Fitch Ratings: Financing Evolving for North American Energy Infrastructure in 2020

Fitch Ratings-New York-11 December 2019: The evolution in financing for energy infrastructure projects will continue into next year, according to Fitch Ratings in its 2020 outlook report.

Fitch is maintaining its stable outlook for North American Energy Infrastructure with most project financings reflecting fixed-price off-take agreements that minimize revenue and margin volatility. However, according to Andy Joynt, Senior Director at Fitch Ratings, shifts are already underway in the typical energy project finance paradigms. "New off-taker types are becoming commonplace and merchant exposure is being incorporated into portfolio financings," said Joynt. "Additionally, newer technologies like battery storage are also gaining investor confidence and may increasingly be paired with solar or thermal generation in future projects."

This evolution comes during an increasingly competitive environment for contracts with PPA pricing and terms steadily falling. This is prompting developers to seek finance projects with re-contracting risk on the table. "Even in the absence of a replacement power purchase agreement, a project could sell energy into the wholesale market but this introduces revenue volatility that erodes credit quality," said Joynt.

Heading into 2020, U.S. liquefied natural gas (LNG) export capacity now exceeds 6 Bcf/day with a handful of projects entering commercial operation in the second half of this year. Asia in general is considered the biggest market opportunity with China a massive consumer of natural gas. However, demand has not materialized due to the ongoing trade war between the U.S. and China. "An ease of trade tensions could lead to a new wave of LNG contracts and trigger final investment decisions on some pending new projects or expansions," said Joynt. "Conversely, LNG suppliers may look to Europe and Latin America if tensions linger."

Fitch Ratings 2020 Outlook: North American Energy Infrastructure is available at www.fitchratings.com.

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Fitch Ratings: Relief for U.S. State Pension Liabilities Not Likely to Last

Fitch Ratings-New York-10 December 2019: Rising state pension liabilities reversed course this past year, although this is likely little more than a short-term breather, according to Fitch Ratings in its latest annual state survey.

Fitch's median state pension liability burden fell to 3.1% of personal income in fiscal 2018 from 3.6% in fiscal 2017. States are also seeing a median 6.7% drop in their adjusted net pension liabilities. Despite the improved numbers, they do not reflect a long-term improvement in states' pension situations, but rather the states' exposure to short-term market fluctuations now inherent in pension accounting, according to Douglas Offerman, Senior Director at Fitch. "The lower fiscal 2018 state net pension liabilities are capturing the lagged recognition of strong market gains most pension plans experienced as of their 2017 measurement dates," said Offerman.

State debt burdens drifted lower with the median burden of state direct debt falling slightly to 2.3% of personal income in fiscal 2018 from 2.4% in fiscal 2017. This move, however, is more reflective of a lasting trend. "Unlike with pensions, the drop in the burden of bonded debt continues a longer-term decline underway in many states," said Offerman. With both debt and pensions lower in fiscal 2018, the median state long-term liability burden has also declined year-over-year to 5.7% of personal income from 6%.

Illinois continues to carry the heaviest liability burden (27.5% of personal income) followed by Connecticut, Kentucky, New Jersey, Alaska and Hawaii (rankings unchanged year-over year). By contrast, 37 states have what Fitch views as low liability burdens with Nebraska topping the list at only 1.7% of personal income.

Fitch's "2019 State Pension Update" is available at www.fitchratings.com.

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Fitch Ratings: U.S. Transportation Infrastructure Growth to Mirror Slower GDP in 2020

Fitch Ratings-New York-09 December 2019: U.S. transportation infrastructure growth will continue moving more or less in step with leveling off GDP next year, according to Fitch Ratings' 2020 outlook report.

Volume growth remains favorable for U.S. airports, ports and toll roads and will remain largely tethered to U.S. GDP movement, which Fitch projects will fall below 2% for 2020. That said, "Some softness in growth may take hold to the extent issuers are exposed to global economic markets and protectionist trade policies," said Senior Director Scott Zuchorski.

Likely to pace volume growth will be U.S. airports, with Fitch projecting 2%-3% thanks to continued healthy demand for travel. Passenger traffic will also remain healthy for both large and small hub airports following a spike this past year. One outlier to watch next year will be the continued grounding of the Boeing 737 Max.

Moving more closely in tandem with U.S. GDP next year will be U.S. toll roads and ports. Stronger performance is expected for toll roads in the Southeast and Southwest regions in particular, due to stronger demographic trends versus the U.S. overall. Meanwhile, volumes at East Coast ports are likely to continue outpacing those of their West Coast counterparts due to their higher exposure to Chinese tariffs. Over time, revenues may start to decline at West Coast ports the longer the trade impasse with China continues.

Two other key developments are worth close watch next year, the first being the fate of PPPs as developer risk allocation led to some contractors exiting the U.S. market. The second is emerging technologies like driverless cars and connected vehicles. Parking assets and managed lanes appear most vulnerable to this change, though more widespread risk is unlikely to manifest for at least the next decade.

Fitch's "2020 Outlook: U.S. Transportation Infrastructure" is available at www.fitchratings.com.

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[Fitch Rtgs: Not-for-Profit Hospitals Outlook Stable in Face of Challenges]

Fitch Ratings-New York-10 December 2019: Hospitals' and healthcare systems' ability to respond to operational challenges by cutting costs and improving efficiency has placed these entities on surer footing for the continued headwinds they will face in 2020, says Fitch Ratings. Overall balance sheet stability and slight improvements in operational performance reflect the sector's adaptation to pressures, such as high levels of labor and pharmaceutical costs, cost and implementation risks of moving toward more value-based and at-risk reimbursement models, a shifting payor mix, commercial insurance rate increases, and competition from non-traditional market entrants. Most providers have begun to effectively align their cost models to revenue pressures, despite these challenges. Fitch changed its sector outlook from Negative to Stable for

2020 and is maintaining a Stable Rating Outlook for healthcare issuers in 2020.

We believe many providers will continue to pursue consolidation and alignment in order to extract greater efficiencies and gain contracting leverage with payors and suppliers. Although size and scale alone do not necessarily result in success, further consolidation is a logical outcome given current industry pressures.

The increase in the share of the US population over age 65 will generally have a negative longer-term effect on payor mix as seniors shift from commercial insurance to Medicare. The aging population should provide an uplift in volumes, as use rates increase proportionally with age; however, this added volume will only be beneficial if providers can manage to break-even, or better, on Medicare rates. Commercial, or managed care, contract negotiations are critical for providers as they seek to offset the effects of comparatively weaker governmental reimbursement with favorable commercial contracts.

The decades-long focus on outpatient services compared with inpatient services has not moderated, resulting in a mismatch of fixed costs and declining inpatient volume. The transition from volume to value-based reimbursement is a longer-term adjustment but in the short term will result in margin pressures for hospitals as they invest in new systems and see a decline in overnight admissions.

Non-traditional healthcare entrants will continue to be a disruptive factor over the medium to long term and are likely to change the way individuals interact with the sector. Technology and large retail companies, with potentially deeper pockets, sophisticated and consumer friendly distribution channels, and data platforms they are able to leverage are expected to make further inroads into pharmacy and low-acuity medical services. This will result in a more competitive operating environment across the patient spectrum.

Balance sheet measures have reached levels not seen since before the Great Recession of 2007-2009. The sector benefited from favorable investment conditions, positive cash flow, and generally manageable spending on capex. As a result, balance sheet strength has largely mitigated operational pressures faced by hospitals in recent years.

While policy direction in the next few years will be determined by the 2020 US elections, the acute care sector would face significant challenges regardless of the outcome. Any systemic change, whether it be the dismantling of the Affordable Care Act or the implementation of a ‘Medicare for All’ plan, would take some time to implement, and places uncertainty on whether or not our Stable sector and Ratings Outlooks will persist beyond 2020.

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

Fitch Ratings: U.S. State and Local Governments to Hold Steady in 2020

Fitch Ratings-New York-10 December 2019: Stability is in the cards for most U.S. state and local governments next year even with a slowing economy making revenue forecasting more difficult, according to Fitch Ratings in its 2020 outlook report.

Fitch has a stable outlook for both sectors in 2020 despite uncertainties related to economic growth, the effect of federal policy, and spending demands for labor and infrastructure. 'Governments will continue to exercise their considerable control over revenues and spending to maintain sound financial resilience,' said Arlene Bohner, Fitch's Head of U.S. state and local governments.

Fitch has identified three states to watch in 2020 that could see tangible changes in credit quality. 'Alaska and Illinois both face potential constitutional amendments that could alter Fitch's assessments of credit quality, while Kentucky will have a gubernatorial transition as it deals with ongoing budgetary challenges,' said Bohner.

Alaska will face key questions on gubernatorial proposals that may weaken operating flexibility. Alaska's governor will continue to seek a full dividend payment for residents and legislative approval for a set of constitutional amendments, which, if enacted, could weaken the state's budgetary operating flexibility and negatively affect the state's Issuer Default Rating.

Illinois voters will decide in November on a constitutional amendment to allow a graduated individual income tax. The credit implications depend on whether Illinois uses any increased revenues to address structural budget challenges, or if the state can adequately adjust its budget to work toward structural balance if the amendment fails.

Kentucky's new Democratic governor will need to work with the Republican-controlled legislature to address persistent budgetary challenges with enactment of a new biennial budget due in the first half of 2020. Maintaining structural spending while reducing reliance on non-recurring budget measures could prove challenging if the political environment deteriorates.

'Fitch Ratings 2020 Outlook: U.S. States and Local Governments' is available at www.fitchratings.com.

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CUSIP Request Volume for Corporate and Municipal Debt Ebbs in November.

NEW YORK, NY, December 10, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for November 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 monthly decreases in CUSIP request volumes for corporate and municipal debt and a slight increase in requests for corporate debt identifiers in November.

Read Report.

16% Monthly Decline in Muni Requests Puts Crimp in Robust 2019 Issuance.

"The low interest rate environment has spurred historically high volumes of new security issuance across several key asset classes this year," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "While the November slowdown in muni issuance will likely take us off track for a record-setting year in 2019, we're still seeing significant volumes on the whole this year."

Read Press Release.

BDA Delivers Strong Message to SEC: Reject the Exemptive Order Outright.

Both the BDA and C-Suite Leaders Submit Comments with the SEC

Today, following extensive work with the BDA working group, BDA policy committees, and outside counsel Nixon Peabody and Davis Polk, the **BDA submitted two letters in opposition to the SEC request for comment**.

The BDA comments, which can be viewed here, argue that the Commission should dismiss this request in full, and not grant any form of relief as requested by PFM and NAMA.

In addition to the formal comments, the BDA also submitted a C-Suite Letter with the SEC, signed by leadership of 19 BDA full member firms. The letter strongly reiterates the BDA position of collective opposition to the request and the need to swiftly dismiss the

exemptive order.

It has been clear from the beginning that the SEC intends to move forward with some form of exemptive relief. While we outright oppose this request it is very important the BDA is "at the table" to ensure any potential relief is a narrow as possible.

Next Steps

The BDA continues to meet with leaders on Capitol Hill to educate on the issue, and is working to get House and Senate legislators involved in pushing back against the SEC request both on and off the record. These meetings are on-going, and the BDA will provide updates going forward.

The BDA is also planning meeting with Commissioners in the coming weeks. While details are still coming together, these meetings will include BDA members and will help further the organizations arguments against SEC action on the exemptive order.

Prior BDA Actions

The BDA has continued to lead the industry response to the PFM and NAMA requests. Following mid-September meetings with leadership at the SEC Office of Trading and Markets, including chief counsel, and the Office of Municipal Securities and Commissioner Robert Jackson, the BDA was tasked with finding a narrow framework for exemptive relief.

While BDA remains opposed to the SEC issuing any form of the requested relief, we believe that, if relief were to be granted, it should be in the form of a **narrowly tailored exemptive order** that makes clear that engaging in the activity constitutes acting as a broker-dealer but, under the limited circumstances, the SEC would exempt municipal advisors from broker-dealer registration requirements.

Following prior fall meetings with SEC staff, the BDA has sent two prior letters in response to the **PFM** and **NAMA** requests for guidance regarding private placement activity by non-dealer municipal advisors.

The September 9th letter, which can be viewed here, focuses on historical precedent, competitive disadvantages and the erosion of investor protections provided by the broker-dealer regulatory regime.

While the **first letter** submitted by the BDA on June 28th addressed directly the problems that would arise from the request for interpretative guidance if granted, including rolling back decades of settled law on what constitutes broker-dealer activity.

Shortly after learning about the letter, BDA staff met with the SEC and the conversation with SEC staff focused on concerns we have with the request, including that it would negate the substantial regulatory protections under BD regulations in place to protect investors.

Bond Dealers of America

December 10, 2019

New Approaches to Large-Scale Green Stormwater Infrastructure Investment Build Climate Resilience.

More frequent and intense rainstorms. Elevated heat and humidity. High water levels and increased shoreline erosion. The realities of climate change, combined with aging and outmoded stormwater infrastructure, create a crisis for Great Lakes stormwater managers.

The good news is many of these challenges can be mitigated through the construction of green stormwater infrastructure–constructed wetlands, porous concrete, and bioswales that help treat stormwater and take the pressure off traditional gray infrastructure like sewers, pipes, pumps, and tunnels. But communities are challenged to fund and implement projects at the scale needed to address the crisis.

Fortunately, new thinking and approaches to funding and constructing green stormwater infrastructure are emerging. These methods, which combine market principles with community benefits, are upending the traditional economics and practice of building green stormwater infrastructure and are bringing climate resilience within reach.

Continue reading.

P3 GREAT LAKES INITIATIVE | TUESDAY, DECEMBER 10, 2019

The Jefferson County, Alabama, Bankruptcy.

The Jefferson County, Alabama, bankruptcy case was slightly more unusual than other municipal bankruptcies, in which the financial downturn severely impacted a municipality's ability to meet its expenditures.

The bankruptcy case of Jefferson County, Alabama, was the epitome of corruption and bribery amongst elected officials, contractors, county employees, and bankers involved in the county's sewer-related debt issuance. This one public work project, often referred to as "the Taj Mahal" of sewage systems, became the epicenter that led to the county filing for bankruptcy and, ultimately, two dozen people, including elected officials, contractors and county employees went to jail for bribery and fraud charges.

In this article, we will take a closer look at the Jefferson County, Alabama, bankruptcy case and what the bankruptcy settlement means for investors and creditors.

Continue reading.

municipalbonds.com

by Jayden Sangha

Dec 11, 2019

[Broker-Dealers Participating in Primary Offerings of Municipal Securities: Prepare for Implementation of New Rules - Jones Day]

The Situation: The Municipal Securities Rulemaking Board ("MSRB") amended its rules regarding primary offering practices and disclosures in connection with primary offerings to enhance regulatory transparency, ensure equal dissemination of information in primary offerings, and include selling group members in certain obligations in a primary offering of municipal securities.

The Result: The rule amendments become effective January 13, 2020, and broker-dealers engaged in underwritings of municipal securities, including those participating as selling group members, will be expected to understand and be in compliance with the changes by that date.

Looking Ahead: Underwriters and firms that participate in primary offerings of municipal securities should be familiar with the impending changes. Firms should review and, as necessary, revise their policies and procedures to ensure compliance with the new requirements.

Overview

On January 13, 2020, amendments to MSRB Rule G-11, on primary offering practices, and Rule G-32, on disclosures in connection with primary offerings, will become effective. In June 2019, the U.S. Securities and Exchange Commission ("SEC") approved the amendments, which are meant to enhance transparency, equalize information dissemination to market participants, and ensure selling group members comply with issuer conditions, priority provisions, and order period requirements that apply to syndicate members.

In short, MSRB Rule G-11 will now:

- ***Require the senior syndicate manager in an underwriting of municipal securities to disseminate the "free-to-trade" information to all syndicate and selling group members at the same time.*** Previously, the syndicate manager had no obligation to provide this information to market participants in a standardized form. As a result, some syndicate members would learn before others that restrictions on an issue had been lifted and the issue was free to trade at prices other than the initial offering price. This created an uneven playing field for syndicate and selling group participants, which the amendment is meant to address.
- ***Require the senior syndicate manager to provide the issuer with the same information the syndicate manager currently provides to syndicate members regarding designations and allocations of municipal securities in the primary offering.*** Currently, the senior syndicate manager is required, within two business days following the date of sale, to disclose to the syndicate, in writing, a summary by priority category of all allocations of securities accorded priority over member orders. In addition, the senior syndicate manager must disclose in writing to each member of the syndicate information on the designations paid to syndicate and nonsyndicate members. The amendment now requires this same information be provided to the issuer regarding their offering.
- ***Codify that selling group members are required to comply with the written communications they receive from the senior syndicate manager relating to, among other things, issuer requirements, priority provisions, and order period requirements.*** The amendment is meant to clarify any confusion that may have existed among selling group members as to their obligations to comply with such communications.
- ***Align the timeframes for the payment of group net sales credits with the existing timeframe for payments of net designation sales credits so all sales credits are received within 10 calendar days following the date the issuer delivers securities to the syndicate.*** Currently, group net sale credits are paid out within 30 calendar days following delivery of the

securities by the issuer to the syndicate. The amendment requires this payment to instead be made within 10 calendar days for consistency with the timeframe for payments of net designated sales credits.

Amendments to Rule G-32 will:

- ***Require the underwriter in an advance refunding, where advance refunding documents are prepared, to provide access to the documents on the MSRB's Electronic Municipal Market Access system so market participants receive the information at the same time.*** Currently, some market participants may learn of advance refunding details before the information is more broadly disseminated, giving them an advantage in the market.
- ***Eliminate the current requirement that a dealer acting as a financial advisor and preparing the official statement in a primary offering must make it available to the underwriter after the issuer approves it for distribution.*** This obligation no longer will be required.

Syndicate and selling group members should be aware of their obligations pursuant to the amended rules and update compliance policies and procedures accordingly.

Three Key Takeaways

- Firms participating in the primary offering of municipal securities should be familiar with how the amendments will affect them and be prepared to meet their obligations thereunder.
- At a minimum, policies and procedures should be reviewed and revised to address the changes well before the January 13, 2020, effective date.
- The SEC also approved changes to Form G-32 for the collection of data elements in connection with primary offerings. The MSRB will issue one or more notices in the near future setting forth compliance date(s) for the changes to Form G-32.

Jones Day – Laura S. Pruitt and Margaret R. Blake (Peggy)

December 12, 2019

SEC Issues FY2019 Enforcement Report – Highlights and Key Takeaways

The Division of Enforcement (Division) of the Securities and Exchange Commission (SEC or Commission) published its fiscal year 2019 (FY2019) enforcement report (the Report) on November 6, 2019. As in previous years, the Report addresses the matters that touch on the Division's five core guiding principles: (1) focusing on retail investors; (2) focusing on individual accountability; (3) keeping up with technological change; (4) imposing remedies that best further enforcement goals; and (5) constantly assessing resource allocation. The Division also continued to focus resources on two key priority areas in FY2019: (1) retail investor protection and (2) combating cyberthreats. Report highlights and our key takeaways follow.

The numbers − briefly

In FY2019, the SEC brought 862 enforcement actions, the highest level since 2016. Through these actions, the SEC obtained judgments and orders totaling more than $1.1 billion in penalties and $3.2 billion in disgorgement, with $1.2 billion returned to harmed investors. While the amount of penalties was among the lowest in the last five years, disgorgement and money returned to investors was the highest level for the same period. The increase is due largely to settlement of Ponzi allegations filed against a Florida-based investment company.

As in FY2018, the majority of the SEC's 526 standalone cases in FY2019 concerned investment advisory and investment company issues (36 percent of cases, up from 22 percent last year), followed by securities offerings (21 percent, down slightly from 25 percent last year), and issuer reporting/accounting and auditing (17 percent, compared to 16 percent last year). Actions against broker-dealers accounted for just 7 percent compared to 13 percent last year; SEC broker-dealer actions have declined as the Commission continues its focus on investment advisers in light of FINRA's mandate to enforce the securities laws and its rules regarding broker-dealers. Other areas included insider trading (6 percent compared to 10 percent last year), market manipulation (6 percent), Foreign Corrupt Practices Act (3 percent), and public finance (3 percent).

The Division's FY2019 initiatives and areas of focus

Retail – or Main Street – investors

The Division continued to view protection of retail investors, who are often particularly vulnerable to the conduct of bad actors, as a top priority in FY2019. One particular area of focus was misconduct that occurred in the interactions between investment professionals and retail investors.

The Report highlighted the successes of the Division's Share Class Selection Disclosure Initiative, which it launched in February 2018. Under the Initiative, 95 investment advisory firms self-reported failures to disclose conflicts associated with the selection of fee-paying mutual fund share classes when a lower- or no-cost share class of the same mutual fund was available. The Division agreed to recommend standardized settlement terms, and the majority of the actions were brought in March or September 2019. Over $135 million was returned to affected mutual fund investors, the vast majority of whom were retail investors.

The Division also noted that its Retail Strategy Task Force has undertaken a number of lead-generating initiatives – often using data analytics – and stated that these initiatives have led to swift enforcement actions. The Task Force's work with the Teachers' Initiative and the Military Service Members' Initiative − which focus enforcement and investor education resources on investment fraud issues impacting teachers, veterans, and active duty military personnel −was also highlighted.

Individual accountability

Holding individuals accountable is a "central pillar" in the Division's program because it allows the Commission to achieve multiple goals: specific and general deterrence, and, where injunctive and other non-monetary remedies are imposed, protection of markets and investors from future misconduct by those same bad actors. The Report highlights four cases in which directors and officers were charged with securities law violations. In each of those cases, the company was also charged.

Cyber-related misconduct

In FY2019, members of the Cyber Unit and other Division staff investigated and recommended to the Commission numerous cases involving initial coin offerings (ICOs) and digital assets, and cybersecurity threats to public companies and regulated entities.

According to the Report, the Division's digital asset activities have "matured and expanded." The Commission filed its first charges for unlawful promotion of ICOs in FY2019 and settled an action against a digital asset trading platform for operating as an unregistered national securities exchange. The Report also noted that the SEC reached settlements with three issuers of digital assets; the settlements included tailored undertakings providing a path to compliance with registration requirements and rescission for investors. The Commission's first litigated action against a digital asset issuer solely for violating registration provisions is pending. These actions are intended to reiterate a clear message that, regardless of labeling, if a product is a security, then issuers, promoters, and transaction platforms must comply with the federal securities laws.

The Commission also brought actions against regulated entities for violations of Regulation Systems Compliance and Integrity. Regulation SCI is designed to monitor the security and capabilities of the technological infrastructure of the US securities markets.

While the Commission did not bring any enforcement actions against issuers or other market participants related to "business email compromises" in FY2019, the Commission issued a Report of Investigation regarding the risks associated with cyber-related threats of spoofed or manipulated electronic communications and mandated that such risks should be considered when devising and maintaining a system of internal accounting controls. See DLA Piper's prior alert on the report. In issuing the report, the Commission seemingly put issuers and other market participants on notice that it may pursue actions in the future against those who fail to appropriately consider the risk of cyber intrusions in designing their controls.

Detecting, remedying, and punishing misconduct by issuers and financial institutions

The Report highlighted a number of cases against issuers to demonstrate the focus of Division and the Commission on financial statement integrity, the accuracy of issuer disclosures, and the willingness to punish significant corporate wrongdoing. The cases noted had penalties ranging from $16 million to $100 million, although, in one case, no monetary penalty was imposed due to the issuer's extensive cooperation, including self-reporting and remediation.

With respect to financial institutions and intermediaries, the Division cited its charges against certain large financial institutions for conduct that undermined market integrity in connection with the pre-release of American Depository Receipts (ADRs). The Commission alleged that the ADRs were improperly provided to brokers in thousands of pre-release transactions when neither the broker nor its customers had possession of the foreign shares needed to support the newly issued ADRs, thereby artificially inflating the total number of a foreign issuer's tradeable securities. Over the last two fiscal years, the Commission has brought actions against 13 firms and 4 individuals concerning these practices.

Finally, the critical role of gatekeepers continues to be a focus. The Division noted two significant cases against auditors and audit firms as well as an investigation that led to settled actions against both the issuer and the senior auditors on the engagement.

In addition, the Division touted its growing "complex analytic tools and capabilities," including proprietary technology that allows staff to analyze large quantities of trading and communications data and identify suspicious activity. For example, in one highlighted case involving an alleged hack into the SEC's EDGAR system to obtain non-public data, the Division notes that it brought charges based on a statistical analysis as to the odds of making certain trades, which was then combined with an analysis of IP addresses involved in various communications.

Continuing areas of focus

The Division continues to coordinate with law enforcement where civil sanctions may be inadequate to deter certain types of violations, particularly those cases involving recidivists, microcap fraudsters, insider traders, Ponzi schemers, and others who act with a high degree of scienter. The Report notes that in more than 400 SEC investigations, law enforcement offices and other regulators requested and obtained access to materials in SEC investigative files.

The Division also has focused on accelerating the pace of investigations because it views cases as having the greatest impact when they are filed close in time to the conduct. In FY2019, it took about 24 months on average after a case was opened for an enforcement action to be filed, a slight improvement over prior years. Financial fraud and issuer disclosure cases took longer (37 months), and the Division is taking steps (not specified) to improve that metric. A respondent's extensive cooperation of course improves the speed. The Report notes that the Division recognizes the value in providing greater transparency into how the Commission considers and weighs cooperation credit and to that end has included such information in public orders. The Division anticipates that the Commission will continue to do so going forward, indicating a willingness to reward cooperation where appropriate.

