in the 1990s against state taxes on diesel fuel. These claims began in Alabama in 2008, with seven rail carriers filing four lawsuits.

"States have been waiting for an answer for more than 20 years; years we have spent litigating cases that have cost taxpayers millions of dollars," the state's filing with the Supreme Court says.

"Granting review to answer the decades-old question thus provides the opportunity to resolve multiple pending cases and prevent new ones."

The railroad says it's inaccurate to characterize the case as the culmination of two decades of litigation because there has not been a string of prior cases with unsettled questions about when tax exemptions for water carriers are justified.

CSX, in a linked "cross-petition," is asking the Supreme Court to review the portion of the 11th Circuit decision related to trucks if it green-lights the state's petition focused on water carriers.

While truckers don't pay the sales and use tax on fuel in Alabama, they do pay a 19 cent per gallon state excise tax on diesel, along with a roughly 24 cent per gallon federal tax. Cargo vessels traveling in and out of the state on waterways don't pay a state fuel tax in Alabama, but do pay a per gallon federal tax of about 29-cents.

Fuel for CSX trains is not subject to any of those taxes, the state court filing notes. Alabama says that between 2007 and 2016 its state and local taxes for train fuel totaled about 23-cents per-gallon.

The company counters that while water carriers pay no Alabama state fuel taxes, CSX in Birmingham and Montgomery, where it buys most of its fuel in the state, faces a combined state and local tax rate of 10 percent, and statewide owes about $5 million in the tax costs annually.

The state's tax exemption for fuel used by water carriers dates back to 1939 and the state says that, while it's not entirely clear, it was likely enacted to comply with federal laws and court decisions.

"Alabama did not exempt water carriers to disadvantage trains," its court petition says.

The state also makes a case that the federal government has jurisdiction over waters used for interstate shipping, and because vessel operators pay federal fuel tax to support projects and policing on those waters, states should be able to forego taxing fuel for ships.

CSX argues that the federal taxes are "irrelevant" and points out that the 11th Circuit rejected arguments tied to the fact that shipping on interstate waters is within the federal domain.

The company says in the 1970s, when lawmakers passed the 4-R Act, many railroads were on the brink of financial collapse, partly due to state and local tax burdens, and that the federal law was meant to help boost competition between freight trains and other types of haulers.

"The Eleventh Circuit's water carrier ruling does just that," the company says. "A state should not be heard to complain of 'lost tax revenue' from its own discriminatory tax."

The 11th Circuit ruling, which preceded the current petition and cross-petition before the Supreme Court, gave Alabama two options to fix the discrimination it found: stop collecting sales and use taxes on fuel from the railroad, or revoke the water carrier exemption.

Under the first option, CSX would pay zero taxes on fuel in the state, Alabama says. With the second, it would face a total tax burden in the state for diesel of about 23 cents per gallon, while for trucks the figure would be around 47 cents, and for barges about 52 cents.

Use of Tax Proceeds

Another company, Illinois Central Railroad Co., on Jan. 2, filed a petition asking the Supreme Court to hear a similar but separate case dealing with a Tennessee tax law.

In the Illinois Central case, the company is asking the court to consider whether a state fuel tax on diesel for trains, that truckers are exempt from, discriminates against railroads under the 4-R Act. The 6th U.S. Circuit Court of Appeals upheld the tax, deeming it "roughly equivalent" to the fuel taxes that motor carriers do pay in the state.

Illinois Central zeros in on the idea that the way tax revenues are spent can factor into whether a tax is discriminatory. Sure, truckers pay fuel taxes in the state, the railroad says, but that money helps pay for highway construction and maintenance, which they benefit from.

Railroads on the other hand, according to Illinois Central, receive "minimal direct benefit" from the fuel taxes they pay and must pony up for their own infrastructure, like tracks and bridges.

This gives an advantage to trucking firms, the company claims. Illinois Central says the case presents the court with a chance to resolve whether the way a state uses tax revenue is relevant when it comes to determining if a tax is allowable under the 4-R Act.

CSX's cross-petition, urging the Supreme Court to weigh in on the 11th Circuit's blessing of Alabama's diesel sales and use tax exclusion for trucks, features similar arguments.

Alabama's lawyers say the court should grant the railroad's cross-petition to resolve questions about the "truck issue" as well.

They also say the Illinois Central case does not present the same issues surrounding the justification for the water carrier exemption and that the court should take its case instead. "The one it knows best," the state adds, "and thanks to Alabama's acquiescence to CSX's cross-petition, the only one that tees up all necessary issues."

Route Fifty

By Bill Lucia,
Senior Reporter

JANUARY 14, 2019

States are Betting on Revenue from Sports Betting This Year.

Bill Bradley did not like sports betting. The former New York Knicks star forward felt it sent the wrong message to young athletes and undermined the integrity of the game. So when Bradley transitioned from the basketball court to the U.S. Senate, he championed a nationwide ban on sports betting.

It was not, perhaps, the most likely of causes for a Senator from New Jersey, home of Atlantic City, and then-Rep. Bob Torricelli was chagrined. To Sen. Bradley's dismay, Torricelli engineered a carveout for New Jersey, with a grandfather clause that allowed continuing sports book operations in a handful of states that already allowed them, including Nevada.

However, a stalemate in the state legislature prevented New Jersey from legalizing sports betting in the narrow window granted them by the new federal law, the Professional and Amateur Sports Protection Act (PAPSA) of 1992. And so it came to pass that, two and a half decades later, a new generation of New Jersey politicians would unmake Bradley's legacy, winning a victory in the Supreme Court to strike down PAPSA and open the door to state legalization—and of course taxation—of sports betting.

Continue reading.

The Tax Foundation

by Jared Walczak

January 25, 2019

S&P Webcast Replay: 2019 U.S. Municipal Water Utilities Outlook

Our US Public Finance utility and infrastructure team held a live, interactive webcast on Wednesday, January 23, 2019 at 2:00 p.m. Eastern Standard Time (11:00 a.m. Pacific Standard Time) where our analysts provided their views on the challenges and opportunities municipal water and sewer utilities will face in 2019. Will there be a federal infrastructure package? Any new environmental rulemaking? What about WIFIA, affordability and climate change.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Transportation Infrastructure Outlook

S&P Global Ratings analysts from the U.S. Public Finance Transportation team held a live interactive webcast on Thursday, January 24 at 2:00 p.m. Eastern Standard Time, where they provided their views on the 2019 Transportation Infrastructure Outlook credit outlook.

View The Event Materials

S&P Webcast Replay: 2019 U.S.Not-for-Profit Charter School Outlook

S&P Global Ratings U.S Public Finance held a live, interactive webcast on Tuesday, January 22nd at 2:00 pm Eastern Standard Time, for a discussion on the U.S Not-for-Profit Charter School sector Outlook. We introduced our new Charter School Sector Leader, Jessica Wood.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Not-for-Profit Health Care Outlook

S&P Global Ratings analysts from the Not-For-Profit Health Care team held a live interactive webcast on Thursday, January 17, 2019 at 2:00 p.m. Eastern Standard Time, 11:00 a.m. San Francisco, where they provided their views on the latest industry credit outlook for the U.S. Not-Fo--Profit Health Care Sector.

View The Webcast Replay