The Report also notes the great success of the whistleblower program; since its 2011 inception, the Commission has ordered more than $2 billion in financial remedies as a result of whistleblower cases and awarded those whistleblowers about $387 million. In FY2019, the SEC received thousands of whistleblower tips and a record number of whistleblower claims. The Report notes that the Division is working to streamline and substantially accelerate the evaluation of claims for whistleblower awards and expects that these improvements will lead to an even greater number of whistleblower claims in the coming year.

Continuing impact of the *Kokesh* decision

In *Kokesh v. Securities and Exchange Commission*, the Supreme Court concluded that the longstanding disgorgement remedy of the SEC was a penalty subject to the five-year statute of limitations under 28 U.S.C. §2462, as covered in a previous DLA Piper client alert. The Division estimated that the *Kokesh* ruling has prohibited the Commission from seeking approximately $1.1 billion in disgorgement, although the Report does not state whether that applies to just FY2019 or the sum total of disgorgement the Commission has forgone since *Kokesh* was decided in June 2017.

The Division also notes that *Kokesh* has forced it to allocate its resources to cases which hold the most promise for returning funds to investors. In light of this, it seems likely that the Division will continue to push those under investigation to come to resolution quickly in order to obtain the maximum disgorgement allowable under *Kokesh*.

Looking forward to FY2020

In addition to the Division's usual investigations related to insider trading, regulated entity and associated person misconduct, FCPA violations, and financial statement issues, we expect that FY2020 will include the following developments:

***Kokesh*, or more broadly disgorgement, will continue to impact the Division:** With the Supreme Court's grant of certiorari in *Liu v. SEC* (see DLA Piper's client alert on the topic here), the Division faces continued uncertainty regarding whether disgorgement is a viable remedy in District Court actions. Even in administrative actions where disgorgement is expressly permitted by statute, we anticipate that those subject to disgorgement claims will continue to push for limits on disgorgement based on more precise measures of the actual amount of ill-gotten gains as opposed to broad brush estimates that have often been the norm.

Protection of retail investors will remain a prime Division objective: We anticipate that the

Division will continue to devote significant resources to protecting retail investors. The Division will continue to focus on undisclosed conflicts of interest, inadequately disclosed or improperly charged fees, protection of the personal information of investors, and Ponzi schemes among the many areas where retail investors are at risk.

Broker-dealers, investment advisers and public companies will face increased Division scrutiny of their compliance with laws and regulations designed to protect against cyber-threats: In addition to the Division's Report of Investigation on cyber-related frauds against public companies, FY2019 saw two alerts from the Office of Compliance, Inspections and Examinations related to potential cyber-threats and related regulatory requirements for broker-dealers and investment advisers. We anticipate that the Division will pursue enforcement actions against entities who have not paid attention to these messages.

The Division will continue to expand its use of technological tools to respond rapidly to potential securities law violations: FY2019 saw the Division's use of technological tools to respond rapidly to potential insider trading leading to the initiation of enforcement actions in a matter of months rather than a matter of years. We anticipate that the Division's use of these tools will continue to expand in FY2020 in cases involving potential insider trading and market manipulation.

The Division will bring more cases: With the agency's hiring freeze lifted (see p. 22 of the Report), the Division has been able to hire more staff. With more staff, we expect more cases.

To find out more regarding the Division's likely priorities in FY2020 or the matters highlighted within the report, contact any of the authors.

DLA Piper

By: Mary M. Dunbar Deborah R. Meshulam George G. Demos John M. Hillebrecht Jeffrey D. Rotenberg Katrina A. Hausfeld Michael Boardman

19 November 2019

[Cook County Businesses Hit Hard by New Property Tax Assessments in the Suburbs — But Homeowners Could Catch a Break.]

As he took over a system riddled with errors and inequity, Assessor Fritz Kaegi vowed to change the way commercial properties are valued in Cook County.

Now his initial assessments are in, covering the north and northwest suburbs, and they show valuations for commercial, industrial and larger apartment properties increased by more than 74%, compared with less than 16% for homes, a Tribune analysis found.

The result may be a significant shift in how the property tax burden is divided up — with homeowners paying less and business owners paying more. A Tribune analysis shows that if Kaegi's initial property values stand, businesses would pick up 44% of the combined taxes in those suburbs next year, up from 34% this year. That would shift 10 percent of the property tax burden from homeowners to businesses.

Continue reading.

By HAL DARDICK

CHICAGO TRIBUNE | DEC 12, 2019 | 5:00 AM

How an $8 Billion Municipal Bond Fund Finds Opportunity in a 'Quirky' Market.

Fresh out of college in 1991, Ben Barber joined the management training program at Franklin Templeton in San Mateo, Calif., and rotated through different departments. In the end, it wasn't emerging markets or the up-and-coming technology sector that captured his interest, but municipal bonds.

"I love the aspect of you're financing infrastructure, generally for the common good, whether it's airports, roads, schools, or hospitals," says Barber, 50, who is co-head of municipal investments for Goldman Sachs Asset Management, or GSAM.

The $3.8 trillion muni market is the mechanism by which states, counties, municipalities, and other government entities fund operations and public-works projects. The nuances of every issuer, sector, project, and tax treatment make for a "quirky" market where every deal is different.

That's all the better for Barber, his co-managers Scott Diamond and Joe Wenzel, and their 34-person team to look for upside. Over the past decade, their $7.7 billion Goldman Sachs Dynamic Municipal Income fund has returned an average of 4.6% annually, better than 91% of its peers, and 1.5 percentage points, per year, better than its benchmark.

The fund (ticker: GSMIX) focuses on national tax-exempt bonds but has a broad mandate. "We want to be up and down the entire yield curve, the entire credit spectrum, and across different structures, and we want to be national," says Barber.

Relative to the rest of the bond market, munis look like a good deal. Default rates tend to be lower than their corporate counterparts, but after-tax equivalent yields are higher. The net supply of new issues is down slightly this year, while demand remains strong. Individual investors own two-thirds of all muni assets—that adds stability to the market but also leaves room for Barber's team to capitalize on inefficiencies.

After joining the muni team at Franklin Templeton, Barber followed his boss and mentor to GSAM and was named head of the muni team in 2002. Barber—who grew up feeding chickens and milking cows on a hobby farm in the Central Valley of California—is based in San Francisco. The rest of the team works in Salt Lake City and New York, making it easier to cover a market that comprises tens of thousands of issuers around the country.

State government general obligation bonds represent the largest slice of the fund at nearly 12% of assets, and not surprisingly. These perennial issuers account for more than a quarter of the fund's benchmark. While state bonds are a portfolio staple, their prices can fluctuate on news of state budgets, economic outlooks, and natural disasters. "Our job is to figure out if it's just noise," Barber says.

Meanwhile, investors often paint muni bonds with a broad brush—and Barber has been able to take advantage of that. Take Illinois, where a state pension crisis has led to persistent downgrades of state-issued muni bonds, which now sit just above junk status. Investors have turned a skeptical eye to other issuers throughout the state as a result, Barber says. Bonds issued for Chicago O'Hare International Airport, for example, trade at a discount to comparable bonds in other states, says Barber. The fund recently had about 12% of its assets in "all things Illinois," though only 5% of that exposure is tied directly to the state.

Historically, taxable muni bonds have been the minority, accounting for less than 10% of the market. A provision in the 2017 tax-cut law—which prohibits states from advanced refinancing of tax-exempt bonds—coupled with low interest rates have prompted many states to refinance with taxable bonds. In response, the fund has bought tax-exempt bonds with short calls—a short period before the issuer can cancel the bond—which are more likely to be refinanced.

State munis offer no shortage of opportunity, "but a much more interesting part of the market are the smaller issuers that may come to the bond market once or a handful of times at most," says Barber. Airports, sports stadiums, and water-treatment facilities fall into this category. So do hospitals, which recently accounted for nearly 8% of the fund's assets.

Tobacco-settlement bonds, meanwhile, make up 3% of the fund. These high-yield, long-term bonds were issued by states and are backed by annual payments from tobacco companies as part of the landmark 1998 legal settlement that resolved 46 states' lawsuit against the industry's major manufacturers. More than two decades later, these bonds are influenced by everything from cigarette sales (settlement payments are based on U.S. cigarette consumption) to broader interest and inflation rates. Recently, the fund has focused on zero-coupon tobacco bonds, which don't pay out interest but have more potential for price appreciation. The sector "requires very specific analysis to succeed," Barber says.

The fund can own up to 30% of its assets in junk-rated munis, though Barber and his team have trimmed their high-yield exposure to 16% of assets, down from a high of 23% in 2017. The reason: valuations. As more investors have ventured into high-yield debt, the difference, or spread, between yields on these lower-rated bonds and comparable investment-grade bonds has narrowed.

Fortunately, the team has the leeway to find deals in many places, including Puerto Rico. It has for years owned Cofina bonds issued by the sales-tax financing authority. Bonds maturing in 2058, for example, yield 4.3%. Recent restructuring of the bonds prompted the team to add to the position, which is the fund's third largest. Yes, Puerto Rico has had its issues, "but bonds tied to sales tax tend to be more stable than any other type of bonds," says Barber. •

Barron's

By Sarah Max

Dec. 11, 2019

How OZ Funds Are Adhering to Policy Intent, with Greg Genovese and Steve Sego.

Are Qualified Opportunity Funds living up to the spirit and intent of the Opportunity Zone initiative? And how should social impact reporting be conducted? Greg Genovese is president of Sound West Realty Capital, a real estate development group based in the Seattle area. Steve Sego is president of the Waterman Group, a community redevelopment, investment, and mitigation company. Click the play button below to listen.

Read More »

Opportunity Db

December 11, 2019

Municipal Bonds: Relative Value Versus Absolute Yield

Bloomberg Intelligence's Eric Kazatsky examines the historical reaction of municipal bonds to Federal Reserve rate decisions and looks at relative value versus absolute yield in the municipal bond market. He speaks with Bloomberg's Taylor Riggs on this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets TV Shows

December 11th, 2019, 8:25 AM PST

Wall Street's Muni-Bond Bankers Brace for a Record Year in 2020.

- **BofA, Citi, Oppenheimer expecting more than $400 billion**
- **Bond sales surge as governments seize on lower interest rates**

The Federal Reserve's decision to keep interest rates low is providing stimulus to a once contracting Wall Street business: underwriting municipal bonds.

State and local government debt sales may surge to a record in 2020, extending this year's boom, as borrowing costs hold near the lowest in over half a century, according to forecasts from some of the market's biggest underwriters. That marks a welcome shift for banks that saw bond work dry up in 2018 after President Donald Trump signed legislation that blocked new tax-exempt debt sales for a major type of refinancing known as an advance refunding.

Continue reading.

Bloomberg Markets

By Danielle Moran

December 12, 2019, 10:30 AM PST

Ex-JPMorgan Banker's Career Gamble Pays Off in Muni-Bond Blitz.

- **Mark Melio started firm in 2009 to advise hospitals on debt**
- **Refinancing boom vaults his firm 93 spots to 11th biggest**

A frenzy of debt sales in the $3.8 trillion municipal-bond market is handing a huge win to an ex-banker's career gamble a decade ago.

Mark Melio, who once led JPMorgan Chase & Co.'s public finance department, struck out on his own in 2009 to start a small financial advisory firm catering to health-care systems. This year, that decision is paying off as hospitals seize on low interest rates to refinance old debt or raise money for new projects. His firm, Melio & Co., is having its best year on record and has vaulted 93 spots to eleventh place in Bloomberg's ranking of municipal-bond advisers.

Melio & Co.'s rise marks a coup in an industry increasingly dominated by PFM Financial Advisors and Public Resources Advisory Group, which together advised on nearly a third of municipal-bond deals in 2019.

Bloomberg ranking of financial advisers
It only took 20 deals for Melio's business to leap in the rankings, thanks to massive issues from juggernauts like CommonSpirit Health and the Cleveland Clinic.

Hospitals have sold $28.4 billion in debt this year, a nearly 38% increase from a year earlier. Much of those sales have been driven by decisions to refinance their debt with taxable securities, a tactic that's taken hold because of new limits on tax-exempt refinancings and low interest rates that have made such deals viable.

Melio said he has no plans to expand his advising business beyond health care but does plan to hire more people. His team right now includes Aimee Trepiccione, a former health-care banker for JPMorgan, and Matt Swafford, a former Morgan Stanley banker.

"That gives the clients some insight in how the banks are thinking," he said in an interview.

Melio said his health care advising business has been a "gratifying" shift from his career in public finance at JPMorgan and Goldman Sachs Group Inc., an industry he was critical of in a 2016 memoir.

"Personally, it makes me feel good to do work on a children's hospital, for instance," he said in the interview. "You feel like you're contributing something meaningful."

Bloomberg Markets

By Amanda Albright

December 12, 2019, 6:47 AM PST

As Tiny Underwriters Die, Brothers' Deal Keeps Firm in Family.

- **McLiney, a family owned firm, merging with Texas's Samco**
- **Small underwriters are disappearing in face of competition**

McLiney and Company, a Kansas firm that's been run by the same family for 54 years, is joining the ranks of small, stand-alone municipal-bond underwriters that are disappearing as Wall Street Goliaths expand their dominance of the $400 billion-a-year business.

But under a deal struck to merge with a rival, it's not entirely losing its blood ties.

The Mission, Kansas-based McLiney, which was founded in 1965 by the son of municipal-bond banker George McLiney Jr., said on Tuesday that its seven employees would join Samco Capital Markets, a larger underwriter based in Austin that specializes in Texas debt.

Continue reading.

Bloomberg Deals

By Amanda Albright

December 11, 2019, 7:33 AM PST

Why BlackRock Is Still Bullish on Munis After Market's Big Gains.

- **Trump tax law helped set off record influx into mutual funds**
- **Firm's muni chief Hayes sees demand holding up into 2020**

Here's one reason why BlackRock Inc., the world's largest money manager, doesn't expect a pullback from the municipal-bond market next year: Google searches for the securities jumped in April, when many Americans first felt the impact of President Donald Trump's tax-cut law.

The $10,000 cap on state and local tax deductions it ushered in helped set off a record-setting municipal-bond buying spree by those hunting for ways to drive down what they owe. And that interest is unlikely to subside anytime soon, Peter Hayes, head of such investments for BlackRock, said on Tuesday.

"We think that this demand continues at least into the first half of 2020 at its current pace," Hayes said at a media event hosted by the company.

Continue reading.

Bloomberg Markets

By Amanda Albright and Danielle Moran

December 10, 2019, 10:39 AM PST

Filing Frenzy Shows Companies Lining Up for Opportunity Zones.

There wouldn't be much of an economy in Center, Texas, without Tyson Foods Inc. The company has a sprawling chicken-processing plant in town and employs about 1,600 people in a city of slightly more than 5,000 near the Louisiana border.

So, when Tyson signaled two years ago that it wanted to build a $50 million feed mill, Center's economic development director, Jim Gibson, was eager to find a location and suggest tax abatements.

Before long, Tyson keyed in on a new benefit: a tax break signed into law by President Donald

Trump, aimed at luring new investments to thousands of low-income areas across the country dubbed “opportunity zones.” Center and most of the surrounding area sat squarely in one.

“One of the people from Tyson said, ‘I think we’re going to make a run at doing these,'” Mr. Gibson recalled.

That was in private. Tyson — the country’s biggest meat processor, with roughly $40 billion in annual revenue — announced its plans for the feed mill in February as it began to seek a separate local tax abatement. News reports and minutes from two county meetings where the project was addressed make no mention of opportunity zones.

The company wasn’t required to say anything publicly about its plans to use the federal subsidy. But like scores of businesses and investors in recent months, Tyson left a faint paper trail. It beat a path to Delaware — where more than two-thirds of Fortune 500 companies have a legal home — to lay the groundwork for claiming one of the most controversial and generous benefits in Trump’s 2017 tax overhaul.

Once heralded as a novel way to help distressed parts of the U.S., opportunity zones are now being slammed as a government boondoggle. The perks are being used to juice investments in luxury developments from Florida to Oregon. And several reports have shown how politically connected investors influenced the selection of zones to benefit themselves.

While Tyson’s feed mill fits more squarely with what lawmakers intended, it still highlights the lack of comprehensive data on who’s claiming the benefits. Congress is now calling for changes to the legislation to boost transparency.

In the meantime, supporters can point to anecdotal evidence that the benefits are spurring development in areas that really need it, and detractors can cite examples of waste.

An analysis of almost 400,000 Delaware Division of Corporations records since the start of 2018 provides a fresh glimpse into what’s going on. After starting slowly last year — as states selected zones and the U.S. Treasury Department wrote regulations — the number of filings referencing opportunity zones accelerated dramatically. There were at least 356 entities containing acronyms or phrases associated with the tax breaks in June alone, and more than 1,800 through the end of September.

Paper trail

Real estate investors and developers, a group that gravitated to the tax breaks early, make up a big portion of the list. But the records show that the appeal is broader, extending to previously unreported efforts by Tyson, AT&T and NextEra Energy. Billionaire hedge fund managers Steve Cohen and Bill Ackman have also made filings.

Tyson said it weighs a variety of factors when looking to expand, including the availability of workers and infrastructure. Government incentives often play a role, too, and were part of the equation for the new feed mill, said Derek Burleson, a spokesman for the Springdale, Ark.-based company.

“Opportunity zones were created to help spur private development in economically challenged areas, and we believe this project will do just that,” Mr. Burleson said in an email. “We see this as a significant investment in the community that will create new jobs with great benefits and make a positive impact on the local economy.”

A spokeswoman for AT&T, which changed the names of two entities after an inquiry from Bloomberg

News in July, scrubbing references to opportunity zones, said the company is evaluating programs to invest in the areas. NextEra, the world's largest utility company by market value, declined to comment, as did spokesmen for Ackman and Cohen.

Lack of transparency

The filings underscore the lack of transparency surrounding a federal subsidy that could cost billions of dollars, said Brett Theodos, a senior researcher at the Urban Institute who has studied opportunity zones. And it shows why the government should gather more information both about individual projects and the impact on communities as a whole.

"These are the exact types of investments that we will never learn about, absent more disclosure," Mr. Theodos said. "We should know how the government is spending our money, and it shouldn't fall to investigative journalists to figure this out."

That there's any record owes in part to jargon Congress used when drafting the law. Taxpayers who want to claim the benefits must hold their investments in a "qualified opportunity fund," a corporation or partnership that has most of its assets in "qualified opportunity zone" property.

Keeping track

Lawyers often use shorthand such as QOF or QOZ in naming the entities, even though it's not required, said Jessica Millett, head of the tax practice at Duval & Stachenfeld LLP in New York who has structured dozens of opportunity zone deals.

"It just helps you remember what's what," she said, adding that Delaware was probably seeing a large share of the filings because of its longstanding reputation for being business-friendly.

Even so, the filings are just clues to what's going on, often giving little more than a name and date of formation. Many entities have names that are too generic or opaque to scrutinize, such as SM QOZB 3 LLC, created in September. Owners couldn't be identified in such cases.

Among those that can be are prominent developers or their projects. More than four dozen entities are tied to Starwood Capital Group, Brookfield Asset Management or RXR Realty, which are raising hundreds of millions of dollars to build in the zones.

Socially minded investors are also represented, including a $200 million effort started by retired Tennessee Titans linebacker Derrick Morgan and another called Arctaris Impact, which has pledged to report publicly on its investments and pursue projects that benefit poor communities.

But, so too, are entities that likely stretch what lawmakers intended for the tax breaks. In July, someone used the Corporation Trust Co., a registered agent that handles many Delaware filings and can help obscure the identities of filers, to create a business called QOZ ART STORAGE QOF 2019, LLC.

Creating the companies or partnerships is no guarantee that a taxpayer will claim the incentives. Both Messrs. Cohen and Ackman formed entities in June that were intended to allow them to invest in the zones, but neither has done so yet, according to people familiar with the filings who asked not to be identified discussing the hedge fund managers' plans.

Just because investors and corporations aren't broadcasting their plans doesn't mean they're doing something untoward, said John Lettieri, chief executive officer of the Economic Innovation Group, a Washington non-profit that helped conceive of and promote opportunity zones. Companies often hold back information for competitive reasons, he added, and sometimes even philanthropic efforts are undertaken anonymously.

Effectiveness of incentives

“On its face, it doesn’t concern me,” Mr. Lettieri said. “When you make a charitable contribution, you can choose to get your name plastered on a building or choose not to.” Even so, he added, the government needs to be gathering more information about investments in the zones so that it can better evaluate whether the incentives are effective.

In October, the Treasury Department and the Internal Revenue Service released new forms that will require funds to say in which opportunity zones they have property and declare the value of those assets. Treasury Secretary Steven Mnuchin called it an “important step toward a thorough evaluation” of the incentives.

But researchers were quick to point out the shortcomings of the forms, which won’t provide information such as the types of projects being funded or their precise locations. And because the disclosure is part of a tax return, the data may never be made public, said Samantha Jacoby, a senior tax law analyst at the Center on Budget and Policy Priorities.

Legislation

Both Democrats and Republicans in Congress are advancing measures to gather more information. Among them is a bill introduced last month by Sen. Ron Wyden, D-Ore., that would bar certain kinds of investments, including stadiums, and require funds to file detailed public reports each year.

More transparency would allow the public to determine whether the incentives actually work as intended and discourage bad actors, Mr. Wyden said.

“This is kind of Sunshine 101,” he said. “What I keep coming back to is: Are the investment dollars largely benefiting those who are well-off in affluent communities? Or are they to support new projects in truly low-income communities?”

Center is the kind of place that could use the money. The poverty rate hovers around 30% in the Census tract where it sits, making it a shoo-in for the opportunity zone designation. But investors haven’t exactly been beating down the doors.

“It’s just not the happening spot in Texas right now,” said Mr. Gibson, the economic development director.

The community lacks the skilled workforce that attracts businesses and real estate development to bigger cities, he said, adding that he couldn’t think of an opportunity zone project in the area, other than the Tyson feed mill.

Construction of the facility on a site outside town and adjacent to a rail line has already begun, according to Mr. Gibson. When it opens in 2021, it will churn out chicken feed for nearby poultry farms. About 40 people will work there, with an annual payroll of about $3 million.

In addition to the opportunity zone benefits, Tyson is getting a five-year break on its county taxes for the mill. But the company decided to forgo another program that would have allowed it to cut payments to the local school district, Mr. Gibson said.

“It’ll be really good for the schools,” Mr. Gibson said. But, in the end, the number of jobs is pretty minimal, compared with the size of the investment, he added. “It’s not one of those transformational game-changers.”

Bloomberg

December 12, 2019 09:13 AM

[Expiring Tax Breaks Set Off Year-End Scramble.]

Industry groups are pressing lawmakers to include their tax priorities in year-end legislation, setting off a last-minute scramble.

A number of tax breaks, particularly in the energy sector, have already expired or are set to expire at the end of this year, and groups want Congress to renew or update those tax preferences.

The pressure goes beyond expiring tax breaks. Industry groups are also urging Congress to add other tax provisions to legislation, such as a bipartisan retirement bill that has already passed the House, and to repeal or delay ObamaCare taxes.

But it still remains to be seen whether any year-end tax package comes together this year, since Democrats and Republicans have some differing priorities and there’s little time remaining to put together a deal.

It’s not uncommon for Congress to pass a tax package at the end of the year, taking action to renew expired and expiring tax breaks known as “tax extenders.” But Congress hasn’t passed extenders legislation since early 2018, and some tax breaks, including in the renewable energy area, have been expired since the end of 2017. Other tax breaks are set to expire at the end of this year, including a couple of provisions created by President Trump’s tax-cut law.

But the pressure this year from industry groups for action is intense, with many offering dire warnings that companies could go out of business without extensions.

For the energy industry, the tax breaks that expired at the end of 2017 include incentives for energy efficiency improvements and biodiesel. A tax credit for wind energy is slated to go away at the end of the year, and a tax credit for investment in solar energy is slated to be reduced next year.

“One thing Congress can do before the end of the year to help rural economies and provide some policy stability is extend the expired biodiesel and renewable diesel tax incentive,” a group of biodiesel and agricultural groups wrote in a letter to House and Senate leaders earlier this month.

Some groups are arguing that extensions of their tax incentives would be a way for Congress to help tackle climate change.

“Energy efficiency is the most effective solution we have for climate change,” said Ben Evans, vice president of government affairs at the Alliance to Save Energy. “It’s a huge hole in the tax code that we don’t currently have any energy efficiency incentives.”

Alcohol industry groups, meanwhile, are pushing Congress to extend tax relief for brewers, winemakers and distillers that was included in the 2017 tax law but is slated to expire at the end of the year. Groups held a day of action last week to mobilize people to contact Congress on the issue.

“We could see businesses shutting down as a result of this not being passed,” said Chris Swonger, president and CEO of Distilled Spirits Council.

Tax extenders, though, are only one item on the docket as the legislative year draws to a close and groups seek a host of other changes.

The House in May passed a bipartisan bill with a host of provisions aimed at boosting retirement savings that also included a fix to an area of Trump’s tax law that had the unintended consequence of raising taxes on certain income received by children, such as survivor benefits for the children of deceased military members and first responders. The bill has stalled in the Senate, but it has bipartisan support in the chamber and retirement-industry groups want it to become law by the end of the year.

“If anything has a good chance of passing in spite of the clock, it’s this bill for everyday Americans,” said Susan Neely, president and CEO of American Council of Life Insurers.

Groups are also pushing for the repeal or further delay of several taxes created by ObamaCare, including the repeal of the “Cadillac tax” on high-cost health plans.

“This tax does not hit ‘overly-generous’ plans,” said James A. Klein, president of the American Benefits Council, which is pushing for repeal of the Cadillac tax. “It disproportionately affects health plans that are expensive because they cover large numbers of older workers, women, and families with chronic or catastrophic health conditions. Congress must act now!”

Many of these priorities have support among at least some lawmakers in Congress, and a number of them — including repeal of the Cadillac tax, passage of the retirement bill and extension of the alcohol excise tax relief — have bipartisan backing.

Earlier this week, a group of Senate Democrats wrote a letter to the chamber’s leaders urging them to prioritize clean energy tax extenders in any tax bill.

But it’s not clear whether there will be any year-end tax legislation this year, and some lawmakers and observers think that a package is unlikely.

“If I had to handicap the prospects for an end-of-year tax deal right now, I would be more pessimistic than optimistic,” said Todd Metcalf, a former aide to Democrats on the Senate Finance Committee and now at PricewaterhouseCoopers.

Tax legislation would likely move along with a spending bill that isn’t just a short-term stopgap measure, Metcalf said. Lawmakers are still negotiating on spending bills ahead of a Dec. 20 deadline.

Metcalf also said that some of the tax provisions that used to motivate Congress to pass end-of-year tax extenders are now permanent. The remaining temporary tax provisions “don’t have the same kind of political juice,” he said.

And the parties have their own priorities. House Democrats are interested in pairing a renewal of tax breaks benefiting businesses with expansions of refundable tax credits that benefit low- and middle-income families, such as the earned income tax credit and the child tax credit. But that’s a tough ask for Republicans, and any year-end tax package would need to be bipartisan to be enacted.

House Ways and Means Committee Chairman Richard Neal (D-Mass.) on Wednesday reiterated his interest in expanding the tax credits and said he thinks there’s room to reach an agreement with

Republicans.

"I think that the extenders bill ought to include an expansion of the earned income tax credit and a more robust child credit," he told reporters.

The top Republican on the Ways and Means Committee, Rep. Kevin Brady (R-Texas), told reporters Wednesday that Democrats and Republicans are trading offers to try to reach a consensus but don't have a deal yet. He said that if talks fall through, he doesn't think there will be a package to simply extend expired provisions.

Brady said that the sizable refundable tax credit expansions Democrats are seeking are a "non-starter."

"We continue to have concerns about the fraud within those programs," he said, adding that the amount of spending Democrats are seeking is "not realistic."

As the clock ticks down, industry groups are remaining upbeat about the chances their priorities will be addressed.

Jim McGreevy, president and CEO of the Beer Institute, said he feels that there is energy at the end of the year for Congress to tackle a number of items.

"I hope extenders is one of them," he said.

THE HILL

BY NAOMI JAGODA – 12/11/19

High Yield Munis Can Be An Equity Hedge, But Understand The Risks.

Summary

- Many investors are looking for ways to hedge against a potential decline in equities, after an impressive run in 2019.
- Municipal bonds are one of my preferred choices for fixed-income exposure, as they have historically low levels of defaults and a low correlation to the equity market.
- High yield munis, however, are less attractive right now. Their spread with investment-grade munis has shrunk, and some bonds in the high-yield sector are struggling to manage debt obligations.

Main Thesis

The purpose of this article is to evaluate the VanEck Vectors High-Yield Municipal Index ETF (HYD) as an investment option at its current market price. As my readers are aware, I have recommended municipal ((muni)) debt in 2019, and that play has been rewarded. However, I have taken a more cautious tone as, similar to equities, valuations have gotten a bit rich and my outlook is less optimistic than when the year started. On that note, I am on the hunt for funds trading at reasonable valuations and which utilize less leverage, which has brought me to HYD, as it is a high-yield muni fund that does not utilize any leverage. While the fund has returned close to 10% this year, and I remain bullish on muni debt, there are a few reasons why I would hesitate to recommend this option.

The strength of the high-yield muni sector largely depends on revenue bonds, which offer unique risks to investors that general obligation bonds do not. While this is not necessarily "bad", it is a sector that has been under some short-term pressure. Further, spreads between high-yield munis and investment-grade munis has narrowed recently, suggesting a limited chance of further outperformance from here. Finally, while high-yield munis do offer an attractive way to hedge against downside in the equity market, investment-grade munis offer a similar opportunity.

Continue reading.

Seeking Alpha

Dec. 15, 2019

S&P Medians And Credit Factors: Delaware Counties And Municipalities

Table of Contents

Overview
Delaware municipalities and counties' (or local governments [LGs]) have demonstrated stable credit characteristics over the past year and S&P Global Ratings expects credit quality for Delaware LGs to remain stable in the near term. This stability is supported by steady economic growth and typically strong budgetary performance and financial flexibility.

S&P Global Ratings maintains ratings on eight local governments in Delaware, consisting of three municipalities and five counties. Currently 88% of Delaware LGs maintain a high investment-grade rating ('AA-' or above). Overall, credit quality remains stable, with no rating movement since July 2018.

Continue reading.

S&P Medians And Credit Factors: Maryland Counties And Municipalities

Table of Contents

Overview
Maryland local governments' continue to demonstrate strong credit quality, in S&P Global Ratings' view, supported by favorable economic growth, low unemployment, above-average wealth and income metrics, and typically strong reserves. Management teams in Maryland generally adhere to formalized policies and procedures, supporting stability in budgetary balance. S&P Global Ratings does not expect any significant changes to Maryland local governments' credit quality over the next

year.

According to the U.S. Bureau of Economic Analysis, Maryland's per capita income stood at 116% of the national level in 2018 (the sixth highest in the nation). The state's unemployment rate of 3.9% in 2018 was equal to the national rate. In addition to strong underlying economic conditions, Maryland counties and municipalities benefit from the lack of state restrictions on increasing property tax rates, providing significant revenue-raising flexibility.

S&P Global Ratings maintains credit ratings on 11 municipalities and 19 counties in the State of Maryland. All Maryland counties and more than 80% of the Maryland municipalities carry high investment-grade ratings ('AA-' or above). In addition, 43% of Maryland local governments are rated 'AAA'. Since June 1, 2018, there have been no rating changes, and there has been one outlook change to positive from stable, demonstrating considerable stability in the portfolio.

Continue reading.

S&P: Florida Shines A Light On Education Funding Trends And Credit

Table of Contents

- K-12: School Districts, Charter Schools, And Private Schools
- Public Higher Education
- The Bottom Line
- Appendix: Rating Lists

Key Takeaways

- Opportunities and challenges for traditional public school, charter school, and higher education state funding have evolved nationwide during the past decade.
- We believe the high-growth state is a microcosm for education portfolios around the U.S. experiencing competition for funds, and in some cases, a stifled revenue-raising environment.
- Despite overall enrollment increases and healthy state funding growth since 2013, a seemingly favorable education-funding environment has not yet fully recovered to pre-Great Recession peak funding levels, particularly when it comes to capital funding.
- Recent policy changes and school choice growth have presented some interesting tradeoffs, as the increasing presence of charter schools has led to enrollment and state-funding shifts away from traditional public schools.

Continue reading.

A New Look at How States Block Local Laws in Areas Ranging From Guns to Taxes.

"This is a national preemption movement that is occurring," says the CEO of the National League of Cities.

States around the U.S. have all sorts of laws on the books to block, or "preempt," cities, towns and villages from enacting their own local policies on issues like the minimum wage, gun safety, rent control, plastic bag restrictions, and taxation.

This big-footing by state governments creates obstacles for communities seeking to tailor their own laws in these and other areas and is a source of frustration for many local elected leaders. It's also becoming increasingly common, with an uptick in the past five years or so, said Clarence Anthony, CEO of the National League of Cities.

"This is a national preemption movement that is occurring," Anthony told Route Fifty on Thursday. "We're seeing that it's unprecedented."

"Local control is under attack," he added.

It's against this backdrop that the National League of Cities recently partnered with Temple University on a project to analyze preemption in 12 different policy areas, in all 50 states.

This project culminated in an online tool, where it's possible to select a state from a map of the U.S. and to then see details about how state laws preempt local ones in each place.

There's a significant amount of detail for each state and policy area.

For example, the tool shows not only whether a state preempts local gun laws, but also which kinds of regulations are explicitly prohibited (such as those dealing with possession, sales, and concealed carry), and penalties officials can face for trying to regulate in these areas.

NLC says that some of the areas where preemption is the most common include gun laws, rent control and tax policy. The League also notes that there are at least nine states that lack mandatory paid sick leave, while also blocking local laws in this area.

Some of the other areas the project provides information for include: "ban-the-box" policies that restrict employers from asking about a person's criminal history on job applications, property zoning, municipal broadband, and an array of tax limitations.

Spencer Wagner, a program specialist at NLC who worked on the project, identified two key factors he said are driving the rise in preemption that Anthony mentioned.

One, he said, is that businesses are spending more money to prevent what they often describe as a "patchwork" of local laws.

"We don't really accept that argument," Wagner said. "Every day businesses are working in different communities with different tax codes and health regulations."

Another factor, he said, is the emergence of more "model legislation" from groups like the American Legislative Exchange Council, which can provide state lawmakers with ready templates for introducing bills that stymie local lawmaking.

Anthony flagged Arizona and his home state of Florida, where he served as mayor of South Bay for 24 years, as two states that have been especially aggressive on the preemption front.

"If someone comes into my home, I don't expect they're going to go there and tell me what kind of music I can play," he said. "That's in a sense how I feel about it. It's the lack of respect that our local leaders are getting in terms of the policies that they need for their cities."

ROUTE FIFTY

by BILL LUCIA

DECEMBER 12, 2019

Why Utah Has Become America's Economic Star.

From taxes to education to the business climate, the Beehive State has its house in order.

Which of the 50 states has the best economic outlook? For each of the past 12 years, Arthur Laffer, Jonathan Williams and I have answered that question in "Rich States, Poor States," an index of economic competitiveness published by the American Legislative Exchange Council. Every year the top performer has been Utah.

In our 2019 report, Idaho, Arizona and Florida nearly took the top spot, but fell short again. For the other 49 states, outcompeting Utah is starting to look about as futile as beating Rafael Nadal on the red clay at the French Open.

How does Utah manage to remain so economically competitive? As a destination spot, the Beehive State has natural advantages, including gorgeous red mountains and national parks that make it a scenic and recreational wonderland. But the real secret to Utah's success is disarmingly simple: The state's politicians tend to do everything right to encourage business development and job creation.

Utah has a low, flat-rate income and corporate tax of below 5%. There's no death tax, so wealthy people don't have to flee to Florida after they retire. It's is a right-to-work state, meaning workers can't be compelled to join unions. Even though the regulatory touch is light, Utah has some of the best health outcomes in the nation.

The minimum wage in Salt Lake City and Provo is $7.25 an hour, not the $10 to $15 mandated in many blue states and cities. This has allowed employers to respond to labor-market forces. Because jobs are so plentiful, wages are rising briskly. Job growth has ranked second in the nation for the past decade, and the state's population growth ranks in the top three. The Salt Lake metro area has become one of America's fastest-growing tech sectors and is now nicknamed the Silicon Slopes.

Utah's K-12 schools serve families well despite per pupil state spending that is the lowest in the nation and $4,000 below the national average. Fourth-graders in the state ranked in the top 10 in both math and reading on the 2019 National Assessment of Educational Progress. So much for money buying better school results.

The state government in Salt Lake also has Utah's fiscal house in order. Utah was among the first states in the nation to start erasing public pension liabilities by gradually shifting to a defined-contribution pension system for government workers. Property taxes fund actual municipal services—schools, police protection, hospitals and roads. In other states—most notably, California, Illinois and West Virginia—hundreds of billions of dollars in pension liabilities are draining tax revenues.

"We are unapologetically pro-business and pro-jobs in Utah," Gov. Gary Herbert told me. "And we have a long tradition of being frugal on how we spend tax dollars." Utah spends a third less per capita on state and local government services like housing and education than do New York, Connecticut and Rhode Island. But while their elected representatives are frugal, Utah residents don't feel deprived. According to WalletHub.com Utah is the second-happiest state in the country. Only Hawaiians are happier.

Part of the reason for Utah's consistently strong economic growth is a still-predominant Mormon culture that encourages out-of-fashion virtues such as thrift, delayed gratification and stable families. The state has the nation's lowest median age. There is no dreary Malthusian concern about "overpopulation" in young and vital Utah. Stand outside a church on a Sunday morning, as I did recently, and you will see families with large numbers of kids spilling out of minivans. In the graying Northeast, that's a rare sight.

Many analysts have attributed Utah's prosperity to favorable demographics. But good economic policy leads to favorable demographics. Roughly half of Utah's population explosion has been due to net migration of almost 80,000 newcomers (mostly young) over the past decade from other states. If Utah had New York's or California's tax rates and antibusiness attitudes, the flow of people would likely run the other way.

Progressives dismiss red states like Utah as places that reward the superrich with low taxes at the expense of everyone else. But perhaps the most confounding thing about Utah is that despite (or because of) its antiprogressive policies, it has the least income inequality in the nation, according to the latest U.S. Census Bureau data.

If the progressive soak-the-rich policies of presidential candidates Elizabeth Warren and Bernie Sanders are really the path to prosperity, why does conservative Utah—which spurns all their ideas—keep coming out No. 1?

Wall Street Journal Opinion

By Stephen Moore

Dec. 6, 2019 6:53 pm ET

Mr. Moore is a senior fellow at the Heritage Foundation and a co-author of "Rich States, Poor States."

Repealing "SALT" Cap Would Be Regressive and Proposed Offset Would Use up Needed Progressive Revenues.

A bill from House Ways and Means Chairman Richard Neal and others would modify and then repeal for two years the 2017 tax law's cap on the federal deduction for state and local taxes (SALT) and offset the cost over ten years by returning the top individual tax rate to 39.6 percent. By itself, repealing the SALT cap would overwhelmingly benefit high-income households, since most low- and middle-income taxpayers don't face the SALT cap. In addition, paying for repeal by raising the top rate would use up a source of progressive revenue that would no longer be available to fund other, more critical priorities.

As a result, the Ways and Means bill would not address two central flaws of the 2017 tax law overall: its steep cost and its heavy tilt toward wealthy individuals and profitable corporations. Chairman Neal and the Ways and Means Committee have separately advanced legislation, the Economic Mobility Act, that would expand refundable tax credits to help low- and moderate-income families, as a down payment on beginning to restructure the 2017 law.[1] Given the steep cost of full repeal of the SALT cap, however, more modest proposals to modify the SALT cap offer a superior approach; such proposals can be designed to exempt the vast share of taxpayers from the cap and at far less cost.

The 2017 tax law imposed a $10,000 cap on the state and local taxes that filers can deduct on their federal tax returns. The Ways and Means bill would raise the cap in 2019, to $20,000 for married couples, and repeal it altogether in 2020 and 2021; the bill would offset the cost by reversing the 2017 tax law's reduction in the top income tax rate from 39.6 percent to 37 percent.[2]

Continue reading.

CBPP

BY CHUCK MARR KATHLEEN BRYANT MICHAEL LEACHMAN

DECEMBER 10, 2019

Fitch Upgrades Hawaii's IDR to 'AA+'; Outlook Stable

Fitch Ratings-San Francisco-10 December 2019: Fitch Ratings has upgraded the following State of Hawaii ratings:

–Issuer Default Rating (IDR) to 'AA+' from 'AA';
–$7.7 billion in outstanding general obligation (GO) bonds to 'AA+' from 'AA';
–$4 million in outstanding certificates of participation (COPs), series 2009A (State Office Building) to 'AA' from 'AA-'.

Fitch has also affirmed the rating on $408 million in outstanding highway revenue bonds at 'AA'.

The Rating Outlook is Stable.

SECURITY
The GO bonds are general obligations of the state of Hawaii that carry the full faith and credit pledge of the state. The COPs are secured by lease payments subject to legislative appropriation.

The highway revenue bonds are special, limited obligations of the state, payable from pledged funds that consist primarily of the fuel license (gas) tax, vehicle registration fees and weight taxes, and rental motor vehicle, tour vehicle, and car-sharing vehicle surcharges.

IDR ANALYTICAL CONCLUSION

The upgrade of the state's IDR and GO bond ratings to 'AA+' and Stable Outlook reflects Fitch's expectations for a resilient economy and continued strong operating performance. The upgrade of the COPs rating to 'AA' with a Stable Outlook maintains the one notch distinction below the state's IDR, consistent with Fitch's approach to rating appropriation-backed debt, which has slightly higher optionality. Given the state's solid, increasingly diversified economic base, Fitch expects that the state will maintain its existing strong financial flexibility as it continues to successfully absorb the costs arising from its pension and other post-employment benefit (OPEB) reforms. The state's commitment to elevating pension and OPEB contributions, and a requirement to report to the legislature annually on a range of pension stresses, establishes a solid basis for managing the risks posed by its retirement obligations, which Fitch expects to remain high for the foreseeable future.

DEDICATED TAX ANALYTICAL CONCLUSION
The ‘AA’ rating and Stable Outlook on the state’s highway revenue bonds reflects Fitch’s assessment of the strong resiliency of the pledged revenue stream and slow prospects for further growth. The rating is capped by the state’s ‘AA+’ IDR.

(SEE BELOW FOR DEDICATED TAX ANALYSIS)

Economic Summary
The State of Hawaii encompasses seven inhabited islands and a total population of 1.4 million, over two-thirds of whom reside on the island of Oahu. The state’s employment base and economy are diverse, with key sources of external support provided by tourism and a substantial federal presence. In the past two years, the state experienced small population declines, which are atypical relative to its history of steady to strong annual population growth. These declines appear largely tied to recent military redeployments to the mainland (which are not expected to continue), reduced international in-migration (in response to current federal immigration policy) and a slightly declining birthrate.

IDR KEY RATING DRIVERS

Revenue Framework: ‘aaa’
General excise taxes (GET) and corporate and personal income taxes provided around 88% of Hawaii’s fiscal 2019 general fund revenues. Total general fund revenues have performed solidly historically, in line with U.S. GDP over the past 10 years. Prospects for ongoing revenue gains appear strong based on the state’s growing economy where long-term diversification trends have bolstered economic resiliency. The state has full control over its revenues with no legal limits on potential increases.

Expenditure Framework: ‘aa’
Based on recent spending practices and continued strong revenue performance, Fitch expects that state expenditure increases will be in line with to marginally above revenue growth absent offsetting policy action. Carrying costs for debt service and retiree benefits are somewhat elevated for a U.S. state but are expected to remain manageable.

Long-Term Liability Burden: ‘a’
Long-term liabilities for debt and retiree pension benefits are well above the median for U.S. states and are elevated but still in the moderate range relative to total personal income. Fitch’s long-term liability burden calculation includes liabilities for the state’s public schools, which are paid for by local governments in most other jurisdictions. Reforms to retiree benefits and higher contributions have helped to slow the growth of related liabilities. However, considerable progress on pension system and OPEB prefunding will take place only gradually.

Operating Performance: ‘aaa’
The state is well-positioned to address economic challenges as a result of limited revenue volatility and increased reserves. Budget management is guided by frequent revenue forecasts and multi-year financial plans that provide input for policy adjustments as required.

RATING SENSITIVITIES
STRONG LONG-TERM FINANCIAL FLEXIBILITY: The state’s IDR and ratings on its GO bonds and COPs are sensitive to changes in overall fiscal and operating performance, particularly in light of the

state’s commitment to making full actuarial contributions for pensions and OPEB. The current rating assumes the state will maintain a high degree of financial flexibility through economic cycles consistent with the rating level while simultaneously addressing retirement liabilities. Deterioration in operating performance tied to cyclicality beyond Fitch’s expectations, slower than expected revenue growth, or a diminished commitment to addressing its retiree liabilities, could result in downward rating pressure.

SOLID ECONOMIC PERFORMANCE: Economic performance that does not support Fitch’s expectations for revenue growth from a solid, increasingly diversified economic base could pressure the ratings.

PLEDGED REVENUE PERFORMANCE: The highway revenue bond ratings are sensitive to pledged revenue declines, or additional debt issuance beyond current expectations, that materially affect debt service coverage on the bonds.

STATE CREDIT QUALITY: Deterioration in the state’s credit quality could affect the highway revenue bond ratings, which are capped by the state’s IDR.

CURRENT DEVELOPMENTS
The state has been active in addressing retirement liabilities in recent years. Although the changes made will not meaningfully lower liabilities in the near term, they improve the chances that the liabilities will be sustainable over time. Most importantly, Hawaii remains on the course laid out by 2017 legislation to accelerate the state pension system’s funding progress by requiring a four-year phase-in to higher employer contribution rates by fiscal 2021. The June 30, 2018 annual actuarial valuation for the pension system estimated that the remaining rate increases to be made in fiscal years 2020 and 2021, held constant thereafter, would result in a 25-year funding period.

The most recently published, legislatively-mandated annual stress test of the pension system indicates that funded ratios would deteriorate under the test’s most severe scenario assumptions, but that sustained payment of higher contributions would prevent the plan’s depletion. The most severe alternate stress test indicates that the pension system’s funded ratio would dip just below 36% but the trust would not be exhausted. Compliance with both the legislatively-mandated employer contribution increases and annual stress testing supports the pension system’s sustainability over time and demonstrates management’s ongoing commitment to address the state’s long-term liability burden.

The state’s irrevocable OPEB trust now has an estimated fiscal 2019 balance of $1.8 billion (16% funded ratio), up from $1.3 billion in fiscal 2018 (12% funded ratio), given the state’s commitment to making full actuarial contributions. Nevertheless, the net OPEB liability continues to grow (to $9.4 billion in fiscal 2019), representing a very high 12% of personal income.

ECONOMIC RESOURCE BASE
Hawaii’s economic performance has been solid with increasing economic diversification, steady growth in tourism, and a continued substantial military presence. As evidence of increasing economic diversification, state officials calculate tourism’s current share of GDP at 17%, compared to 33% in 1988. For the first nine months of 2019, state officials estimate that the leisure and hospitality sector accounted for 18% of the state’s employment, comparable to the trade, transportation and utilities sector (17%), but noticeably less than the government/military sector (25%).

Tourism activity has been subject to periodic declines historically but has proven resilient over the long term. Visitor numbers and spending are at record levels, airline seat capacity to Hawaii is growing, and hotel room capacity is expanding. However, the rate of growth for visitor arrivals and spending is expected to slow relative to recent years' rapid growth, in part due to expected national and global economic headwinds.

For well over a decade, the state's unemployment rate has been below the U.S. average and it is now exceptionally low. Personal income levels are above average on a nominal basis, although real spending power is curtailed by the state's high cost of living.

Housing affordability is a growing issue for Hawaii with well above average median single family house prices (when comparing Honolulu with other comparably sized U.S. cities). State officials advise that considerably fewer houses are being constructed than local and out-of-state demand could absorb. Although high construction costs appear to be a barrier for some already permitted projects, many residential, commercial, and hotel projects are currently underway across the state. In addition, significant public sector capital investments are currently being made in the state's transportation infrastructure, schools and universities, and water and wastewater systems, while the military continues to make sizable capital investment in its Hawaiian bases.

IDR CREDIT PROFILE

Revenue Framework

The state relies on general excise taxes (GET) on business income and corporate and personal income taxes for the majority of its general fund revenues. The GET is broad-based and captures income from the sale of services as well as goods, accounting for half of general fund revenues in fiscal 2019. The state continues to focus on improving GET collections from on-line retailers and individual vacation rental units. Net income taxes from corporations and individuals account for over a third of general fund revenues. Policy-adjusted performance for all general fund revenues has been solid historically, exceeding inflation but slightly below overall U.S. economic performance.

Fitch expects Hawaii's revenue growth, absent policy actions, generally to perform in line with GDP based on the state's resilient and growing economy. While revenue gains may be affected by periodic economic shocks, strong growth is expected over the long term. The state's multiyear forecast anticipates general fund revenue growth of between 2.9% and 3.8% annually during fiscal years 2021 to 2025.

The state has full legal authority to raise revenues and has regularly adopted measures to modify revenue sources and amounts.

Expenditure Framework

Hawaii provides a broad range of services to its residents with education and health and human services accounting for the bulk of total governmental fund expenditures (inclusive of federal funding). Elementary, secondary and higher education comprised over a third of total governmental fund expenditures in fiscal 2018. Health and welfare spending combined for another third. The fiscal challenge of Medicaid is common to all U.S. states and the nature of the program as well as federal government rules limit the states' options in managing the pace of spending growth. Federal action to revise Medicaid's programmatic and financial structure appears less likely in the near term given divided control in Congress. The state does not have expenditure risk associated with voter initiatives.

Fitch expects that the natural pace of spending growth will be in line with to marginally above expected revenue growth based on the state's current spending profile. The state will continue to see growth in spending for retiree benefits, education and health care in particular, but ongoing revenue gains are likely to keep pace with expenditure increases. The state's multiyear forecast anticipates general fund expenditure growth of between 1.5% and 2.4% annually during fiscal years

2021 to 2025, which is less than projected general fund revenue growth over that period. There is a constitutional expenditure ceiling that can only be exceeded with a two-thirds vote of the legislature. Apart from fiscal 2007, appropriations for recent years have not exceeded that expenditure ceiling.

The state has a strong track record of making expenditure reductions when needed despite the large share of its budget devoted to education and health and human services. General fund spending fell by approximately 14% during fiscal years 2010 and 2011, largely due to employee furloughs and executive department spending restrictions, in response to reduced revenues.

Looking ahead, the state's substantial expenses for debt service and prefunding of retiree benefits could present a greater challenge for expenditure flexibility. Carrying costs for these items accounted for 16% of governmental expenditures in fiscal 2018, among the highest shares for states. This is partly driven by Hawaii's commitment, unusual for a state, to make actuarial rather than pay-as-you-go contributions for OPEB, necessitated by the size and inflexibility of that liability. OPEB contributions at the full actuarial level from fiscal 2019 onwards and higher scheduled employer pension contribution rates appear likely to increase this ratio further, and therefore Fitch expects carrying costs to remain high relative to other states.

Long-Term Liability Burden
Long- term liabilities for debt and pensions are high for a U.S. state. They are elevated but still in the moderate range at 21% of personal income as of fiscal 2018, more than three times the median for states, as reported in Fitch's 2018 State Pension Update. This ratio excludes the net pension liability attributed to the University of Hawaii. The ratio appears to be on an upward trajectory in the short-term based on debt issuance plans and more conservative assumptions included in recent pension valuations.

Long-term liabilities include debt issued for the state's elementary and secondary schools; historically, almost a third of the state's general fund debt has been for K-12 education (local governments pay for this in most other states). Amortization is moderate, with 62% of outstanding principal due for repayment within 10 years.

The pension system reported a relatively low 56% ratio of assets to liabilities as of its fiscal 2018 measurement date and an assumption of 7% investment returns. Under Fitch's standard 6% return assumption, this would drop to 49%. Contribution rates are determined by statute and adjusted periodically if the actuarial funding period exceeds 30 years. The state increased contribution rates in 2012 and again in 2017. The state remains on track with the current four-year phase-in of higher employer contributions, with the goal of eliminating the UAAL by fiscal 2043.

The state has implemented several rounds of retirement reforms since the Great Recession. Despite the immediate negative impact on the plan's funded condition, Fitch expects that these changes along with rising contributions will position the plan for funding progress, assuming current assumptions are achieved. Fitch views positively the state's proactive support of pension system sustainability, most notably through the contribution increases, and its annual mandate of stress testing pension investments and their impact on contributions. The latter provides significant transparency for the state's management on how contributions would have to change in the event of asset underperformance.

The state also carries a high liability for accrued OPEBs, which it regards as legally protected. Unusually for a state, Hawaii has made notable progress in prefunding OPEBs, moving from pay-a--you-go to full funding of the annual required contribution (ARC). Under the new accounting standard, OPEB liabilities are discounted at 7%, reflecting the actuarial determination of contributions. Legislation adopted in 2013 established a schedule for full ADC funding by 2019, which the state achieved, with full prefunding of accrued benefits forecast for 2045, if plan assumptions are achieved. The 2013 legislation also established an irrevocable OPEB trust that now has an estimated fiscal 2019 balance of $1.8 billion (16% funded ratio), up from $1.3 billion in fiscal 2018 (12% funded ratio). Nevertheless, the net OPEB liability continues to grow (to $9.4 billion in fiscal 2019) and it represents a very high 12% of personal income.

Operating Performance
Increased reserves and a history of limited revenue volatility contribute to an assessment of strong financial resilience for the state in a moderate economic downturn. Based on historical results adjusted for the impact of policy action, Fitch estimates that a 1% decline in U.S. GDP would reduce state revenues by 2.5%. The state's reserves provide a considerable cushion against revenue declines expected in a moderate recession.

The state made key improvements to financial flexibility in the wake of the Great Recession, increasing budgetary and emergency reserves. A budget reserve policy adopted in 2016 sets a goal of 10% of prior year budgeted revenues for such savings, committing a portion of ongoing tobacco revenues and general fund balance in years of strong revenue performance. Balances in the state's Emergency Budget and Reserve Fund (EBRF) rose to over $378 million in fiscal 2019 (nearly 5% of prior fiscal year budgeted revenues), from just under $10 million in fiscal 2011. The EBRF is budgeted to grow to $391 million (nearly 5% of prior fiscal year budgeted revenues) in fiscal 2020.

In addition, the state has a balance of almost $184 million in its Hawaii Hurricane Relief Fund, which has functioned as an additional working reserve in times of economic stress. This fund is projected to grow slightly to $185 million in fiscal 2020.

The state reported a fiscal 2018 net general fund deficit of $228 million (3% of total general fund expenditures and transfers out), up from a 1% deficit the prior year. These deficits reflect expenditure pressure related to increased pension and OPEB contributions. However, total governmental funds showed only a slight deficit of $39 million in fiscal 2018 (0.3% of spending) and positive operations in fiscal 2017.

The state's September 2019 revised general fund financial plan projects balanced general fund operations in fiscal 2019 (adding just under $2 million to the general fund balance), a small deficit in fiscal 2020 and positive operations thereafter. Fitch expects the state to address budget balancing challenges as they arise and to maintain its strong financial flexibility.

DEDICATED TAX KEY RATING DRIVERS
RATING CAPPED BY STATE CREDIT QUALITY: The highway revenue bond rating is capped by the state's general credit quality. Pledged revenues, a relatively narrow basket of motor vehicle-related taxes and user charges, are structurally protected from general government operations and restricted to the support of the state highways system.

SLOW PLEDGED REVENUE PERFORMANCE: Pledged highway revenue growth has been above inflation but less than national economic performance over the past 10 years, in part due to state policy actions to adjust tax rates and charges to offset economic volatility. Pledged revenues have provided robust coverage of debt service in a scenario that considers leveraging up to 4.5x MADS, in combination with revenue declines anticipated in a moderate economic downturn.

DEDICATED TAX CREDIT PROFILE
Legal provisions for the bonds provide solid protection for bondholders. Senior bonds (the only active lien) have a first lien on the pledged funds once deposited in the state highway fund. Subordinate lien debt is permitted, though none has been issued. Hawaii's general revenue bond law

requires the state to maintain pledged revenues in amounts sufficient to meet commitments to bondholders. While not anticipated, such commitments could be modified by the state legislature. Pledged revenues are not subject to annual appropriation by the state legislature.

Transfers out of the state highway fund are permitted, but only after senior and subordinate debt service obligations, operations and maintenance expenses, and required capital improvements have been funded. Further, transfers are only allowable if monies remaining in the fund exceed 135% of the next year's revenue requirements. Since 2006, the legislature has supported revenue increases to support the highway fund and transferred $37 million from the general fund in fiscal 2017.

Highway revenue bonds are supported by both a cash-funded debt service reserve and sureties sized at 50% of maximum annual debt service (MADS). The state has proposed to eliminate the reserve on future debt issuances upon receipt of 100% bondholder consent, which is not expected to occur until the series 2005, 2008, 2011, and 2014 highway revenue bonds mature or are refunded. Such changes are not a rating consideration given the credit's underlying strength.

Pledged revenues consist of highway fuel license taxes assessed at a per-gallon rate; a fixed per vehicle registration fee; a tax based on motor vehicle weight; surcharges on rental motor vehicles, tour vehicles, and car-sharing vehicles applied on a per day, month, or hour basis; and other miscellaneous fines, charges, and fees. In fiscal 2019, vehicle registration and weight fees provided approximately 45% of pledged revenues and fuel taxes accounted for an additional 29%.

Revenues are sensitive to fuel usage and efficiency, vehicle ownership levels, motor vehicle size, total mileage and tourism activity. Revenues dipped by a cumulative 13% between fiscal years 2008 and 2010, during the Great Recession, but the combination of a recovering economy and repeated state policy actions have resulted in cumulative growth of almost 53% over the following eight years.

Between 2008 and 2018, pledged revenues rose at a compound annual growth rate of 2.8%, well above inflation but below national economic growth. The state is projecting future pledged revenue growth at around 1% annually from fiscal 2021 onwards, a more modest rate of growth than historical performance. However, baseline pledged revenues will increase significantly in fiscal 2020 primarily due a 67% increase in the rental motor vehicle surcharge enacted on July 1, 2019 (Act 174). This increase is projected to generate an additional $33 million annually.

To evaluate the sensitivity of the dedicated tax revenue stream to cyclical decline, Fitch considers both a revenue sensitivity scenario (using a 1% decline in national GDP scenario) and the largest decline in revenues over the 10-year period covered by the revenue sensitivity analysis. Based on this history, Fitch's analytical sensitivity stress test (FAST) generates a 4% decline in pledged revenues during the first year of a moderate recession while the largest cumulative revenue decline historically was the 13% described above.

Management has typically limited debt service expenses to less than 20% of total annual revenues to ensure sufficient funding for operations and maintenance; it plans to continue this practice in the future. The state expects to issue a substantial amount of additional revenue bonds in fiscal years 2020 and 2021. The pro forma debt amortization schedule indicates that pledged revenues held constant at fiscal 2019 levels would maintain a minimum of 5.0x MADS coverage, the state's minimum coverage assumption when evaluating future bonding plans. Fiscal 2019 pledged revenues were 5.6x MADS.

Conservatively assuming leverage down to 4.5x MADS, pledged revenues could withstand a 78% drop before not fully covering MADS. This represents 18.6x the scenario-generated decline and 5.8x the largest recorded decline.

EXPOSURE TO ISSUER OPERATIONS
The dedicated tax bond rating is capped by the state's 'AA+' IDR. While pledged highway revenues are structurally protected from general government operations and restricted to supporting the state highways system, the state has considerable discretion over the appropriation of state highway fund monies. Transfers out of the state highway fund are permitted once certain conditions are met, and in 2017 the fund received support from the general fund.

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Sources of Information
In addition to the sources of information identified in Fitch's applicable criteria specified below, this action was informed by information from Lumesis.

ESG Considerations
Unless otherwise disclosed in this section, the highest level of ESG credit relevance is a score of '3' – ESG issues are credit neutral or have only a minimal credit impact on the entity, either due to their nature or the way in which they are being managed by the entity.

For more information on Fitch's ESG Relevance Scores, visit www.fitchratings.com/esg.

- GASB Proposes New Implementation Guidance to Assist Stakeholders with Application of its Pronouncements.
- SIFMA: Proposed Exemptive Order Related to Muni Advisors
- SIFMA Says SEC Is On 'Wrong Path' With Advisor Exemptive Order.
- MSRB Proposes Enhancements to EMMA Website
- Muni-Bond Ratings Are All Over the Place. Here's Why.
- IRS Issues Private Letter Ruling Allowing Tax Equity Financing with a Regulated Utility Taxpayer.
- Fitch Exposure Draft for U.S. Affordable Housing Rating Criteria & Webinar
- "Small Claims Court" Lawsuits Could Cost Wall Street's Credit Rating Agencies Billions.
- *Herrick v. Jackson Hole Airport Board* – Supreme Court of Wyoming holds that statute authorizing airport board to purchase "lands and other property" using revenue bonds allows purchase of both

tangible and intangible property, which includes goodwill.

- And finally, Why Not In My Backyard? is brought to us this week by *Town of Delaware v. Leifer*, in which the town had to convince Mr. Leifer – at first gently, but then judicially – that he couldn't hold a three-day music festival in his backyard. We're just not seeing what part of, "off-site parking at a local school and rental of shuttle buses to transport attendees to the event site, a party tent for inclement weather, security at both the parking lot and event, $2,000,000 event insurance, 16 portable toilets, a 30–cubic–yard dumpster, EMTs on site and an ambulance on standby" is inconsistent with single-family residential zoning. Maybe we're missing something.

PUBLIC UTILITIES - ALABAMA

City of Wetumpka v. Alabama Power Company

Supreme Court of Alabama - November 27, 2019 - So.3d - 2019 WL 6337290

City brought action against power company for a judgment declaring that power company was responsible for the costs of relocating electric facilities in accordance with a new city ordinance.

The Circuit Court dismissed action. City appealed.

The Supreme Court held that the Public Service Commission (PSC) had exclusive jurisdiction over the dispute.

The Public Service Commission (PSC) had exclusive jurisdiction over dispute in which city sought to have power company bear the costs of relocating overhead electrical facilities in accordance with a new city ordinance, and thus the circuit court lacked subject-matter jurisdiction over city's action for a declaratory judgment that power company had to bear such costs; city's claim was in effect a challenge to a service regulation.

PUBLIC PENSIONS - CALIFORNIA

City of Anaheim v. Bosler

Court of Appeal, Third District, California - November 25, 2019 - Cal.Rptr.3d - 2019 WL 6270841 - 19 Cal. Daily Op. Serv. 11, 269

City brought petition for writ of mandate against Department of Finance regarding Department's determinations of city obligations to pay retirement costs of employees who worked as joint employees for city and redevelopment agency (RDA).

The Superior Court entered judgment in favor of Department, and city appealed.

The Court of Appeal held that:

- City disavowed reliance on sponsor agreement for payment of retirement costs;
- Determinative qualification for enforceable obligations of successor city to RDA under statute governing dissolution of
- RDAs was that payments on behalf of employees were legally enforceable;
- RDA's alleged contractual relationship with retirement system was irrelevant to successor city's obligations;
- Dissolution law did not purport to create legally enforceable substantive duties beyond duties that

already contractually existed between RDA and city;
- Retirement costs were not legally enforceable obligation for RDA in absence of contract;
- City's suggested reading of dissolution statute that Legislature intended to reduce liability of local entities for retirement costs as part of eliminating abusive diversion of tax increment was not warranted.

TELECOM . - ILLINOIS

[Village of Campton Hills v. Comcast of Illinois V, Inc.]

Appellate Court of Illinois, Second District - November 18, 2019 - N.E.3d - 2019 IL App (2d) 190055 - 2019 WL 6112055

Municipality filed suit against cable company to recover cable franchise fees.

Cable company filed declaratory judgment against municipality and county to determine which government unit was entitled to fees. County filed counterclaim against cable company for recovery of unpaid fees and for indemnification. On cross-motions for summary judgment, the Circuit Court determined municipality was entitled to fees, ordered county to reimburse cable company for fees it had paid to county, and denied county's claim for indemnification. County appealed, and municipality cross-appealed.

The Appellate Court held that:

- Trial court's determination was not improper modification of franchise agreement between cable company and county;
- Franchise fees were not included in definition of damages in indemnification provision of county ordinance; and
- Municipality was not entitled to appeal trial court's determination.

Trial court's determination granting county municipality franchise fees from cable company was not improper modification of franchise agreement between cable company and county, where county ordinance provided payments would continue to extent allowed by law, and counties code limited county's ability to license, tax, or franchise cable company to systems within county but outside of municipalities.

Franchise fees were not included in definition of damages in indemnification provision of county ordinance which precluded county's liability for damages sustained in relation to franchise agreement with cable company, and thus, county was required to reimburse franchise fees cable company had paid to county upon trial court's determination that municipality, and not county, was entitled to fees, even though ordinance did not provide definition of damages.

Municipality was not entitled to appeal trial court's determination that incorporation of municipality and annexation had same meaning under counties code, in action brought by municipality, seeking to recover franchise fees cable company had paid to county instead of municipality, where trial court had ruled in favor of municipality, and municipality had been granted all relief it had requested.

COUNTIES - IOWA

[Marcus News, Inc. v. O’Brien County Board of Supervisors]

Supreme Court of Iowa - November 15, 2019 - N.W.2d - 2019 WL 6040805

Owner of disappointed applicants for designation as official county newspaper, which were under common ownership and published in the same city, contested entitlement for designation as official county newspaper.

The District Court affirmed county Board of Supervisors’ decision to consider disappointed applicants as separate newspapers, and designation of two newspapers owned by intervenor as the official county newspapers for publication of official proceedings.

Following District Court’s denial of motion for reconsideration, owner of disappointed applicants appealed.

The Supreme Court held that:

- Subscriber lists demonstrated that disappointed applicants served different geographic areas, and thus were precluded from being combined for purposes of determining circulation;
- Board was not required to combine and consider two successful applicants as one publication in the same geographic area; and
- Owner of disappointed applicants was not entitled to relief based upon claim that successful applicants’ subscribers were not bona fide yearly subscribers.

Subscriber lists for disappointed applicants for designation as official county newspapers demonstrated that applicants served different geographic areas, and thus were precluded from being combined to be considered as one publication for purposes of determining circulation; newspapers were not equally distributed throughout county, and legislature chose to impose a same-geographic-area requirement for combining publications, rather than a county-wide requirement.

County Board of Supervisors was not required to combine, and consider as one publication in the same geographic area, two successful applicants for designation as official county newspapers, where 87 percent of subscribers of one newspaper were located within city, while 58 percent of second newspaper were located outside of city.

Owner of disappointed applicants for designation as official county newspapers was not entitled to relief from district court’s designation of successful applicants as county’s official newspapers based upon claim that successful applicants’ subscribers were not bona fide yearly subscribers; short renewal terms did not mean that listed subscribers were not subscribers who received publications for at least six consecutive months, and largest disappointed applicant still had fewer subscribers than smallest successful applicant.

OPEN MEETINGS - LOUISIANA

[Landry v. Duplechain]

Court of Appeal of Louisiana, Third Circuit - November 6, 2019 - So.3d - 2019 WL 5782584 - 2019-457 (La.App. 3 Cir. 11/6/19)

Attorney general filed petition seeking to enforce Open Meetings Law against school board, superintendent, and other individual school board members.

The petition sought declaratory judgment finding that defendants violated Open Meetings Law, injunctive relief requiring defendants to abide by Open Meetings Law, as well as civil penalties, attorney fees, and costs. Superintendent filed exception of no cause of action, which was granted. The parties submitted stipulation, which included agreement that liability of individual members would be bifurcated and reserved for further proceedings, following determination of liability, vel non, of school board. Thereafter, the District Court rendered judgment against school board. Superintendent and individual members appealed.

The Court of Appeal held that:

- Superintendent was not a third party who had a right to appeal judgment rendered against school board, and
- Claims against individual members were separate and distinct from those ruled upon in judgment rendered against school board.

Superintendent was not a third party who had a right to appeal judgment rendered against school board in action against school board, superintendent, and other individual school board members; trial court rendered final judgment in favor of superintendent dismissing him as defendant from the action, this dismissal was based in part upon superintendent's admission that he was not an indispensable party to an action where his contract was at issue, and superintendent, as well as plaintiffs, did not appeal from judgment of dismissal.

Claims against individual school board members were separate and distinct from those ruled upon in judgment rendered against school board, in action against school board, superintendent, and individual members, and therefore judgment rendered against school board had no effect on rights of individual members and did not preclude them from presenting evidence or argument in defense of claims against them; individual members could only appeal portions of judgment adverse to them, judgment was rendered in favor of plaintiffs and against school board, and trial court's order designating judgment against school board as final made clear that remaining claims against individual members were distinct, severable, and governed by different standards of liability.

ZONING & PLANNING - MINNESOTA

[Schulz v. Town of Duluth]

Supreme Court of Minnesota - December 4, 2019 - N.W.2d - 2019 WL 6519674

Landowners sought zoning variance to build retirement home on their property. After town planning and zoning commission granted variance, neighbors, who lived adjacent to landowners and alleged that construction of home would obstruct their view of lake, appealed. The town board of supervisors denied neighbors' appeal and granted landowners' variance application, and neighbors appealed.

The District Court granted town's motion to dismiss action. Neighbors appealed. The Court of Appeals affirmed, and neighbors appealed.

The Supreme Court held that:

- To perfect appeal and confer jurisdiction on district court, aggrieved party appealing zoning variance is only required to serve municipality;
- Neighbors' failure to timely serve landowners and make them parties to their action, seeking judicial review of town board of supervisors' decision, did not mean that district court lost jurisdiction over neighbors' action;
- Statute, governing judicial review of municipal planning decisions, and town ordinance required

that timely service of request for judicial review be made only on the municipality;
- District court acquired jurisdiction over neighbors' action when neighbors properly served town, regardless of neighbors' improper service on landowners;
- District court erred by dismissing neighbors' action with prejudice, rather than joining the non-municipality defendants; and
- Landowners were "necessary parties" to neighbors' action.

ZONING & PLANNING - NEW YORK

[Town of Delaware v. Leifer]

Court of Appeals of New York - November 21, 2019 - N.E.3d - 2019 WL 6183535 - 2019 N.Y. Slip Op. 08446

Town commenced action against landowner, seeking permanent injunction to prevent landowner from holding three-day music and camping festival on his 68-acre property.

The Supreme Court, Sullivan County, granted town's motion for summary judgment, denied landowner's cross-motion for summary judgment, and permanently enjoined landowner from advertising, selling tickets to, or holding festival on his property. The Supreme Court, Appellate Division, affirmed. Landowner appealed.

The Court of Appeals held that:

- Proposed festival was not encompassed within permitted principal or accessory use of single-family residence;
- Zoning law's theater land use restriction was content-neutral time, place, and manner restriction;
- Restrictions were narrowly tailored to serve town's legitimate interests;
- Zoning law was not overbroad;
- Zoning law afforded landowner sufficient notice that music festival was prohibited land use; and
- Injunction was not overly expansive.

IMMUNITY - TEXAS

[Cutrer v. Tarrant County Local Workforce Development Board]

United States Court of Appeals, Fifth Circuit - November 22, 2019 - F.3d - 2019 WL 6242860 - 2019 A.D. Cases 451, 680

Employee of county workforce development board filed suit against her employer claiming disability discrimination, retaliation, and post-employment retaliation under the Americans with Disabilities Act (ADA), and use of her personal information in violation of the Fair Credit Reporting Act (FCRA).

The United States District Court for the Northern District of Texas dismissed on basis of employer's sovereign immunity. Employee appealed.

The Court of Appeals held that:

- Employee waived claims not briefed on appeal;
- County and cities were not the State and therefore could not confer Eleventh Amendment immunity on county workforce development board; and
- There was no evidence that State of Texas was source of board's funding, as could support finding

- that board was arm of state and thus entitled to Eleventh Amendment immunity.

County and cities were not the State and therefore could not confer Eleventh Amendment immunity on county workforce development board which they created to oversee delivery of workforce training and services; county and cities were territorially part of state but were merely political subdivisions.

There was no evidence that the State of Texas was the source of funding for a county workforce development board created in cooperation between a county and two cities to oversee deliver of workforce training and services, as could entitle it to Eleventh Amendment immunity to employee's claims for discrimination, in violation of ADA, and violation of the Fair Credit Reporting Act (FCRA), as an arm of the state.

REVENUE BONDS . - WYOMING

Herrick v. Jackson Hole Airport Board

Supreme Court of Wyoming - November 26, 2019 - P.3d - 2019 WL 6317542 - 2019 WY 118

Potential service providers for airport, along with individuals dissatisfied with airport's current services, filed petition for declaratory judgment, challenging validity of agreement for airport board's purchase of current service provider's assets as beyond statutory authority of board.

The District Court granted summary judgment to board. Potential providers and individuals appealed.

The Supreme Court held that:

- Trial court acted within its discretion in denying motion to compel production of reports regarding valuation of specific assets;
- Trial court acted within its discretion in denying motion to compel production of legal opinion letters;
- Statute authorizing airport board to purchase "lands and other property" using revenue bonds allows purchase of both tangible and intangible property; and
- Goodwill is intangible property included in term "other property," which an airport board is authorized to purchase using revenue bonds.

Trial court acted within its discretion in denying potential airport services providers' motion to compel production of reports, which discussed how specific assets were valued, in providers' declaratory judgment action, challenging validity of board's purchase of certain intangible assets, as part of purchase agreement, as being beyond board's statutory authority; board did not deny it was buying intangible assets, and value of intangible assets was not germane to issue of board's authority.

Trial court acted within its discretion in denying potential airport services providers' motion to compel production of legal opinion letters by private attorney, which discussed powers of airport board, in providers' declaratory judgment action, challenging validity of an asset purchase agreement as beyond board's statutory authority; issue of board's authority was question of law for court to decide, and a private attorney's preliminary legal analysis was not a fact pertinent to court's statutory interpretation.

Statute authorizing airport board to purchase "lands and other property" using revenue bonds allows purchase of both tangible and intangible property.

Goodwill is intangible property included in term “other property,” which an airport board is authorized to purchase using revenue bonds.

GASB Proposes New Implementation Guidance to Assist Stakeholders with Application of its Pronouncements.

Norwalk, CT, December 4, 2019 — The Governmental Accounting Standards Board (GASB) today proposed implementation guidance containing questions and answers intended to clarify, explain, or elaborate on certain GASB pronouncements.

The Exposure Draft, *Implementation Guidance Update—2020*, contains proposed new questions and answers that address application of the Board’s standards on the financial reporting entity, fiduciary activities, leases, external investment pools, asset retirement obligations, and conduit debt obligations. The Exposure Draft also includes proposed amendments to previously issued implementation guidance.

The GASB annually issues new and updated guidance to assist state and local governments in applying generally accepted accounting principles (GAAP) to specific facts and circumstances that they encounter. The GASB develops the guidance based on (1) application issues that are raised during due process on GASB Statements, (2) questions it receives throughout the year primarily from governments and auditors, and (3) concerns identified by members of the Governmental Accounting Standards Advisory Council and other stakeholders. The guidance in Implementation Guides is authoritative and constitutes Category B GAAP.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB encourages stakeholders to review the proposal and provide comments by January 31, 2020. Information about how to comment can be found at the front of the Exposure Draft.

Muni-Bond Ratings Are All Over the Place. Here’s Why.

Amid fight for market share, ratings companies struggle to judge creditworthiness of financially troubled cities

Chicago is in bad financial shape, with an unsustainable pension burden and a towering debt load. Yet the city will shortly issue bonds that are likely to be rated as supersafe, even though similar investments have lost money.

Bond-ratings firms are struggling to judge the creditworthiness of cities and local governments with deep financial problems. There have been widely disparate ratings, errors in analysis and a fight for market share that may have produced optimistic outlooks.

Chicago has the most pension debt of any major U.S. city, according to Merritt Research Services, and a shrinking population. To help cover an $838 million budget shortfall, the city is planning to sell up to $1.5 billion in bonds beginning as soon as this month.

Continue reading.

The Wall Street Journal

By Gunjan Banerji

Dec. 6, 2019 5:30 am ET

Fitch Exposure Draft for U.S. Affordable Housing Rating Criteria & Webinar

Fitch's proposed criteria focus on bonds secured by less than 10 cross-collateralized: federally subsidized multifamily affordable housing properties; solely unsubsidized multifamily affordable housing properties; or properties with a combination of subsidized and unsubsidized affordable housing units.

Read the Exposure Draft.

Related Webinar:

U.S. Affordable Housing Criteria Exposure Draft | December 12, 2019 at 2:PM EST

An Ominous Signal in the Muni-Bond Market Now Seen as Just Noise.

- **Governments may start selling debt faster than it's paid off**
- **Barclays sees positive net supply of $80 billion in 2020**

An ominous signal in the municipal-bond market shouldn't scare buyers too much.

State and local governments' frenzy to seize on lower interest rates could leave them issuing new bonds next year at a faster pace than they're paying them off, causing an increase in the net supply of outstanding securities. Usually, that's viewed as a negative in the $3.8 trillion municipal market, given that the increase in supply can exert a drag on prices.

But this time, the jump may be matched by a flood of cash that's been washing into the market all year as Americans burned by the limit on state and local tax deductions use the investments to drive down what they owe to the federal government. Municipal-bond mutual funds last week alone received a record $2.36 billion of new cash, according to Refinitiv Lipper US Fund Flows data, extending an unprecedented influx that's continued since January.

"Higher net supply is not going to be oversupply," said Peter Block, head of municipal strategy at Ramirez & Co., which is projecting positive net supply of $98 billion next year.

The increase follows what had been a slowdown in new municipal-bond sales, which caused the size of the market to shrink in 2018 and during the first half of this year, according to Federal Reserve figures. That led mutual fund managers to complain about the competition and high prices being paid for new debt issues, though the drop in yields also saved state and local governments money.

With the market's interest rates now holding not far from more than half-century lows, Wall Street underwriters anticipate the pace of borrowing to pick up. Barclays Plc is forecasting that will cause the size of the market to grow by $80 billion in 2020, which the company projects would be the biggest increase since 2016. Bank of America Corp. strategists last month predicted a similar rise.

The ballooning supply is driven heavily by state and local governments' push to refinance their debt with taxable securities. While that may be a drag on that corner of the market, analysts say it's unlikely to trickle into demand for traditional tax-exempt bonds, which will also benefit from interest and principal payments that bondholders will seek to reinvest.

Barclays strategists led by Mikhail Foux said their forecast for positive net supply in 2020 won't be problematic for tax-free buyers because those sales won't increase "materially."

Bloomberg Markets

By Amanda Albright

December 3, 2019, 10:50 AM PST

"Small Claims Court" Lawsuits Could Cost Wall Street's Credit Rating Agencies Billions.

This is truly a story about David verses Goliath. Over the past four to five months, two hundred and forty small claims court lawsuits have been filed with the California Superior Court. The plaintiffs claim that the executives at the three largest credit rating agencies, Moody's, Fitch and S&P engaged in securities fraud, mail fraud, wire fraud, bribery, extortion and racketeering when they issued credit ratings on tens of billions of dollars in Puerto Rico municipal bonds. The plaintiffs are seeking to recover two thousand five hundred dollars.

Unbelievably, the credit rating agencies decided to dispute the claims rather than reach a settlement. I say "unbelievably" because of what you are about to read next.

The credit rating agencies dispute resulted in an evidentiary hearing on November 15, 2019. The defendants claimed the court did not have jurisdiction in these cases. The court denied that motion and reaffirmed jurisdiction over these disputes. The defendants claimed one of the plaintiffs did not have legal standing to participate in a lawsuit. That motion was also denied by the court. The court asked the plaintiffs to submit evidence justifying these lawsuits.

The following was submitted to the court: A copy of a forensic accounting audit on the bonds reflecting the fact that the municipal agencies were already bankrupt prior to the issuance of these bonds. Sworn testimony from municipal executives claiming that the credit rating agencies knew them to be bankrupt but would issue good credit ratings in exchange for hefty fees. Sworn testimony that the lead auditor for the municipal agencies stating the agencies have been technically bankrupt since 2010. Documents confirming the existence of recorded telephone conversations reflecting payoffs to Department of Justice personnel to prevent any investigations or prosecutions.

The court determined that sufficient evidence exists to move forward with these small claim cases. The evidence was shared with the Riverside District Attorney, Michael Hestrin who then forwarded the evidence on to the California, Attorney General, Xavier Becerra.

One has to ask? What were the credit rating agency executives thinking? Now they are looking at the possibility of billion of dollars in fines from the Securities and Exchange Commission and the real possibility of criminal charges.

The plaintiffs have recently requested that the court issue subpoenas forcing the appearance of the defendants in these small claims court hearings. There is no doubt that there will be law enforcement personnel in the courtroom eagerly listening to the defendant's testimony. Stay tuned this story can only get better. Honestly, you can't make this stuff up!

ROCKLAND COUNTY TIMES

BY RICHARD LAWLESS

December 5, 20190 Comments

Richard Lawless is an investigative journalist and one of the plaintiffs involved in these 240 lawsuits. Lawless has written articles on financial fraud that have appeared with major media outlets all over the world. He has 30 years of experience as a senior and executive banker for companies like Wells Fargo Bank and Home Savings and has served on a number of corporate boards.

[SIFMA Says SEC Is On 'Wrong Path' With Advisor Exemptive Order.]

The Securities and Exchange Commission is making a mistake by considering an exemption from broker-dealer registration for municipal advisors working on private placement deals, a top muni lobbyist said Thursday.

Securities Industry and Financial Markets Association President and CEO Kenneth E. Bentsen Jr. raised that warning among other topics of importance to the muni market during SIFMA's State of the Industry briefing at the group's New York office.

“We have strong concerns,” Bentsen said. “We think that the SEC is going down the wrong path with that.”

The proposed exemptive order, on which the SEC opened a comment period in early October, would allow registered municipal advisors to perform some roles in the private placement of bonds that dealer firms view as properly their role.

SIFMA has previously sent letters to the commission warning against the concept, and Bentsen said it is among SIFMA's regulatory priorities. Under the proposal, MAs could play a role facilitating private placements without being a registered dealer so long as it complies with certain conditions.

To qualify for an exemption, the MA would have to make written disclosures to an investor saying that it represents the interests of the issuer, not the investor. In return, the MA would have to get written acknowledgment of that disclosure from the investor.

The MA would also need to get written representation from the investor that it is capable of independently evaluating the investment risks of the transaction. The entire issuance would have to be placed with a single investor, and the MA would have to continue to comply with regulations governing municipal advisors.

Dealers have pointed out that muni advisors owe a fiduciary duty to their municipal entity clients, but do not have the regulatory duties to protect investors that dealers have. Dealers have raised concerns that privately placed bonds could make their way into the secondary market without ever having been subject to the due diligence that broker-dealers are required to perform.

The proposed exemption has received a generally favorable reception outside the broker-dealer community, and comment is due to the SEC Dec. 9.

Bentsen also discussed the search for the Municipal Securities Rulemaking Board's next president and CEO. The role has been filled on an interim basis by its CFO Nanette Lawson since longtime leader Lynnette Kelly stepped down at the start of October. The board announced last month that it had hired executive search firm Spencer Stuart to aid the search.

"I think it's very important," Bentsen said, declining to comment on the MSRB's process. "But it's an important job," he added, noting that the post entails a range of responsibilities and the ability to interact with market participants. "You need to engage with the community that you regulate," Bentsen said.

"They're going to have their work cut out to fill that," he said.

Bentsen touched on the need to reinstate tax-exempt advance refundings, and said he was encouraged by the work done by House muni finance caucus co-chairs Steve Stivers, R-Ohio, and Dutch Ruppersberger, D-Md., to introduce a bill that would do so.

"We're eager to see the Senate take this up," Bentsen said.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 12/05/19 12:06 PM EST

[SIFMA: Proposed Exemptive Order Related to Muni Advisors]

SUMMARY

SIFMA submitted comments in response to the U.S. Securities and Exchange Commission's Proposed Exemptive Order. The Proposed Exemptive Order would allow a registered municipal advisor, acting on behalf of a municipal issuer client, to solicit and engage in the direct placement of municipal securities with certain institutional investors, and receive transaction-based compensation for such activities, without registering as a broker-dealer under Section 15 of the Securities Exchange Act of 1934.

SIFMA strongly opposes the Proposed Exemptive Order and, for the reasons articulated below, believes that if a municipal advisor acts as a placement agent (i.e., underwriter) with respect to direct placements of municipal securities, it should be subject to all of the requirements that would apply to a broker-dealer when acting in that same capacity.

[Read the SIFMA Comment Letter.]

December 9, 2019

MSRB RFC: Proposed Enhancement to the EMMA Website to More Prominently Display the Timing of Annual Financial Disclosures.

The comment period is now open on the MSRB's proposed enhancement to the EMMA website to more prominently display the timing of annual financial disclosures. Comments are due by December 18, 2019.

Read the Notice.

Submit Comments on SR-MSRB-2019-13.

Federal Register: MSRB Proposes Enhancements to EMMA Website

The MSRB proposal to more prominently display certain financial disclosures and related information on the organization's Electronic Municipal Market Access ("EMMA") system was published in the Federal Register. Comments on the proposal must be submitted by December 18, 2019.

As previously covered, the Security Details pages of EMMA would – under the proposal – provide:

- a link to annual financial information disclosures and/or the most recent fiscal period's audited financial statement;
- a calculation of the number of days between when the first disclosure was posted for the fiscal period and the financial period's end date for the same disclosure.

In an FAQ, the MSRB also provided information on how the information as to the timing of disclosure will be presented.

November 27 2019

Cadwalader Wickersham & Taft LLP

IRS Issues Private Letter Ruling Allowing Tax Equity Financing with a Regulated Utility Taxpayer.

In Private Letter Ruling 201946007, the Internal Revenue Service (IRS) allowed a tax equity investor to participate with a regulated utility in a tax equity financing arrangement for wind investments without being subject to the tax normalization rules.

In Depth

Investments in renewable energy facilities can reduce reliance on fossil fuels, boost energy security and provide tax benefits, such as accelerated depreciation, the investment tax credit (ITC) under IRC § 48 and the production tax credit (PTC) under IRC § 45. The PTC incentivizes certain wind and other renewable energy projects by granting a per kilowatt-hour tax credit based on the amount of electricity produced; and the ITC provides a tax credit based on the amount of investment in solar facilities. Accelerated depreciation allows for greater tax deductions in the earlier years of a project's lifecycle at a faster pace than depreciation under regulatory or financial accounting standards. For many years, tax equity investors have partnered with non-regulated energy producers to obtain these tax attributes. Under a safe harbor established by Revenue Procedure 2007-65, a tax equity investor and an energy producer may enter into a partnership that holds renewable energy assets, and they can share the PTCs, depreciation deductions, any other tax items and cash that may be generated by the assets.

Before PLR 201946007, there was significant uncertainty as to whether a tax equity investor could enjoy the full benefit of accelerated depreciation from an investment partnership with a regulated utility due to the possible application of the tax normalization rules. The Code provides that tax normalization rules apply to utilities that can recover costs through rates set by a public utility commission. The tax normalization rules provide that, for purposes of recovering costs from customers, depreciation of public utility property cannot be recovered more rapidly than depreciation allowable for accounting purposes. ITCs are also subject to the tax normalization rules. The normalization rules allow a regulated utility to enjoy the full benefit of depreciation deductions and the ITC without having to immediately pass the benefits on to its ratepayers. The regulated utility can take these benefits over the useful life of the asset for regulatory purposes. If a regulated utility is not permitted by its public utility commission to use a normalized method of accounting, the utility is ineligible for accelerated depreciation and ITCs.

If a regulated utility partner entered into a tax equity partnership, it was unclear whether the partnership's wind assets would be public utility property, and therefore whether the tax equity investor could take accelerated depreciation. Because of this uncertainty, regulated utilities have generally not participated in tax equity structures.

In PLR 201946007, the Service addressed whether a new wind generation facility would be public utility property for purposes of determining whether the depreciation deductions from the facility would be subject to the normalization rules. The taxpayer planned to form a joint venture with an independent tax equity investor to invest in a wind facility. The joint venture would sell the electricity generated by the wind facility to a disregarded affiliate of the taxpayer (Affiliate), a regulated utility, pursuant to a wholesale power purchase agreement (PPA). Affiliate would then sell the electricity to its customers. Rates under the PPA would be determined based on a competitive bidding process and market-based method, and not on a rate-of-return or cost basis. The taxpayer requested a ruling that the wind facility would not be Public Utility Property, so that the normalization rules would not apply.

The IRS looked at the rules under section 168(i)(10) and related regulations, which provide that a facility will only be treated as public utility property if the following three factors are met:

1. The facility must be predominately used in the trade or business of the furnishing or sale of electric energy;
2. The rates for such sale must be established or approved by one of the enumerated agencies or instrumentalities; and
3. The rates set by that agency or instrumentality must be established or approved on a rate-o--return basis.

In the ruling, the IRS analyzed the factors at the partnership level. The wind facility clearly met the first two factors, but failed to satisfy the third because the PPA's rates were set on a market basis, and not a rate-of-return basis. As a result, the IRS ruled that the wind facility would not be public utility property. Therefore, the tax normalization rules will not apply.

This ruling is significant because it confirms that the normalization rules will not apply to wind generation facilities held by a partnership where the electricity is sold to the regulated utility investor at market rates, even though the utility sells the power at regulated cost-of-service or rate-of-return rates.

Practice Point: Regulated utilities can participate in tax equity structures, generating accelerated depreciation for tax equity investors.

Practice Point: Because the normalization rules also apply to the ITC, the IRS's letter ruling presents a road map for structuring solar investments with regulated utilities to fully maximize tax benefits.

McDermott Perspective: McDermott submitted the above ruling request on behalf of a Firm client.

December 3, 2019

McDermott Will & Emery

[California Pension Fund Goes Green With Muni-Bond Debut.]

- **Environmentally friendly headquarters apt for Calstrs**
- **Even at just 64% funding, pension would see demand for bonds**

The California State Teachers' Retirement System may have just missed its investment goal but its debut municipal-bond sale Thursday is right on target.

The public pension, the second-biggest in the nation, is selling $281 million in tax-exempt municipal green bonds at a time when wealthy Californians are snapping up such debt to drive down their tax bills and when buyers are increasingly seeking investments intended to lessen the impact of climate change. The pension, which posted a 6.8% return shy of its 7% expectation for the year that ended in June, is using the bond proceeds for an expansion of its West Sacramento headquarters designed to meet high environmental standards, including the ability to achieve zero net energy consumption.

While investors generally haven't paid higher prices for assets complying with environmental, social and governance principles, that may change in the future, said Eric Friedland, director of municipal research at Lord Abbett & Co. That makes the Calstrs bonds, which are already linked to a strong state credit because of the financing California provides for the pension system, even more appealing, he said.

"If you believe that there will be more of an ESG focus going forward, and that people will pay a premium for green bonds, then you're basically getting that for free right now," Friedland said.

The new building, a 10-story tower, will link to the current headquarters and ultimately encompass 510,000 square feet serving 1,200 employees, according to bond documents. Elements include a child-care center, "irresistible stairwells" to encourage people to take stairs instead of riding an elevator and a cafe offering healthy meals with ingredients from the on-site garden, Calstrs Chief Financial Officer Julie Underwood said during the Environmental Finance conference at the Milken Institute in October.

Vanessa Garcia, a spokeswoman for Calstrs, said in an email that officials wouldn't make public statements on the bond issuance through the California Infrastructure and Economic Development

Bank until after the closing of the sale. The building is expected to open in 2022.

The pension hired Kestrel Verifiers to vouch that the securities meet the standards for green bonds from the Climate Bond Initiative. It makes sense that Calstrs would sell green bonds given how it uses its influence as a shareholder to drive social and environmental change, said Ksenia Koban, a municipal-credit analyst at Payden & Rygel Investment Management in Los Angeles. Calstrs, for example, has pressured Duke Energy to cut carbon emissions and retailers to adopt best practices for firearms sales.

Calstrs officials are "putting money where their mouth is in mainstreaming ESG practices and ideas," said Koban, who called the bond offering "a great issuance."

The state, which has booked years of surpluses thanks to its growing economy, plays a large role in the pension's bottom line: it directly made 36% of all contributions Calstrs received last fiscal year and provides significant aid to school districts, which make their own payments to the pension. California lawmakers in this year's budget made a supplemental payment to pay down the state's share of the unfunded liabilities for the organization that represents more than 960,000 educators and their beneficiaries.

The system, which by law has limits on how much it can hike contribution rates, is five years into a plan to reach 100% funded by 2046. It has about 64% of the assets needed to cover its liabilities, according to the latest data.

The new bonds are rated A+ by S&P Global Ratings, which gives the rating a stable outlook because it expects the pension's funded ratio to improve over the next two years. Moody's Investors Service ranks the debt A1 and Fitch Ratings grades it AA.

Bloomberg Markets

By Romy Varghese

December 4, 2019, 6:00 AM PST Updated on December 4, 2019, 10:49 AM PST

Court of Appeal Affirms California's Interest in Housing Can Override Laws of Charter Cities.

- In *Anderson v. San Jose*, the Sixth District Court of Appeal held that the Surplus Land Act constitutionally applies to California's charter cities. Many prior published opinions have affirmed that various California housing laws constitutionally apply to charter cities, but Anderson is the only recent binding precedent addressing whether California's recently amended housing laws validly apply to charter cities as well.
- The decision recognized that the Legislature may advance state land use policy objectives by overriding the laws and policies of charter cities because addressing the shortage of sites available for low- and moderate-income housing is a matter of statewide concern.
- By affirming a state law that directly infringes on charter cities' ability to control the disposition of their own property, *Anderson* sets an important precedent that can be used to defend the constitutionality of other state laws which limit charter cities' authority to deny or delay development projects that meet the state's critical housing shortage.

For decades, the California State Legislature has enacted numerous laws that limit the authority of local governments to constrain the supply and affordability of housing. These include the Housing Element Law, which requires cities to plan for their fair share of regional housing needs; the Housing Accountability Act (HAA), which limits cities' discretion to deny affordable and zoning-compliant development projects; and the Density Bonus Law, which requires cities to grant additional density and other modifications to qualifying affordable housing projects. In recent years as the housing crisis intensified, the Legislature amended these laws and enacted new measures including Senate Bill (SB) 35 of 2017, which creates a streamlined ministerial approval process for qualifying housing-rich development projects. (See Holland & Knight's previous alerts, "California's 2020 Housing Laws: What You Need to Know," Oct. 18, 2019; "California's 2019 Housing Laws: What You Need to Know," Oct. 8, 2018; and "A Closer Look at California's New Housing Production Laws," Dec. 6, 2017.)

In response, some charter cities have argued that these and other state housing laws do not apply to them. Under the California Constitution, cities governed by their own charters are exempt from complying with conflicting state laws, but only "with respect to municipal affairs."1 The constitution does not define "municipal affairs," but it lists the conduct of city elections and employment of city officials as among the illustrative examples.2 Numerous published opinions have held that housing, by contrast, is a statewide concern and that various state housing laws constitutionally apply to charter cities.3 Despite these precedents, charter cities have argued that they are exempt not only from complying with newer housing laws such as SB 35 but also exempt from much older statutes including the nearly 40-year-old HAA.

The ramifications of this debate are profound. As the Legislature found as long ago as 1990, "[t]he excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing."4 However, about one-fourth of California's cities, including all of the 15 largest cities in the state, are charter cities. If the Legislature were unable to enact state laws that conflict with charter cities' local ordinances and policies, the State of California would be essentially powerless to address this critical aspect of the statewide housing crisis.

The Anderson Decision

In *Anderson v. San Jose*, the Sixth District Court of Appeal considered the City of San Jose's claim to be exempt from complying with the Surplus Land Act (SLA). The SLA, enacted first in 1968 and amended numerous times in recent years, aims to address the "shortage of sites available for housing for persons and families of low and moderate income" by providing that "surplus government land, prior to disposition, should be made available for that purpose," by requiring a minimum percentage of units to be made available at specified affordability levels when surplus land is sold or leased to develop low- or moderate-income housing, or for general residential development of 10 or more units.5 In 2016, San Jose took the position that as a charter city it was not required to comply with the SLA, and the city adopted policies for the disposition of city property which did not comply with requirements of state law. After low-income households and housing advocates sued, a Santa Clara County Superior Court judge agreed with San Jose.6

The Sixth District Court of Appeal reversed that decision, holding that "while a city's process for disposing of surplus city-owned land is typically a municipal affair, San Jose's policy here must yield to the state law."7 The court applied the Supreme Court of California's four-element inquiry to determine whether state law constitutionally overrides the local law of a charter city: 1) to consider whether the city's local law or policy relates to a municipal affair, 2) to consider whether state law conflicts with the city policy, 3) to consider whether the state law relates to a statewide interest, and 4) to consider whether the state law is reasonably related to resolution of the statewide concern and narrowly tailored to avoid unnecessary interference in local governance. If "the subject of the state statute is one of statewide concern and … the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto … ."[8]

The parties did not dispute, and the Sixth District Court of Appeal concluded that the first two elements were met, and so the court proceeded to determine whether the state had the authority to "advance[] state land use policy objectives," and specifically "to address shortage of sites available for low- and moderate-income housing in California."[9] The court concluded that this was clearly a matter of statewide concern. In so doing, it distinguished the California Supreme Court precedents on which San Jose relied, because these opinions recognized only that charter cities had exclusive authority over the expenditure of their own public funds and over the ability to license taxes on businesses within their jurisdiction.[10] In contrast, the Sixth District Court of Appeal noted that numerous published opinions "have recognized the statewide dimension of the affordable housing shortage … ."[11] The court emphasized that "the regional spillover effects of insufficient housing demonstrate 'extramunicipal concerns' justifying statewide application of the Act's affordable housing priorities."[12]

Finally, the court concluded that the SLA was "sufficiently tailored to its purpose."[13] In conducting this analysis, the court did not put the state to the burden of proving that its law was the least restrictive means that could possibly be imagined to accomplish the statewide purpose. Instead, the court cited other recent Court of Appeal authority for the proposition that to survive constitutional scrutiny, a state law need only "be reasonably related to the issue at hand and limit the incursion into a city's municipal interest."[14] Here, the court held that the SLA primarily imposed "generally applicable procedural standards" that "impinge[] less on local autonomy than … substantive obligations."[15] As the court noted, "[w]hether land is deemed 'surplus' is entirely within the local government's discretion," and the SLA only imposes requirements upon those lands which the city has chosen to designate.[16] The court recognized that the SLA also imposes substantive obligations, but concluded that while "the substantive measures are significant in their narrow spheres," they "do not dominate the generally applicable procedural standards" and further noted that many other "substantive" requirements have been upheld as validly applicable to charter cities.[17] Accordingly, the SLA constitutionally supersedes contradictory local laws adopted by charter cities.

Conclusion and Takeaways

The *Anderson* decision only directly addresses the constitutionality of the SLA, and it is possible that other state laws could be assessed differently. However, the opinion provides strong support for the constitutionality of many other state housing laws for several reasons, including:

- The SLA deprives charter cities of authority over a core municipal power: the power to decide how they will dispose of *their own property*. Nonetheless, the SLA was held constitutional in light of the statewide interest in affordable housing. Other housing laws, which do not affect local control over municipal property but merely limit local police power authority over private property, should stand on even stronger constitutional footing.
- By emphasizing that state laws are "sufficiently tailored" if they merely impose procedural obligations, the opinion provides strong constitutional support for laws that limit the ability of local governments to impose excessive procedural roadblocks to housing approvals. Just as the SLA leaves the ultimate decision about whether to designate land as surplus to the city, laws such as the HAA and SB 35 leave to cities the ultimate decision about where housing is to be permitted and at what scale. These laws merely impose procedural limitations on cities' ability to deny or delay development projects that comply with the zoning rules the cities have put in place.
- At the same time, the opinion also recognized that state laws can still constitutionally apply even if they do impose appreciable substantive requirements on local governments, which provides useful

defense to the constitutionality of laws such as the Housing Element Law and the Density Bonus Law.

The court's emphasis on the "spillover effects" of constrained housing supply is a welcome understanding of the need for statewide housing policy. Indeed, housing policy is the classic example of a collective action problem: many local jurisdictions would prefer, if permitted, to shift the burden onto others to meet the statewide need for more affordable housing. However, as the *Anderson* court recognized, the Constitution does not prohibit the State of California from stepping in to ensure that each locality contribute its fair share.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

by Daniel R. Golub

December 5 2019

Holland & Knight LLP

S&P: U.S. Higher Education Is Learning To Manage Its Own Risk

How Event Risk That Creates A Crisis Can Have An Impact

Colleges and universities are grappling with event risk with increasing frequency, whether from nature (think weather) or man-made (such as campus shootings, management and governance controversies, racial tensions, or sexual assault). These crisis incidents create difficult assessments in terms of their impact on credit quality, with some not resulting in an immediate rating action and many not triggering any credit action at all owing to some combination of factors that can substantially mitigate the associated risks. In our opinion, these factors include a sound enterprise risk management (ERM) program that is in place and followed promptly; strong management and governance controls; ample financial resources, which may include insurance coverage for the specific risk; and the ready availability of and access to external support such as disaster aid programs. Additionally, we have seen schools with strong market positions that benefit from national brand recognition and solid demand experience little, if any, impact to enrollment or fundraising.

Recent high-profile events of the man-made variety include the Department of Justice's investigation into higher education admission practices ("Varsity Blues," the codename for this examination) and the Harvard admissions lawsuit, which have received widespread news coverage, attracting significant negative attention to the higher education industry. These proceedings have placed a focus on the adequacy and transparency of management and governance and the importance of sound internal controls, such as the need for a well-developed ERM program that can contribute toward an effective response strategy.

While most crisis events represent a significant operational challenge and potentially an immediate headline risk, testing an institution's tactical responsiveness, the long-term effect on a college or university's creditworthiness often takes several months to manifest. Consequently, it is not the actual event but the institution's ability to respond and adapt in light of it that determines whether there will be any credit implications. In most cases, swift corrective actions and effective outreach have enabled institutions to maintain their ratings. On the other hand, some risk management or governance failures have resulted in negative rating actions.

Continue reading.

S&P: U.S. States Are Slow To Reform OPEBs As Decline In Liabilities Masks Increased Risk

Table of Contents

U.S. states continue to severely underfund their other postemployment benefit (OPEB) plans. S&P Global Ratings' latest survey found that for most states, annual plan contributions do not keep up with growth in liabilities. Given the degree of underfunding, unfunded OPEB liabilities will likely escalate absent meaningful reform.

However, most states have not recently pursued reform efforts. Because the size of these unfunded liabilities varies greatly among states, progress toward reducing them is more pressing for some than others. S&P Global Ratings believes it crucial for states to prudently manage plan fiscal health ahead of a tipping point where rising OPEB costs lead to budgetary stress.

Despite contributions that generally fall short of growth in liabilities, S&P Global Ratings' most recent survey data also indicates that total net OPEB liabilities for states fell by 7.3% in fiscal 2018. This drop occurred primarily due to an increase in the discount rate used to measure OPEB liabilities rather than improved funding or OPEB reforms. Generally, state plans have applied a discount rate based on a municipal bond rate due to a general lack of interest earning assets and Governmental Accounting Standards Board (GASB) methodology.

Continue reading.

NFMA Newsletter.

The NFMA publishes newsletters for its membership. Officers of NFMA and constituent societies report on activities, and committee chairs report on the status of their initiatives.

To view the current newsletter, click here.

Historic US Towns Endured Wars, Storms. What About Sea Rise?

SWANSBORO, N.C. — Historic cities and towns along the Southeastern U.S. coast have survived wars, hurricanes, disease outbreaks and other calamities, but now that sea levels are creeping up with no sign of stopping, they face a more existential crisis.

With a total annual budget of $225 million, Charleston, South Carolina, can't afford the billions of dollars to save itself without federal help. It's counting on the U.S. Army Corps of Engineers to help surround its downtown peninsula with seawalls, harkening to the barriers the city built when it was founded 350 years ago.

Keeping water off the streets and buildings is even more difficult for smaller towns like Swansboro, North Carolina, with 3,200 people and a $4 million budget that doesn't account for climate-related sea rise.

The most vulnerable coastal communities sit only a few feet above sea level and are already getting wet at some high tides. Scientists estimate the sea will rise another 2 feet (61 centimeters) to 4 feet (122 centimeters) in the next 50 years.

Municipal leaders say they need billions of state and federal dollars to save block after city block of low-lying homes and businesses. And while even climate change-denying politicians are beginning to acknowledge the inevitable onslaught, city officials worry that those who control the purse strings won't see the urgency of a slowly unfolding catastrophe that's not like a tornado or earthquake.

Founded in 1783, Swansboro became the center of North Carolina's steamboat industry. In 1862, it saw Union troops burn down a Confederate fort guarding the nearby Bouge Inlet to the Atlantic Ocean. Across its quaint downtown on the White Oak River, almost every building boasts a city seal with the date it was built. Most are much older than the gray-haired tourists strolling around, and can't forever withstand the kind of flooding they suffered last year, when Hurricane Florence's sea surge topped 30 inches (76 centimeters) of rain.

Stunned, the town commissioned a report for the future. It said the water's edge may end up a block or two inland from the historic waterfront, and soberly suggested: "Consider retracting services or strategically abandoning infrastructure in areas that are likely to be risky or dangerous."

Local leaders recognize the importance of Swansboro's charm, but its future is largely out of their hands.

"We're going to be very, very dependent on outside funding," new Town Manager Chris Seaberg said. "We're trying to preserve the history, but trying to accommodate these new issues that weren't there 100, 200 years ago."

North Carolina passed a law in 2012 preventing the state from forming coastal polices based on sea rise predictions. But Republican control of the legislature is waning, and local leaders say hurricanes Matthew in 2016, Florence in 2018 and Dorian in 2019 — along with changing attitudes toward climate science— appear to be shifting the state's outlook. North Carolina created an Office of Recovery and Resiliency this year to plan for floods and other extreme weather events.

"There will need to be political stressors to get people to understand the importance of climate change," said Beaufort, North Carolina, Mayor Rett Newton.

An Air Force retiree who is getting his PhD in marine science, Newton sweeps his arm across the Beaufort Channel. One spot is where the pirate Blackbeard scuttled some of his ships 300 years ago. Nearby is where blockade runners hid from British ships while helping supply the U.S. in the War of 1812. And on the horizon is where freed slaves helped Union troops defeat Confederates in 1862.

The historic buildings along Beaufort's waterfront are gleaming now, reflecting millions in new investment. It wasn't like that when Newton grew up in the 1960s amid grimy seafood shops, rundown shacks and fish plants. People wealthy enough to buy waterfront property can always move, Newton said, but escaping the seas will be much harder for poorer residents, who often live on low-lying land handed down through generations, are already beset by social and economic problems.

"I can't tax anyone else. At the local level, we can't tax our way out of this," Newton said, noting his town of 4,200 people collects about $3.5 million a year in taxes.

Charleston, with state and federal help, is spending $64 million to raise the lowest part of the seawall guarding its downtown Battery, which should keep that part of the city safe even if the ocean rises more than 6 feet (2 meters) in the next century, Chief Resilience Officer Mark Wilbert said. The city also is spending hundreds of millions of dollars to modernize its storm water system.

But these measures alone probably can't save a city that was once the most heavily fortified in North America, with a system of walls, moats and drawbridges to keep out the Spanish, French, Native Americans, and occasionally the ocean as well.

The city's 7 million visitors each year come looking for old charm along the water, but probably not underfoot. Downpours regularly cause flooding these days, and more than once a week on average, Charleston gets "sunny day" flooding when tides push water onto city streets.

Four of the seven highest water levels recorded in Charleston Harbor have happened in the past four years, pushed by Hurricane Matthew in 2016, Hurricane Irma in 2017 and nor'easter type storms that hit in 2015 and 2018.

"What used to only happen occasionally is happening more often," Wilbert said.

Charleston is working with the Army Corps on solutions, and everyone agrees sea walls aren't the only answer. Also under consideration are flood gates, enhanced pumps and other potential fixes, and the city hopes for plenty of state and federal help to pay for it.

South Carolina highway funds are already going to raise the downtown sea walls, and Republican Gov. Henry McMaster created the South Carolina Floodwater Commission, which is studying freshwater and ocean flooding and exploring the use of artificial reefs to blunt massive waves in hurricanes.

Charleston also plans to seek at least some of the state's tourism taxes on hotel rooms and restaurant meals for flood control. Currently, that money must be spent on tourism.

"You are not going to reverse this. The sea level is going to keep rising," Wilbert said. "It's not something where you can say how much it will cost or when it will end."

By The Associated Press

Dec. 5, 2019

Leveraging Opportunity Zones to Boost Affordability in Hot Markets.

Abstract

The Opportunity Zones tax incentive, created by the Tax Cuts and Jobs Act of 2017, was designed to spur investment in low-income and undercapitalized communities. How can stakeholders use the program to benefit disinvested neighborhoods and expand access to affordable housing? The experiences of investors, developers, government officials, and philanthropy representatives show how the incentive is working at the national and local level in King County, Washington.

Download article.

The Urban Institute

by Brett Theodos & Jorge González

December 4, 2019

Fitch Upgrades Puerto Rico Aqueduct & Sewer Authority Rev Bonds to 'CC'; Watch Removed

Fitch Ratings – Austin – 04 December 2019:

Fitch Ratings has upgraded the following Puerto Rico Aqueduct and Sewer Authority (PRASA) bonds to 'CC' from 'C':

–Approximately $3.1 billion in outstanding senior lien revenue bonds, series A, B, 2012A and 2012B;

–Approximately $285 million in outstanding revenue refunding bonds, series 2008A and 2008B (guaranteed by the Commonwealth of Puerto Rico).

Fitch has removed the ratings from Negative Watch.

Continue reading.

Elevated Muni Supply to Be Met With Healthy Demand in 2020, BlackRock's Carney Says.

Sean Carney, BlackRock Financial's head of municipal strategy, discusses the outlook for municipal bonds in 2020 with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

December 4th, 2019, 8:38 AM PST

Ex-Morgan Stanley Rep Suspended Over Unsuitable Muni Bond Sales.

The broker incurred unnecessary fees by buying the funds in brokerage accounts and transferring them, FINRA said.

The Financial Industry Regulatory Authority suspended a former Morgan Stanley broker for three months over a series of unsuitable investment transactions, including 28 municipal bonds, that were made by him in eight of his customers' accounts in violation of FINRA rules, according to the regulator.

John A. Borsellino [signed a letter of acceptance, waiver and consent] on Oct. 25 in which, without admitting or denying FINRA's findings, he agreed to the suspension, to pay a $5,000 fine and to disgorge commissions he made from the 43 unsuitable purchases in the amount of $23,931, plus interest. FINRA accepted the letter Wednesday.

Morgan Stanley declined to comment Thursday. Borsellino's attorney, Marc Dobin of Dobin Law Group in Jupiter, Florida, didn't immediately respond to a request for comment.

The broker recommended that the eight clients buy 28 muni bonds and 15 non-municipal securities in their brokerage accounts, which "caused the customers to incur upfront sales charges," according to the FINRA letter. In each instance, Borsellino transferred the security to the customer's existing fee-based account shortly after buying it despite the fact that, in each case, he could have bought the security in the fee-based account without any upfront sales charges, the letter said.

The upfront sales charges associated with the 43 unsuitable purchases made in the customers' brokerage accounts totaled about $58,000, all of which Morgan Stanley went on to reimburse to Borsellino's clients, FINRA said.

The transactions were made by Borsellino despite the fact that he "lacked a reasonable basis to believe that the recommended securities purchases made in the customers' brokerage accounts were suitable because he failed to exercise reasonable diligence and failed to consider the costs associated with the transactions," according to FINRA.

Borsellino first registered with a FINRA member firm in 1990, when he became associated with Merrill Lynch, according to FINRA's BrokerCheck website. He registered as a general securities representative through Morgan Stanley Dean Witter in 2006, Morgan Stanley & Co. in 2007 and Morgan Stanley in 2009.

The broker remained with Morgan Stanley until Dec. 19, 2017, when he was discharged from the company due to "concerns about asset movements between, and the timing of trades in, accounts for the same clients with different fee characteristics and whether the representative spoke with the clients before taking these actions," according to a disclosure on his BrokerCheck profile.

Between January 2014 and December 2016, Borsellino "recommended and then made unsuitable securities transactions in eight customers' accounts," violating FINRA Rules 2111 and 2010 and Municipal Securities Rulemaking Board Rules G-19 and G-17, according to the FINRA letter.

The incidents didn't represent the first investments he made on behalf of his clients that were later alleged to be unsuitable. There are eight disclosures on Borsellino's BrokerCheck profile, including the 2017 employment separation agreement with Morgan Stanley.

In 2001, a client claimed he made an unauthorized purchase and sued him for $14,550. He denied the claim and there was no settlement, according to BrokerCheck. Then a client claimed he didn't provide any notice of a deferred sales charge on Class B mutual fund shares. That client requested $5,000 in damages, but the settlement in 2002 wound up being for an even larger amount: $11,000.

That same year, there was a $20,109 settlement in a case where a client claimed a mutual fund was bought without authorization.

Then came three customer disputes settled between 2003 and 2006 in which there were claims of unsuitable investments being made by Borsellino. The first was closed with no action. However, he settled for $85,000 and $135,000 in the next two disputes, both in 2006.

The first disclosure on his profile actually involved an incident long before his securities career started. He was arrested and charged with shoplifting about $20 worth of merchandise in Poughkeepsie, New York, but the charge was dismissed, according to BrokerCheck.

Think Advisor

By Jeff Berman | December 06, 2019 at 09:50 AM

Historic U.S. Towns Now Face A Rising Sea.

SWANSBORO, N.C. — Historic cities and towns along the Southeastern U.S. coast have survived wars, hurricanes, disease outbreaks and other calamities, but now that sea levels are creeping up with no sign of stopping, they face a more existential crisis.

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The Associated Press

December 5, 2019

Municipal Securities Dealer Settles FINRA Charges for Providing Inaccurate Information in Issue Price Certificates.

A municipal securities dealer settled FINRA charges for providing inaccurate information in the issue price certificates of 22 municipal offerings.

According to FINRA, the issue price certificates incorrectly stated the percentage of each offering sold to public investors (as opposed to other broker-dealers). FINRA claimed that the municipal securities dealer failed to implement appropriate supervisory procedures to ensure that information in the issue price certificates was accurate.

To settle the charges, the municipal securities dealer agreed to (i) a censure, (ii) a $85,000 fine, and (iii) undertake remedial measures to identify and notify issuers of inaccuracies in issue price certificates.

December 3 2019

Cadwalader Wickersham & Taft LLP

Treasury Submits Updated Opportunity Zones Rules to OIRA.

Read the Updated Rules.

Office of Information and Regulatory Affairs | *Dec. 9*

Sens. Scott, Grassley, Colleagues Introduce Expanded Bill on Opportunity Zone Reporting Requirements

Read the Expanded Bill.

U.S. Senate | Dec. 6

[Over $3.9 Billion Raised by Opportunity Zone Funds, with Michael Novogradac.]

Are Opportunity Zone funds having success raising enough capital? Will capital raising reach federal government estimates? Find out why one prominent tax accountant thinks so. Michael Novogradac is managing partner of Novogradac, a top 50 accounting firm and thought leader in the Opportunity Zone industry. Click the play button below to listen to my conversation with Michael. Note: This is Part 1 of my two-part…

Read More

Opportunity Db

December 4, 2019

[Pairing Tax Credits with the Opportunity Zone Tax Incentive, with Michael Novogradac]

How can different real estate tax credits (New Markets, Low Income Housing, Renewable Energy, and Historic) be paired with the Opportunity Zones tax incentive? Michael Novogradac is managing partner of Novogradac, a top 50 accounting firm and thought leader in the Opportunity Zone industry. Click the play button below to listen to my conversation with Michael. Note: This is Part 2 of my two-part conversation…

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Opportunity Db

December 4, 2019

- The Bond Is in the Mail: Muni Market's New Way Around Trump Ban.
- A Missouri Bank is Using Tech to Secure Large Deposits from Public Entities.
- Regulatory Comments Stress Safe Harbors in Libor Transition.
- The Troubling Decline in City Revenue Growth.
- *Matter of Trusteeship Created by Port Authority of City of St. Paul Relating to Issuance of Tax Exempt Senior Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-1 & 2000-7* – Court leaves unresolved the issue of whether Deed in Lieu of Foreclosure Agreement from Trustee of defaulted tax-exempt senior lien parking ramp revenue bonds and taxable subordinate lien parking ramp revenue bonds to Port Authority constituted a "sale" of the ramp and triggered certain rights and obligations owed to holders of taxable subordinated cash flow notes issued by the Port Authority. Time to tighten up the applicable docs.
- And finally, Oh, *This* El Camino is brought to us this week by *McConnell v. Dudley*, in which the

Supreme Court of Ohio recounted the following, "A few minutes before 8:00 a.m. on September 18, 2013, Coitsville Township Police Officer Donald C. Dudley Jr. responded to a dispatch alert regarding a stolen vehicle, an El Camino. As Officer Dudley investigated, he located an El Camino that was being towed by a Buick sedan headed toward Youngstown. He pulled alongside the Buick and inquired about the El Camino, and the occupants replied that they owned it. Officer Dudley pulled behind the El Camino, and as he radioed for backup, the suspects unhooked the El Camino from the Buick and drove away in the Buick." Apparently someone never read the classic,"Nonchalant Unhooking of El Caminos For Fun and Profit."

PUBLIC RECORDS - FLORIDA

DeMartini v. Town of Gulf Stream

United States Court of Appeals, Eleventh Circuit - November 21, 2019 - F.3d - 2019 WL 6207952

Employee of law firm that sought public records from town on a grand scale brought § 1983 action, alleging town filing lawsuit against her was retaliation in violation of her First Amendment speech rights, as well as a malicious prosecution claim against government contractor.

United States District Court granted defendants' motions for summary judgment.

The Court of Appeals held that:

- Town had probable cause to initiate civil litigation against employee, and
- Contractor had probable cause.

Town had probable cause to initiate Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employee of law firm that filed numerous public records requests from town, precluding employee's § 1983 claims alleging town's lawsuit was retaliation in violation of employee's First Amendment right of access to the courts; firm created non-profit organization to test and enforce compliance with public records law, nearly 2,000 requests were made and 36 lawsuits were filed regarding those requests, costing town $370,000 in attorney's fees, executive director of that non-profit resigned and gave sworn testimony to town's special counsel that employee, along with non-profit and firm, engaged in scheme to extort money from town through voluminous and intentionally vague requests, employee was specifically implicated, two outside attorneys conducted investigations and recommended filing the civil lawsuit, and town had legitimate, objective reason to protect itself and taxpayers from abusive litigation.

Town contractor, who was subject to public record requests by law firm, its employee, and non-profit organization created by firm, had probable cause to file Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employee, precluding employee's malicious prosecution claims under Florida law against contractor; same attorney represented both town and contractor, attorney had investigated non-profit's scheme to file vague and voluminous records requests, and contractor had agreed to join lawsuit after discussion with attorney.

PUBLIC RECORDS - FLORIDA

Deeson Media, LLC v. City of Tampa

District Court of Appeal of Florida, Second District - November 15, 2019 - So.3d - 2019 WL

6041428

Limited liability company (LLC) filed petition for writ of mandamus, seeking public records to verify that city director of finance was a city resident as required by city charter.

The Circuit Court denied petition. LLC appealed.

The District Court of Appeal held that:

- Petition for writ of mandamus was an appropriate vehicle to challenge denial of public records request, and
- Appeal was moot.

Petition for writ of mandamus is an appropriate vehicle to challenge the denial of a public records request, even where an exemption has been asserted.

Limited liability company's (LLC) appeal of circuit court's denial of its petition for writ of mandamus seeking public records to verify that city director of finance was a city resident as required by city charter was moot, where, following dismissal, LLC sought same public records in a separate action for declaratory and injunctive relief, and the circuit court denied relief.

IMMUNITY - OHIO

McConnell v. Dudley

Supreme Court of Ohio - November 20, 2019 - N.E.3d - 2019 WL 6138542 - 2019 -Ohio-4740

Motorist injured in an automobile accident with police officer who had been engaged in high-speed chase brought action against township, township's police department, and officer, alleging negligence, negligent hiring and training, and loss of consortium.

The Court of Common Pleas denied defendants' motion for summary judgment. Defendants appealed. The Court of Appeals affirmed in part and reversed in part. Township sought discretionary review.

The Supreme Court held that exception to political subdivision immunity for negligent operation of motor vehicle did not encompass action alleging that political subdivision negligently hired, trained, or supervised its employee.

Exception to political subdivision immunity for negligent operation of a motor vehicle did not encompass an action alleging that a political subdivision negligently hired, trained, or supervised a police officer who was involved in a motor-vehicle accident while responding to an emergency call; a political subdivision could not itself be negligent in the operation of a vehicle, as political subdivisions did not drive, but instead the language of the immunity statute demonstrated that it was the conduct of a subdivision's employee that established the exception from immunity.

OPEN MEETINGS - MARYLAND

Frazier v. McCarron

Court of Appeals of Maryland - November 20, 2019 - A.3d - 2019 WL 6167484

Petitioner filed suit against city council, alleging violations of Open Meetings Act (OMA), seeking, inter alia, imposition civil penalties in amount of $8,250, voiding all actions taken at closed meeting, reimbursement of legal expenses and court fees, and order directing city council to unseal minutes of meeting.

Following trial, the Circuit Court found that city council had violated OMA, but concluded that violations were "technical," and entered judgment for city council. Petitioner appealed. The Court of Special Appeals affirmed. Petition for certiorari review was granted.

The Court of Appeals held that:

- Trial court's finding that city council conducted open meeting at which vote was taken to go into closed session was clearly erroneous;
- Trial court did not abuse its broad discretion in declining to impose civil penalties on city council; and
- City council was not subject to sanctions for alleged violations of OMA.

Trial court's finding that city council conducted open meeting at which vote was taken to go into closed session, in compliance with Open Meetings Act (OMA), based on its belief that all witnesses testified to that fact, was clearly erroneous, in action on petitioner's complaint that city council conducted closed meeting in violation of OMA; although mayor testified that there was open meeting at which vote was taken to go into closed session, four city council members and city manager testified that there was no open meeting.

Trial court did not abuse its broad discretion in declining to impose civil penalties on city council for alleged violation of mandatory provision of Open Meetings Act (OMA) that city council conduct open meeting at which vote would be taken to move into closed session.

City council was not subject to sanctions, nor was petitioner entitled to award of attorney fees and costs, based on city council's purported violations of mandatory provisions of Open Meetings Act (OMA) requiring that city council conduct open meeting, to which public could attend, to take vote to move into closed session, that city council provide notice of open meeting, and to produce statement by presiding officer of reasons for moving to closed session; closed session was for purpose of obtaining legal advice with respect to potential lawsuit against city council, so there was nothing for trial court to void, there was no evidence of attorneys' fees or litigation costs, and minutes of closed session were made public within one and one-half months of closed session.

ZONING & PLANNING - MASSACHUSETTS

Leonard v. Zoning Board of Appeals of Hanover

Appeals Court of Massachusetts, Plymouth - November 13, 2019 - N.E.3d - 2019 WL 5959566

Florists brought action against zoning board of appeals seeking declaration that their outdoor displays were a lawful prior nonconforming use of their lot, and that concrete barriers separating their property from abutting restaurant property were not an alteration of a prior nonconforming lot requiring a special permit or site approval.

Town sought declaratory relief. On motions for summary judgment, the Superior Court declared florists' outdoor displays were unlawful prior nonconforming uses, thus requiring a special permit, but the concrete barriers were not an alteration that would require a special permit. Parties appealed.

The Appeals Court held that:

- Florists' outdoor displays were not prior nonconforming uses entitled to protection from enforcement of amended zoning bylaws, thus requiring a special permit;
- Items placed on metal racks outside of shop were not structures, and thus ten-year statute of limitation for enforcement of zoning regulations did not apply to prevent town from seeking zoning enforcement;
- Even if metal racks were structures, ten-year statute of limitations applicable to actions complaining of structural violations for which no special permit was given did not protect florists' use of the metal racks;
- Concrete barriers did not alter and intensify the nonconformance of florist's property, and thus were exempt from requirements of a special permit;
- Concrete barriers were not structures under zoning bylaws;
- Florists failed to exhaust their administrative remedies challenging fire chief's order to remove concrete barrier; and
- Town was precluded from seeking declaratory relief for issues involving its zoning bylaws, and thus vacatur of judgment addressing town's complaint was required.

REVENUE BONDS - MINNESOTA

Matter of Trusteeship Created by Port Authority of City of St. Paul Relating to Issuance of Tax Exempt Senior Lien Parking Ramp Revenue Bonds (Fourth and Minnesota Parking Ramp Project) Series 2000-1 & 2000-7

Court of Appeals of Minnesota - October 28, 2019 - Not Reported in N.W. Rptr. - 2019 WL 5543957

Wells Fargo Bank serves as Trustee for a Trust Indenture relating to the issuance of tax-exempt senior lien parking ramp revenue bonds and taxable subordinate lien parking ramp revenue bonds.

LLCs holds taxable subordinated cash flow notes issued by the Port Authority in connection with the ramp. The subordinated cash flow notes include an acceleration provision or an assumption obligation in the event the ramp is sold to a third party. The Port Authority also entered into an Option to Purchase and First Refusal Agreement with LLCs, granting LLCs an option to purchase the ramp and a right of first refusal in the event that the Port Authority receives an offer to purchase the ramp that the Port Authority intends to accept or does accept.

Due to the parking ramp's lack of profitability, both the senior and subordinate bonds were in default. Rather than foreclose the mortgage and dispose of the facility in a sheriff's sale, the Trustee proposed transferring ownership of the ramp by structuring the transaction as a deed in lieu of foreclosure (deed in lieu) on the senior mortgage.

The Trustee filed a petition for preliminary approval to proceed with the disposition of the parking ramp. LLCs filed a notice of objection to the petition, asserting that the Deed in Lieu of Foreclosure Agreement and the Assignment Agreement constituted a "sale" of the ramp and triggered certain rights and obligations under the parties' respective agreements with the Port Authority. The Port

Authority disputed this assertion.

Although this case was remanded on other grounds, the moral of this story appears to be the need to explicitly stipulate in the applicable documents whether or not this type of transaction constitutes a sale.

LIABILITY - NEW YORK

Zurich American Insurance Company v. City of New York

Supreme Court, Appellate Division, Second Department, New York - October 23, 2019 - N.Y.S.3d - 176 A.D.3d 1145 - 2019 WL 5406553 - 2019 N.Y. Slip Op. 07640

Insurer and insured warehouse operators brought separate actions against city, alleging negligent performance of governmental function, after fire department personnel shut off main water supply valve to warehouse's sprinkler systems, and warehouse was destroyed during fire.

Following consolidation, the Supreme Court, Kings County, denied city's motion to dismiss. City appealed.

The Supreme Court, Appellate Division, held that insurer and insureds sufficiently alleged special relationship with city, so as to state claim for negligent performance of governmental function.

Insurer and insured warehouse operators sufficiently alleged special relationship with city, so as to state claim for negligent performance of governmental function; complaint alleged that city fire department personnel, upon arriving at scene and assuming control over ongoing fire, shut off main water supply valve to warehouse's sprinkler systems, then certified to warehouse employees that it was safe to reenter building when in fact the fire was still at risk of rekindling, which it did within minutes after fire department personnel left premises.

ZONING & PLANNING - OKLAHOMA

Cloudi Mornings, LLC. v. City of Broken Arrow

Supreme Court of Oklahoma - November 19, 2019 - P.3d - 2019 WL 6123533 - 2019 OK 75

Retail marijuana establishment and its manager petitioned for declaratory judgment and injunctive relief, alleging city had no authority to zone or otherwise regulate medical marijuana businesses within city limits.

The District Court issued declaratory judgment, finding city was precluded from adopting regulations, zoning overlays, fees or other restrictions relating to medical marijuana business activities. City appealed. The Supreme Court remanded for findings of fact and conclusions of law addressing whether city had unduly changed or restricted zoning laws so as to prevent the opening of a retail marijuana establishment, and the impact of the statutory amendment on the validity of the

City ordinances. The District Court filed its findings of fact and conclusions of law in which it concluded ordinances did not unduly change or restrict zoning so as to prevent opening of retail marijuana establishments.

The Supreme Court held that:

- City had the authority to follow standard planning and zoning procedures as to marijuana growers under amendments to the Act that legalized medical marijuana, and
- Retail marijuana establishment lacked standing to bring declaratory judgment action.

City had the authority to follow standard planning and zoning procedures as to marijuana growers under amendments to the Act that legalized medical marijuana, which specifically stated that "municipalities may follow their standard planning and zoning procedures to determine if certain zones or districts would be appropriate for locating marijuana-licensed premises, medical marijuana businesses or any other premises where marijuana or its by-products are cultivated, grown, processed, stored or manufactured."

Retail marijuana establishment lacked standing to bring declaratory judgment action against city for a determination as to whether city had authority to zone or otherwise regulate medical marijuana businesses within city limits, as the amendments to the Act legalizing medical marijuana authorized the city to follow standard planning and zoning procedures as to marijuana growers, retail marijuana establishment was not denied any city permits, required to pay a particular city fee, or prohibited from locating in a chosen location within city limits altogether, and thus, there was no actual, justiciable controversy between city and the marijuana establishment.

The Bond Is in the Mail: Muni Market's New Way Around Trump Ban.

- **So-called forward delivery bonds used to lock in low rates**
- **It's one way to refinance after 2017 law yanked subsidies**

Anyone who agreed to buy the bonds sold by Washington state this month has a long wait until they see a return on their investment: the nearly $400 million of securities won't be delivered until March 2021.

The delay is the result of an increasingly popular maneuver that states and cities are using to get around a provision of President Donald Trump's 2017 tax-cut law, which stripped them of their ability to sell tax-exempt bonds to refinance debt that can't yet be called back from investors.

But with rates hovering near more than half-century lows, local governments are eager to refinance. So they're selling bonds now that investors won't receive until months — or even years — later when the outstanding securities can be bought back. There have been $10 billion of such municipal bonds sold this year, the most since at least 2005, with $1.4 billion in the last month alone, according to data compiled by Bloomberg.

Illinois's Metropolitan Pier and Exposition Authority is planning next week to sell $923 million in bonds that won't be delivered to investors until March 2020. Washington D.C.'s airport authority is selling $364 million in bonds Dec. 12. Those won't settle until July.

"The interest rates are just so favorable right now," said Larita Clark, chief financial officer of the Metropolitan Pier and Exposition Authority, which expects to save as much as $150 million. "We just wanted to lock in those rates."

After the Federal Reserve cut rates for a third time this year, Henry Dachowitz, the chief financial officer for Norwalk, Connecticut, decided to sell about $18 million of forward delivery bonds. He had been talking to multiple underwriters who were marketing the structure.

"The forward structure was new to me. I explored it and when I saw the present value savings were almost $2 million, it was compelling," he said in an interview. "I thought interest rates if anything would go up. It was time to pull the trigger after the last rate cut."

Washington delayed the delivery date longer than any other borrower this year, according to data compiled by Bloomberg. The nearly year-and-a-half wait did come with a price: the 10-year bonds were priced with a 2.3% yield, or 73 basis points more than top rated debt. Comparatively, the state in September sold 10-year bonds for 1.47%, a 16 basis-point spread.

Sylvia Yeh, co-head of municipal fixed income at Goldman Sachs Group Inc., said the deals are largely suited to bigger institutional investors, given the risks that could crop up between when the bonds are sold and when they're delivered.

"The funds definitely have the opportunity to do this. For them it comes down to spread," she said. "There is appetite at a price. That speaks to how our market continues to develop."

Bloomberg Markets

By Danielle Moran and Fola Akinnibi

November 26, 2019, 10:30 AM PST

— With assistance by Sowjana Sivaloganathan

A Missouri Bank is Using Tech to Secure Large Deposits from Public Entities.

Bank of Franklin County, a Washington, Mo.-based bank with $273 million in assets, is using 'cash sweep' technology to gain large deposits from public funds without having to put up its own assets as collateral.

While accepting large deposits is not a pain point for most financial institutions, accepting public funds requires additional steps. If a bank accepts a deposit over the FDIC insurance limit ($250,000) from a public entity, banks have to put up their own assets as collateral, limiting their abilities to use these funds for other purposes.

Becky Buhr, vice president of finance and retail manager at Bank of Franklin County, told Bank Innovation the bank has sought help from the tech company Reich & Tang to seek an alternate solution to this problem that involves spreading out the deposit among a network of institutions.

"All these banks that participate in the [Reich & Tang] network each have $250,000 of FDIC insurance coverage, so they can take my $13 million, put it out there on that network and it gets spread out among all these banks in increments of less than $250,000," Buhr said.

According to Bank of Franklin County, this tool has been used since May of this year, when the bank secured a $13 million deposit from the local school district. "The school district gets full FDIC insurance. They get a good interest rate. I get $13 million that I have access to any time," Buhr explained.

The deposit came from the School District of Washington, which wanted to work with a local bank that could reinvest that money in the community. When Bank of Franklin County was deciding whether or not to bid on the deposit, Buhr said she needed to find a way to secure it without having to offer up the bank's assets as insurance. Reich & Tang, which has hundreds of banks on its deposit marketplace, told Buhr it could spread those funds throughout its member institutions and provide the required FDIC insurance.

The bank can access the funds by emailing Reich & Tang, which will then wire the money to the bank, explained Buhr. Institutions on the marketplace can also request capital to fund new loans, but they must pay Reich & Tang back with interest.

The technology acts as a two-way street for capital solutions. Banks that need money can request it, and banks that need to insure their deposits can send money. Bank of Franklin County, according to Buhr, actually generates revenue from interest Reich & Tang pays to keep the deposit on its marketplace.

The Bank of Franklin County has five branches in eastern Missouri, slightly west of St. Louis. Although its primary functions are commercial transactions, it also features retail products like personal checking and savings accounts. According to Buhr, the cash sweep technology is part of a bigger effort to digitize operations.

"We have a very robust online banking platform, and we have a very robust mobile banking platform. We offer remote deposit capture so our business customers can scan in their checks right on site," Buhr said. "We really can compete with the big banks, but what limits us is the size of those relationships."

Bank Innovation

by Rick Morgan

December 2, 2019

[Fitch Rtgs: Cordon Pricing May Boost US City Public Transit Usage, Revenue]

Fitch Ratings-New York-03 December 2019: Well-designed cordon pricing (CP) has the potential to reduce traffic and raise revenue for highly congested US cites, which can help fund public transit, says Fitch Ratings. CP is effective at quickly and materially reducing congestion and vehicle trips, while increasing transit usage, as shown in several European cities using CP. However, CP in isolation may not meet public policy goals unless there is substantial investment in a region's transit system.

Cities must consider the capital costs of the CP system itself and upfront costs required to expand the transit system to accommodate motorists who switch to public transit. Alternate transportation is only valid to the extent there is a robust transit system that serves the cordoned zone and can accommodate additional users. CP zones with transit systems that are unreliable, small, infrequent, or at capacity may find motorists will not respond to CP because driving is preferable to the alternatives.

Unlike European cities using CP, many US cities do not contain a single central business district or urban core. US cities are likely to be lower density, with less public transit alternatives, featuring more diffused traffic patterns and requiring more than one congestion zone with a variety of congestion-pricing methods, such as dynamically priced parking meters and managed lanes. These characteristics do not necessarily rule out CP systems as an effective congestion management system but they suggest a smaller pool of suitable cities in the US.

Continue reading.

03 DEC 2019

Fitch Rtgs: Managed Lanes Performance Strong but Untested in Recession

Fitch Ratings-New York-03 December 2019: Performance among Fitch-rated managed lanes (MLs) is strong with fiscal YTD 2019 total revenue rising by a median of 21%, says Fitch Ratings. This is in line with a longer trend of robust ML performance. Growth is supported by accommodative economic conditions, low gas prices, and solid population and generally higher growth in regions with MLs.

MLs typically exist in corridors with free general purpose lanes (GPLs) at or near designed capacity and grow much faster than the corridors they operate in. As a result, a high proportion of marginal corridor traffic growth spills into the MLs instead of the more congested GPLs. This same dynamic leaves MLs more vulnerable to corridor traffic declines, whether caused by recession, increased corridor capacity, or new competing routes.

The MLs sector is young and growing quickly. The proliferation of projects, operational and post ramp-up, provides a critical mass of data not available in recent years. Most MLs projects out-performed our base and rating case projections in most years. Fitch uses this data to form its assumptions as it relates to truck traffic, value of reliability, induced traffic and project extensions.

Although MLs performed extremely well under the U.S.'s prolonged economic expansion, only Orange County Transportation Authority's (OCTA) SR-91 MLs were open during the Great Recession of 2007-2009, when the facility's traffic fell 18% and revenue fell by 11%. The lack of robust historical recessionary performance data results in limited visibility as to how MLs will perform in the next recession. Fitch continues to use conservative assumptions in our rating case cash flow projections as it relates to the effects of economic volatility.

Although Fitch-rated MLs growth slowed in each of the past three years, this is to be expected, as newer facilities exit the fast growth ramp-up phase. Over the next year Fitch-rated MLs projects are projected to finish construction in California, Colorado, North Carolina and Texas, and portfolio-wide revenue growth may rise as the proportion of facilities in ramp-up increases. Fitch expects the growth of MLs to continue as they tackle congestion issues while simultaneously producing revenue streams that can be used to pay for roadway maintenance and possibly other capital projects.

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At Pimco, Climate Change Is Happening Sooner Rather Than Later.

- **Muni analysts treat climate change as more a near-term threat**
- **Traditional credit factors are seen through 'different lens'**

The typical municipal-bond analyst already wields an array of jargony acronyms befitting the niche market: GO, COP, POS. Now comes WUI.

That's wildland urban interface, a term once confined to firefighters and academics. But since 2017, when some of the most destructive fires in California history burned entire neighborhoods, analysts for bond giant Pacific Investment Management Co. have increasingly focused on whether muni-bond sellers reside in that kind of environment, where people live near brush and trees and are at a greater danger from fire.

"When we make investments in California, we take a birds-eye view of where these communities are located," said Sean McCarthy, Pimco's head of municipal credit research, in an interview. "It's not just the warming climate — there are more homes in harm's way, there are more human ignition sources."

That's just one of the ways the firm is assessing the impact of climate change, which for its analysts has moved from a long-term threat to one that could impact local governments within three to five years. They look at traditional metrics such as the size and diversity of the tax base with a "different lens" and evaluate how resilient they would be if there's a fire or other natural disaster, he said.

"It's front and center more on the individual analyst's mind when they're doing their ratings process," said McCarthy, whose firm holds about $50 billion of municipal bonds. "We are more acutely concerned about some of these longer-term risks falling within the shorter-term ratings horizon than we were in the past."

Investment and rating companies are seeking to reassure investors in the $3.8 trillion municipal-bond market that they're accounting for climate change when they evaluate issuers given how state and local government bond sellers are on the front lines. Climate scientists predict hurricanes will intensify and rainfall will increase in a warming globe. In California, the biggest municipal-bond issuer, 10 of the 20 most destructive wildfires have occurred since 2015.

Pimco analysts use an internal tool that pulls up dozens of different financial metrics by zip code. If a jurisdiction is within an elevated risk area, they consider offsetting factors such as support from state and local governments. (For instance, California lawmakers backfilled lost local property-tax revenue due to wildfires in this year's state budget.)

"A geographically desirable city, such as Malibu, California — which has strong credit factors and occupies prime oceanfront property — will likely show relative resilience after severe wildfires, with residents more willing and able to return to rebuild," Pimco analysts wrote in a report this month.

How essential the project being financed also gets scrutinized. A local government at risk from wildfires is more likely to continue making debt payments on a hospital than an arena, for instance. And important considerations some may overlook, McCarthy said, are technicalities of the deal, such as the ability of an issuer to redeem the bonds before maturity.

A lower internal rating doesn't necessarily mean Pimco would avoid buying the bond altogether, but "we should be compensated with greater risk premiums," he said.

Bloomberg Markets

By Romy Varghese

November 25, 2019, 9:40 AM PST

[Chicago Passes $11.65 Billion Budget as 2021 Concerns Loom.]

- **City closes $838 million hole with debt refinancing, new fees**
- **Budget contains 'no significant' property tax hikes: Lightfoot**

The Chicago City Council approved Mayor Lori Lightfoot's $11.65 billion budget for 2020 that raises fees on ridesharing services, refinances more than $1 billion of debt and merges departments to fill the biggest shortfall in recent history.

Lightfoot is closing an $838 million budget deficit. The spending plan's reliance on some one-time moves, like debt restructuring, raised questions about how she will plug future shortfalls as pension costs are projected to rise.

"The 2020 budget is a progressive blueprint for the future," Lightfoot said at City Hall after the vote on Tuesday. "We first look inwards and not to the taxpayers."

Chicago is struggling with rising costs and a shrinking population that has already been hit with higher property taxes and other increased levies in recent years. The city's four pension plans are short about $30 billion, and the city's mandated pension contributions are poised to ramp up. Chicago's annual projected pension contribution climbs to $1.68 billion in 2020 and tops $2 billion by 2022, city documents show.

Lightfoot said that the 2020 spending plan has "no significant" property tax increases.

"Overall, this seems to be a reasonable plan to move the city forward," said Laurence Msall, president of the Civic Federation, which analyzes government budgets. "It's a budget that reflects the challenges of these times."

The 2020 spending plan includes about $40 million more revenue from higher fees on ride hailing services, particularly from single riders in downtown, a move that Uber Technologies Inc. has pushed back against. Next year's budget counts on $210 million in savings from refinancing more than $1 billion in debt.

The city is taking all those savings in one year, rather than spreading it out over several years. This planned refunding that seeks to "realize disproportionate savings in the short-run" is "an unsustainable budgetary practice that should be avoided," Matt Fabian, partner at Municipal Market Analytics, said in an emailed report.

Fabian also warned that Chicago's task of balancing budgets in upcoming years, including 2021, may pose challenges.

"A failure to raise taxes now, while the local economy is reasonably strong, raises the risk of an eventual hike being proposed when growth is weaker or even negative: a very hard environment to present recurring budget solutions," Fabian said in his report.

Lightfoot had to balance her budget more with cost cuts after she was unable to gain Illinois legislative support for a graduated real estate transfer tax, which was projected to yield about $50 million.

She lobbied lawmakers during the six-day legislative veto session in October and November to approve such a tax as well as lower the tax structure on a proposed Chicago casino to increase its appeal for potential operators. Neither initiative got approval. The mayor and city officials may advocate for both measures next year as Chicago needs to find more revenue to pay its future bills.

Bloomberg Markets

By Shruti Singh

November 26, 2019, 11:07 AM PST Updated on November 26, 2019, 11:35 AM PST

Cities Should Invest Now to Reduce Climate Change Depreciation.

Cities are beginning to worry that a susceptibility to climate change could reduce the chance that partners will invest in them. No financial support means no funds for the infrastructure to protect against the climate.

(TNS) — Someday soon, analysts will determine that a city or county, or maybe a school district or utility, is so vulnerable to sea level rise, flooding, drought or wildfire that it is an investment risk.

To be sure, no community has yet seen its credit rating downgraded because of climate forecasting. And no one has heard of a government struggling to access capital because of its precarious geographical position.

But as ratings firms begin to focus on climate change, and investors increasingly talk about the issue, those involved in the market say now is the time for communities to make serious investments in climate resilience — or risk being punished by the financial sector in the future.

"We look not just at the vulnerability of state and local governments, but their ability to manage the impact," said Emily Raimes, vice president with Moody's Public Finance Group. "While we'll be looking at the data on rising sea levels and who may be more vulnerable, we'll also be looking at what these governments are doing to mitigate the impact."

Moody's has been especially vocal about its climate change concerns. The firm has issued numerous papers assessing climate risk, and two months ago it purchased a majority stake in Four Twenty Seven, a climate-risk data firm.

Emilie Mazzacurati, Four Twenty Seven's founder and CEO, said that the bond sector's attention to the issue should prompt local governments to make it a priority. "It creates an incentive for them to be better prepared, because it's going to cost them money if they don't."

But some worry that punishing places for their susceptibility to climate change will just make it more difficult for them to finance the infrastructure improvements that might protect them.

"Nobody has yet been penalized for having a bad environmental policy or practice or system," said Tim Schaefer, California's deputy treasurer for public finance. "I don't know how much longer that's going to go on. I'm assuming not much longer."

Assessing Florida's Future

Governments large and small rely on the $3.8 trillion municipal bond market for much of their infrastructure work. When officials want to build a highway or a school — or a seawall or an emergency operations center — they often issue bonds, bringing in the money needed to complete the project. Investors are repaid with interest over a period that can run for decades or more.

About two-thirds of infrastructure projects in the United States are paid for by municipal bonds, and more than 50,000 states, local governments and other authorities have issued bonds to finance their work.

Governments pay higher interest rates on those bonds when their credit ratings are low. Firms such as Moody's Investors Service and Standard & Poor's Financial Services issue the ratings assessments.

"Investors are in a position of demanding a higher return when they see greater risk," said Kurt Forsgren, managing director of S&P Global Ratings.

Municipal bonds are considered a conservative investment, with a current default rate of around 0.3%, according to Matt Fabian, a partner at Municipal Market Analytics. To date, the bond market has done little to reflect that the risk may be increasing.

"There is almost no impact on muni bond prices with respect to climate change vulnerabilities. Prices do not acknowledge the risk in climate change," he said. "Most investors believe that [climate change] is going to start affecting the market right after their own bonds mature."

As more investors and firms study the risks, however, that might change.

"We are about a year away from climate change beginning to affect the muni market — a little," Fabian said. "Changes on the investor side are going to happen first, [credit] ratings will come second, and issuer behavior will be a distant third."

Some investors already have begun to factor climate change into their decisions. Eric Glass, a portfolio manager with AllianceBernstein, said his portfolio opted to steer clear of a recent three-decade bond in the Florida Keys, which is facing rising sea levels.

“What does [the Florida Keys] look like in 30 years?” Glass said. “I don’t know. But I know it’s not going to look like what it looks like today. That is a tough calculus to make, and we’ve decided not to take it.”

David Jacobson, vice president of communications for Moody’s Public Finance Group, called a downgrade over climate projections a “what-if type of thing.” Moody’s ratings are based on what its analysts expect a government’s creditworthiness to be in the next 12 to 24 months, he said, even though the bonds they issue can run for decades.

“The things that are happening right now or in the next 24 months weigh a whole lot more than things we think will happen in 15 to 20 years,” said Lenny Jones, a managing director at Moody’s. “We’re not scientists.”

Credit-rating firms have always acted conservatively, said Justin Marlowe, a professor at the University of Washington who studies public finance. To some critics, that reluctance to downgrade pre-emptively is leaving the market unprepared for the onslaught of climate effects that so many local governments will face.

That’s the conundrum facing the municipal bond market right now: If the market fails to be proactive about future risks, it could lead to billions in ill-fated investments in communities at the forefront of climate change. But making it more expensive for governments with environmental liabilities to borrow money could prevent them from making the improvements needed to strengthen their infrastructure.

And just because a city is likely to be struck by sea level rise or wildfire doesn’t necessarily mean it will default on its bonds. Further effects like crop yields and population shifts — and their impact on a tax base — could prove even harder to project.

“It’s a pretty big step from ‘we have economic impacts’ to ‘this is going to affect their long-term ability to repay their bonds.’ There’s a really big difference,” Mazzacurati said. “[Ratings firms’] focus is really about counties who repay their debt. That’s it. There can be really important impacts that are not going to be reflected in the bond rating, and that doesn’t mean the bond rating is off.”

Disaster Fallout

So far, the few climate-related credit downgrades have come after specific disasters. New Orleans and Port Arthur, Texas, experienced credit downgrades after major hurricanes. And after a fire nearly destroyed Paradise, California, last year, the pool of pension obligation bonds it was a member of saw its credit downgraded.

As New Orleans rebounded, its credit improved. The city adopted a resilience strategy, bolstered its levee system and pursued other projects, such as turning green space into water reservoirs during periods of flooding. Today, the city sees its biggest climate threat as extreme rainfall, which has increased in frequency in recent years and flooded parts of the city.

Leaders in New Orleans are asking voters to approve $500 million in new bonds, which would pay for infrastructure improvements such as the replacement of outdated pipes, as well as other goals like affordable housing. City officials say it shows New Orleans is “doubling down” on its infrastructure program.

“The environment is changing. More water’s coming down in a shorter period, and we have to respond to that,” said Norman White, the city’s chief financial officer. “Our first responsibility is to the citizens of New Orleans. Fortunately, that lines up with investors.”

Coastal cities across the country are building seawalls to stave off rising oceans. Others are elevating roadways to prepare for more frequent flooding. Some are requiring sturdier new construction and retrofitting existing buildings to withstand severe weather events. Communities in drought-prone areas may focus on projects such as water storage, while those with flooding concerns must fortify their sewage infrastructure.

Last year, Moody's surveyed the 50 largest U.S. cities; 28 responded. Among them, they had 240 climate resilience projects, totaling $47 billion. Some 60% of the projects were to combat flooding.

Florida's Miami-Dade County has been praised by analysts for its infrastructure investments focused on climate preparedness. Ed Marquez, the county's deputy mayor, said future financing is a "concern," but officials are trying to address that with capital plans focused on dealing with the changing climate.

"This is a many-year process as we fix our infrastructure, as we add new infrastructure, as new science comes on board," he said. "Miami is still growing. People are still coming. Investors are buying our bonds. We're telling them what the odds are, but it's odds that they're willing to play."

Statewide, Florida remains in good shape creditwise, despite the challenges many of its communities are facing. Ben Watkins, the state's director of bond finance, said that's likely to continue, even amid hurricanes and rising sea levels. Even the most devastating hurricane seasons have ended up being a "blip on the radar" in terms of Florida's credit health, he said. But concern remains for smaller governments within the state.

"People are dying to come to Florida and coming to Florida to die," he said. "Until that changes, we'll have the economic engines to be able to access credit."

Cities with climate change risks should follow Florida's lead and borrow now for local projects, said Fabian, the analytics researcher.

"As investors get smarter about climate change risk, it will become more expensive for governments with the largest need to borrow," Fabian said. "Their costs to borrow could certainly be higher. Acting earlier is almost always cheaper."

BY ALEX BROWN, STATELINE.ORG | NOVEMBER 26, 2019 AT 3:01 AM

The Troubling Decline in City Revenue Growth.

The economy continues to grow, yet cities anticipate revenue problems. How can both be true?

The most startling conclusion of The National League of Cities' new fiscal conditions report was that revenue growth "stalled" last year and that this trend has continued—creating real problems for city budgets.

This came as a particular shock to us because gross domestic product from coast to coast continues to grow. According to the U.S. Bureau of Economic Analysis, "Real gross domestic product (GDP) increased in all fifty states in the first quarter of 2019."

So, the question emerges: While the economy has remained healthy, why are so many cities experiencing revenue growth stagnation or even declines? Columbia, Missouri (population 122,000), for example, saw annual growth in sales tax revenues of 5.8 percent in 2011, but just 1 percent growth in 2018. The city's budget report last year noted, "Sales tax growth has been historically low for the last four years. These revenue challenges appear to be long term problems."

Continue reading.

Route Fifty

By Katherine Barrett & Richard Greene

Nov 24, 2019

Wells Fargo Warns of Mispricing of Risk in Municipal Bond Market.

Gabe Diederich, portfolio manager at Wells Fargo Asset Management, discusses risks within the municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

November 27th, 2019, 10:07 AM PST

Key Dates & Deadlines for Opportunity Zone Investing.

As 2019 winds down and the full benefit of the Opportunity Zones tax incentive expires, here are some key dates for investing in Opportunity Zones — past and future. Note: as IRS regulations are not yet finalized, these dates are subject to change. February 2, 2017: The Investing in Opportunity Act is introduced in the Senate and House. December 22, 2017: The Tax Cuts and …

Read More »

Opportunity Db

November 27, 2019

Could California's Public Banks Finance a Statewide Green New Deal?

After years of claiming to be a leader in climate action, California might be finally starting to step into its promised role — and it is bringing a secret weapon to the challenge.

On November 19, Gov. Gavin Newsom announced the state was placing a moratorium on new permits for oil drilling activities that involved steam injection and fracking. The announcement came just a few months after news broke that not only did California's top oil regulators have a vested interest in major oil companies, but since Newsom became governor, the number of oil permits had doubled.

"Governor Newsom has shown the world today that the future of climate leadership means saying 'no' to the fossil fuel industry's dreams of endless expansion," said Stephen Kretzmann, head of Oil Change International, one of the organizations behind the Keep It in the Ground movement. "While there is still a long road ahead, the measures announced today are important steps towards comprehensive action to phase out California's oil and gas production and align its economy with climate safety," he added.

Continue reading.

Truthout.org

by Carla Santos Skandier,

November 29, 2019

Regulatory Comments Stress Safe Harbors in Libor Transition.

The establishment of safe harbors is one of the key issues raised by public finance industry groups in their comments to the U.S. Treasury, Internal Revenue Service and the Governmental Accounting Standards Board on their proposed guidance for making the transition away from Libor.

In formal comments filed with the federal government and separately to GASB ahead of filing deadlines this week, municipal finance groups have given the regulators generally high marks while noting the transition to other reference rates is not of their own choosing.

Libor is being phased out at the recommendation of the Alternative Reference Rates Committee created by the U.S. Federal Reserve Board and the Federal Reserve Bank of New York.

National Association of Bond Lawyers President Rich Moore characterized his organization's 22-page submission to Treasury and the IRS as an effort to ensure that the tax-exempt bond market receives consideration.

"This transition from Libor is big in the general tax market," Moore said. "All sorts of folks are going to be commenting on this proposed regulation and NABL wanted to focus on the areas that are unique to tax-exempt bonds because if we don't comment on those, who will?"

NABL, for instance, suggested tweaks to the arm's-length safe harbor to ensure it works for the issuer and more clarity that any one-time payment that goes to or from the issuer not be treated as proceeds of the bonds.

NABL also wants clarity that if the new index uses a multiplier that would otherwise cause that bond to be a contingent debt instrument, that it not be treated as a contingent payment debt instrument.

"We have some background in the appendixes on all these things as to why we care," said Moore, noting that the committee of NABL lawyers who composed the document was chaired by Matthias Edrich.

NABL's comments are longer and more detailed than they might have been because of the recent departure from Treasury of John Cross, the department's most experienced public finance tax expert.

The Government Finance Officers Association, which also filed comments with Treasury and the IRS, requested "an additional safe harbor to the substantial equivalence test."

"This safe harbor may further assist the GASB in their proposed exposure draft addressing replacement rates on current effective hedges," said GFOA.

The new alternative reference rates cited by Treasury and the IRS include the Secured Overnight Financing Rate (SOFR) published by the Federal Reserve Bank of New York and the Federal Funds Rate.

Both the Treasury and GASB proposals include all other IBORs offered in other countries, including Switzerland, Japan and the European Union.

"We are pleased to see the IRS and Treasury's preemptive approach in the proposed regulations, especially as they address issuer's legacy contracts," GFOA said in its comments. "We are especially pleased to assist in the efforts of the industry, official sector and regulatory agencies moving forward to build a framework that allows for a comprehensive approach for issuers and their counterparties in the context of a cessation of Libor."

The GASB proposal, Replacement of Interbank Offered Rates, offers new accounting and financial reporting guidance to assist state and local governments that use GAAP accounting in the transition away from Libor for reporting periods beginning after Dec. 15, 2020.

GASB received more than a dozen comments from groups such as the National Federation of Municipal Analysts and the National Association of State Auditors, Comptrollers and Treasurers.

NFMA's letter noted, "a few of the organization's members questioned whether the GASB should consider allowing other rates/indices as appropriate benchmark rates and broadening the exception to account for the potential discontinuation of other rates or indices."

GASB's proposal clarifies the hedge accounting termination provisions when an IBOR is replaced as the reference rate of a hedged item and that the uncertainty associated with reference rate reform does not, by itself, affect the probability that an expected transaction will occur.

GASB would allow an amendment to replace the reference rate that would not constitute a termination within certain guardrails that prevent changing the terms of the swap. It also clarifies the definition of reference rate, and provides an exception to the lease modifications guidance in Statement 87 for certain IBOR-related lease contract amendments.

By Brian Tumulty

BY SOURCEMEDIA | ECONOMIC | 11/27/19 12:08 PM EST

[Taxing Online Sales Won't Save Cities From the Retail Apocalypse.]

The Supreme Court's year-old Wayfair decision allows most U.S. states to collect sales tax from online shopping. Can cities expect a revenue bump?

As the holiday shopping season approaches, more governments than ever will reap the benefits of all that spending. That's because in 2018, the U.S. Supreme Court overturned the ban on governments taxing online sales. More than a year after the South Dakota v. Wayfair decision, states have now started collecting, and some have already seen a slight boost in sales tax revenue. That bump could be even greater as the Black Friday/Cyber Monday shop-a-thons kick off the end-of-year spending spree.

But it's unlikely that cities will see much of it.

States saw a 7 percent bump in sales tax revenue between June and September of this year over the corresponding period in 2018, according to data compiled by the Urban Institute's State and Local Finance Initiative. That's a few percentage points higher than average, and the Institute's Lucy Dadayan says it's most likely due to the increased collections from online sales.

Continue reading.

CITY LAB

by LIZ FARMER

NOVEMBER 26, 2019

Wyoming Supreme Court: Jackson Hole Aviation Purchase Legal

Airport board has not yet decided whether to pursue acquisition once again, director says.

Jackson Hole Airport's planned purchase of Jackson Hole Aviation could be back on the table now that the Wyoming Supreme Court has ruled for the airport, deeming the acquisition legal.

Several local pilots — Greg Herrick, Richard Sugden and Brent Blue — challenged the 2018 purchase, arguing that the airport's use of revenue bonds to purchase the nontangible assets and goodwill of a private business clashed with state statute. Teton County District Court Judge Timothy Day disagreed in February, and on Tuesday the state's highest court affirmed that determination.

"The district court correctly interpreted Wyo. Stat. 10-5-101(a) when it held the term 'other property' authorized the use of revenue bonds for purchases of both tangible and intangible property," Justice Kari Gray wrote in the opinion.

Continue reading.

Jackson Hole News & Guide

By Mike Koshmrl

Nov 27, 2019

Understanding Municipal Debt Backed by Transportation Districts.

Transportation debt is unique in the way that it's often issued for projects that can take a long time to complete, involve multiple jurisdictions and may span across a vast region. These initiatives include: bridges, highways, public transit system (including rail and buses), ports and airports. And because these projects are rarely unique to one local government, you will often see a large metropolitan area consisting of many cities and counties taking part in these projects by creating special districts, electing a board with a unanimous consensus and funding these initiatives.

Contrary to popular belief, transportation bonds aren't limited to the big infrastructure projects mentioned above or only issued by larger jurisdictions. In 2016, Kenmore, Washington (population 22,460), passed its first bond measure in the city's history: a Walkways and Waterways bond that supports new sidewalks and buffered bike lanes along two streets in the city. The bond is tied to the city's Target Zero goal, which strives for zero fatalities of people walking and bicycling by 2025.

In this article, we will take a closer look at the transportation debt market, revenues that back up this form of obligation and how it fits in your portfolio as an investor.

Continue reading.

municipalbonds.com

by Jayden Sangha

Nov 27, 2019

CalPERS Numbers Tell Costly Pension Story.

Editorial, includes "… On average, local governments in California are paying 50 cents on top of every payroll dollar to cover retirement costs for public safety employees. … Two dozen jurisdictions are paying 70 cents on the payroll dollar, twice as many as last year, and that number is expected to double again next year to 50. … The state Supreme Court ducked an opportunity to evaluate the California rule in a case decided earlier this year. The justices will get another crack at the issue in a pending case. If they take another pass, the vicious cycle of rising costs for pensions and cutbacks for basic public services will continue to accelerate."

Read the full article on: The Press-Democrat (California)

November 27, 2019

Rural Communities Look to Jails for Revenue.

A new report found that rural areas are increasingly renting out jail beds to places with overcrowded facilities in an effort to bring in more revenue.

The jail population in the U.S. has been steadily falling over the past decade. Much of that decline has been driven by cities, like New Orleans, which shrunk the jail population to the lowest numbers since 1979, and New York, where the jail now holds almost 70% fewer people than it did in the 1990s.

But jail capacity hasn't seen the same shift. Instead, rural communities, as well as some suburban localities and mid-sized cities, are often choosing to build new jails or additions. Overall jail capacity grew by over 11% between 2005 and 2013, according to a new report from the Vera Institute of Justice, a nonprofit that advocates for changes to the criminal justice system.

"Across the country, you see a really interesting trend," said Chris Mai, one of the report's authors. "While the number of people in jail is going down, capacity is going up. Small towns and rural America just keep adding more jail beds."

Continue reading.

Route Fifty

By Emma Coleman

Nov 27, 2019

North Dakota Gets Top Marks in Financial Transparency.

Includes "North Dakota state government has gotten top marks for financial reporting transparency from the nonpartisan watchdog organization Truth in Accounting … The organization each year measures each state's Comprehensive Annual Financial Report against a 'best practices' framework. …"

Read the full article on: Jamestown Sun (North Dakota)

November 27, 2019

TAX - PENNSYLVANIA

City of Philadelphia v. Jones

Commonwealth Court of Pennsylvania - November 20, 2019 - A.3d - 2019 WL 6138376

Property owner filed a petition to open, strike, stay or set aside sheriff's sale and deed arising from tax sale.

The Court of Common Pleas affirmed the tax sale. Property owner appealed.

The Commonwealth Court held that:

- Trial court lacked jurisdiction to consider property holder's petition;
- City strictly complied with notice provisions of Municipal Claims and Tax Liens Act (MCTLA); and
- Property owner lacked standing to challenge notice of tax sale.

How Fit Is Your School? The Methodology Behind Forbes' 2019 College

Financial Health Grades.

The majority of the nation's institutions of higher education are in precarious financial straits, as many tuition-dependent colleges compete to fill freshman classes in order to stay open. Forbes' sixth report on the financial health of private-not-for profit colleges finds that the overall financial well being of colleges has deteriorated and many are in danger of closing or merging. Student demand is tapering, tuition pricing (and discounting) is growing, and unfortunately many administrations and faculties are loath to adapt to this new reality.

This is not a moment; it's a trend. The outlook for the higher-education sector is negative, according to analysts at credit agencies Moody's and Fitch Ratings. And while both public and private schools are feeling the heat, according to Fitch's Emily Wadhwani, "The typical credit characteristics of a public institution are better suited for weathering with resilience declining demand. … In general, [private colleges] are more pressured than their public counterparts."

That pressure is painfully evident in Forbes' College Financial Health Grades. The number of D-graded colleges, those with GPA's less than 1.5, have swelled from 110 when we started grading finances in 2013 to 177 today—a 61% increase. Only 34 schools, including Harvard, Brown and MIT, earn A+'s.

To grade the schools, we used data from the Department of Education's IPEDS database. We averaged the figures from the two most recent "final release" fiscal years, 2016 and 2017. Only private not-for-profit colleges with at least 500 students and sufficient data were examined, and the lowest grade we gave out was a D.

The GPA's and grades measure financial health as determined by nine components:

1. Endowment Assets Per FTE (15%): This is year-end endowment assets divided by the number of 12-month full-time equivalent students. Denison University was the lowest-scoring school to still get full credit, with $337,980 per student; Columbia University got 14.9%, with $334,870. Eleven schools boast over $1,000,000 in endowment per student; only one, Princeton, eclipses $2 million.

2. Primary Reserve Ratio (15%): This "liquidity"-oriented ratio analyzes how well a university's "expendable assets" could quickly cover its annual expenses without straining its normal operations. Expendable assets are defined as total unrestricted net assets, plus temporarily restricted net assets plus debt related to property, plant and equipment, minus property, plant and equipment net of accumulated depreciation, divided by total annual expenses. Schools needed just beneath a ratio of 2.5, or two years and six months, to get full credit. Grinnell College in Iowa—whose endowment fund was once under the stewardship of Warren Buffett—is once again the top score, with a ratio over 14. University of Pennsylvania, despite its A+ grade, slides in just under 1.0.

3. Viability Ratio (10%): Similar to the primary reserve ratio, the viability ratio measures the amount of expendable assets a college has relative to its debt load. Many colleges carry no debt and therefore received full credit. The cutoff for a perfect score is just above 2.5. Dartmouth has a ratio of 4.8. Davis & Elkins College, a tiny school in Appalachia, was in the midst of a $100 million fundraising campaign during the years pulled for the list; by paying down its debt, it had a viability ratio of over 65—and the school now boasts no debt, according to its president, Chris Wood.

4. Core Operating Margin (10%): This measures operating profit, otherwise known as "surplus." We looked at core revenues for education, as measured by the DOE, minus core expenses. In other words, how well is a college meeting its annual obligations, like instruction expenses and student services, from the tuition, grant, gift, contract and investment revenue it takes in? Of the 933 schools ranked, 384 had negative margins. Standouts like Bates College and Berea College got near perfect scores, with operating margins around 43%.

5. Tuition As A Percentage of Core Revs (15%): Tuition-dependent schools, where tuition revenues account for more than 60% of their core revenues, tend to be at higher risk. Price discounting can have a big effect on these schools' viability, and enrollment shortfalls can mean budget misses, and potentially layoffs or cost cutting. Any college where tuition dependency is less than 10% of revenues gets a perfect score. Three schools rely on tuition for less than 5% of their revenues: College of the Ozarks, California Institute of Technology and Grinnell College.

6. Return On Assets (10%): This metric divides the change in net assets over the year for an institution by the assets at the beginning of the year. This answers the simple question of whether an institution's assets are actually growing. Only 204 saw their assets shrink; online degree leader Southern New Hampshire University, which Forbes profiled in March, earned a perfect score with an over 30% ROA.

7. Admission Yield (10%): Is a college students' first choice, or a last choice? This measure looks at the percentage of admitted students who actually choose to enroll. For this metric, we averaged the last three available years of data. Near the top of the pack is College of the Ozarks (profiled by Forbes in 2018), with an average yield over 89%. Meanwhile, colleges like High Point University and Drexel University have safety-school-type ratios, of less than 20%.

8. Percent Freshman Getting Institutional Grants (7.5%): Turns out, giving out merit scholarships does not necessarily mean a school is well-endowed and generous; it may just be desperate. This figure measures the percentage of students getting discounts, otherwise known as institutional grants, to entice enrollment. Schools where the percent is less than 40%, like Wake Forest University and Tufts University, get full credit. Fordham University and Wofford College got half credit because 90% of their first-year students receive institutional grants.

9. Instruction Expenses Per FTE (7.5%): This measure is an indicator of how much funding the particular institution devotes to the core mission of higher education per full-time-equivalent student. Washington University in St. Louis, Yale and Stanford all spend over $100,000 per student, though spending over $45,000 per student got a perfect score. The College of Idaho, graded an A, spends less than $10,000 on instruction.

Forbes.com

by Carter Coudriet & Matt Schifrin

Nov 27, 2019

Fitch On Demand Webinar: Nashville Airport Subordinate Airport Revenue Bond Series 2019A&B

Fitch hosted a webinar to discuss our new rating of Metropolitan Nashville Airport Authority.

Please join Scott Zuchorski, Seth Lehman, and Jeffrey Lack for a discussion of the airport, our rating, and our thought process.

Register Now

Can An Unfinished But ‘Usable’ Basement Space Be Taxed? Berkeley Says ‘Yes’ And The Courts Have Agreed.

A group of Berkeley property owners has taken to emails, phone calls, social media and even the courts to challenge the way the city calculates special, voter-approved taxes.

The property owners — it’s hard to know how many, but at least several — question the accuracy and legality of the city finance department’s way of measuring square footage, which is the basis of the city’ special taxes, used for such services as the library, parks, and emergency medical serves, and the schools.

They claim they’re being overtaxed to the tune of thousands of dollars a year.

There is “potential for the city to be forced to issue a large amount of refunds (perhaps in the millions) and have reduced tax collections going forward,” said David Kellogg, a tax-questioning property owner who is asking the city to reimburse him for back taxes.

Continue reading.

Berkeleyside

By Kate Darby Rauch

Nov. 27, 2019, 11 a.m.

Louisiana’s Ransomware Attack Was Largest but ‘Not Catastrophic’

During a last-minute hearing Friday, Louisiana Deputy CIO Neal Underwood revealed that last week’s ransomware attack was the largest one to impact the state, but he stopped short of calling the attack catastrophic.

Last week’s Louisiana ransomware attack affected approximately 10 percent of the 5,000 servers within the state government’s IT infrastructure, making it one of the largest cyberattacks on the state to date.

Neal Underwood, deputy chief information officer for the Office of Information Technology (OIT), revealed the news during a last-minute hearing Friday morning, in which legislators quizzed numerous agency heads on their operational status following the cyberincident.

“It’s not catastrophic,” Underwood said, before ultimately concluding that it was “a significant event, much more significant than any we’ve had in the past.” He also called it a “sophisticated, coordinated attack,” and not the result of “some malcontent teenager in their parent’s basement.”

Continue reading.

GOVERNING.COM

BY LUCAS ROPEK | NOVEMBER 27, 2019 AT 3:01 AM

Ohio Gears Up Cyber Soldiers for Virtual Defense Tactics in 2020.

- **Ransomware attacks on municipalities have surged in 2019**
- **Cyber group credit positive for Ohio municipalities: Moody's**

Cyberattacks in Ohio have disrupted airport flight displays, led to the shutdown of a help line during a winter storm and cut off access to police investigation reports temporarily.

The Buckeye State is fighting back.

Its first volunteer cyber reservists will be assembled in January, ready to parachute in to get local governments back up and running after computer systems are hacked. The move is among the latest defense plans of local governments across the U.S. as dozens of states and municipalities face cyberattacks this year.

Continue reading.

Bloomberg Cybersecurity

By Maria Elena Vizcaino

November 25, 2019, 11:11 AM PST

- Trump Tax Cut Sets Off Boom in Once Sleepy Corner of Muni Market.
- When Summer Reading and Public Finance Tax Intersect – Tax-Exempt Bonds, Pop Culture, and the Town of Windthorst
- Electronic Disclosure, RIN 1210-AB90: SIFMA Comment Letter
- SEC Enforcement Annual Report: Retail Focus Raises Regulatory Risk for Investment Advisers
- NASBO State Expenditure Report.
- MSRB Investor Guide to ABLE Programs.
- And finally, Troy, Leningrad, Panama City Beach is brought to us this week by *Classy Cycles, Inc. v. Panama City Beach*, in which the court upheld a local ordinance prohibiting motorized scooter rentals. The court noted that, "The City is geographically small and crowded and is being besieged by inexperienced scooter drivers seeking amusement and driving in a dangerous manner." Besieged? Motorized scooters? That's what the Wehrmacht rode, right?

UTILITIES - CONNECTICUT

Summit Saugatuck, LLC v. Water Pollution Control Authority of Town of Westport

Appellate Court of Connecticut - October 29, 2019 - A.3d - 193 Conn.App. 823 - 2019 WL 5538269

Property owner sought review of determination by town's water pollution control authority denying owner's application for sewer extension to service proposed affordable housing development.

The Superior Court sustained owner's appeal and ordered conditional approval of application.

Authority appealed.

The Appellate Court held that trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application.

Although conditional approval of application for sewer extension to service proposed affordable housing development by water pollution control authority was viable and available option for agency, authority was not required to exercise option whenever possible, and thus, trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application; authority exercised cautious approach of requiring developer to file new application once it could demonstrate that sufficient sewer capacity existed for planned development, unknown and unforeseen problems could potentially arise between time for approval and completion of sewer upgrades, and authority had settled policy to not grant conditional approval of applications.

MUNICIPAL ORDINANCE - FLORIDA

Classy Cycles, Inc. v. Panama City Beach

District Court of Appeal of Florida, First District - November 13, 2019 - So.3d - 2019 WL 5945495

Motorized scooter vendor brought action against city, challenging validity of ordinances which prohibited motorized scooter rentals.

The Circuit Court granted summary judgment in favor of city. Vendor appealed.

The District Court of Appeal held that:

- Ordinances were not arbitrary or unreasonable, and
- State traffic statute did not impliedly preempt ordinances.

Municipal ordinances which prohibited night rentals of motorized scooters, and which imposed a general prohibition against all motorized scooter rentals after a certain date, were not arbitrary or unreasonable for only prohibiting rental rather than operation of scooters, and therefore ordinances were valid pursuant to rational basis analysis; ordinances were enacted based on findings that sheer volume of daily scooter rentals and often reckless operation of scooters had placed an impracticable strain on city resources, negatively impacted tourist experience, and posed safety risks, and it was reasonable to conclude that scooter owners would be more experienced and safe than one-time renters.

State traffic statute did not impliedly preempt municipal ordinances which prohibited night rentals of motorized scooters, and which prohibited all motorized scooter rentals after a certain date, even though statute precluded passage of any conflicting city ordinances as well as ordinances on traffic matters absent authorization; ordinances did not regulate the method of scooter driving or apply penalties for improper scooter driving in conflict with state traffic statute, and statute provided for a local government’s reasonable exercise of police powers to prohibit incompatible traffic from heavily traveled streets.

IMMUNITY - GEORGIA

[Cannon v. Oconee County]

Court of Appeals of Georgia - October 30, 2019 - S.E.2d - 2019 WL 5588788

Surviving parents brought wrongful death suit against county, alleging county was responsible for sheriff's deputy's actions in high-speed police chase that led to their daughter's death.

The county moved for summary judgment, and surviving parents filed a motion for sanctions and a motion to substitute sheriff as defendant. The Superior Court granted county's motion and denied surviving parents' motions. Surviving parents appealed.

The Court of Appeals held that:

- Sheriff's office constituted "local government entity" under statute waiving sovereign immunity for motor vehicle claims, and
- County sheriff would not suffer prejudice as result of being substituted as defendant.

Sheriff's office constituted "local government entity" under statute waiving sovereign immunity for motor vehicle claims, and thus sheriff's office, and not county, was proper party in wrongful death action brought by surviving parents' alleging sheriff's deputy's actions in high-speed car chase contributed to their daughter's death; sheriff's offices, which were separate from county itself, performed governmental services on local level.

County sheriff would not suffer prejudice as result of being substituted as defendant in surviving parents' wrongful death action against county, alleging sheriff's deputy's actions in high-speed police chase contributed to their daughter's death, for purposes of substitution relating back to original pleading date, where sheriff had received notice of action through his coordination with county through their vigorous defense of action, and sheriff should have known that, but for parents' mistake in identifying proper party, based on their misunderstanding of proper local government entity to sue, action would have been brought against him.

PUBLIC RECORDS - MISSOURI

[Wyrick v. Henry]

Missouri Court of Appeals, Western District - November 12, 2019 - S.W.3d - 2019 WL 5874668

Records requester whose mother died after sustaining injuries in motor vehicle accident filed petition against city clerk seeking a declaration that clerk purposefully violated the Sunshine Law's open records requirement by failing to disclose the requested traffic records after requester sent a notice of claim city.

The Circuit Court granted partial summary judgment in favor of requester. Clerk appealed.

The Court of Appeals held that:

- As a matter of first impression, requested records did not possess, by their inherent nature, a clear nexus to litigation, and thus were not exempt from disclosure under the Sunshine Law;
- Substantial evidence supported trial court's finding that clerk knowingly and purposefully violated the Sunshine Law, as would allow imposition of civil penalty on city;
- Trial court's award of attorney's fee in the amount of $38,550 in favor of requester was not unreasonable;

Substantial evidence supported imposition of civil penalties amounting to $4,000 against city for clerk's knowing and purposeful violation of the Sunshine Law; and
- Imposition of civil penalties in the amount of $4,000 against city did not prejudice city, and thus was appropriate.

Requested traffic records relating to accidents or complaints involving the intersection where requester's mother died after sustaining injuries in a motor vehicle accident did not possess, by their inherent nature, a clear nexus to litigation, and thus were not exempt from disclosure under the Sunshine law, even if the records might have been relevant, that is, discoverable or admissible, in potential litigation between city and requester who sent a notice of claim to city before making request for the records.

ZONING & PLANNING - PENNSYLVANIA

Protect PT v. Penn Township Zoning Hearing Board

Commonwealth Court of Pennsylvania - November 14, 2019 - A.3d - 2019 WL 5991755

Citizens' association sought judicial review of decision by zoning board, which denied association's challenge to constitutionality of zoning ordinance permitting unconventional natural gas development (UNGD) in township's low-density residential district.

The Court of Common Pleas upheld the ordinance. Association appealed.

The Commonwealth Court held that:

- Evidence was sufficient to establish that UNGD was compatible with purposes of zoning district;
- Evidence was sufficient to establish that overlay district was consistent with township's comprehensive plan and residential land use expectations;
- Evidence was sufficient to establish that ordinance protected residents' right to enjoy their property and their right to a healthy environment under state constitution; and
- Association failed to establish that ordinance posed a substantial actual risk to environment or health of residents.

OPEN RECORDS - PENNSYLVANIA

City of Harrisburg v. Prince

Supreme Court of Pennsylvania - November 12, 2019 - A.3d - 2019 WL 5883528

City petitioned for review of determination of the Office of Open Records (OOR) that city was required, under Right-to-Know Law (RTKL), to supply requester with an unredacted donor spreadsheet for fund that city created to defray legal costs associated with defending challenges to local firearms ordinances.

The Court of Common Pleas reversed. Requester appealed. The Commonwealth Court affirmed. Allocatur was granted.

The Supreme Court held that:

- Donor spreadsheet was a financial record subject to disclosure under RTKL, but
- Donors needed notice and an opportunity to be heard before city balanced public interest in

disclosure of names and address from donor spreadsheet against right to privacy.

MUNICIPAL ORDINANCE - WASHINGTON

Yim v. City of Seattle

Supreme Court of Washington - November 14, 2019 - P.3d - 2019 WL 5997021

Plaintiffs, individual landlords and a membership association providing screening services to its landlord members, brought action against city, challenging the constitutionality of the Fair Chance Housing Ordinance which generally precluded landlords from inquiring about a tenant or a prospective tenant's criminal history or from taking adverse action against the same based on criminal history, alleging it violated landlords' free speech and substantive due process rights.

The United States District Court certified question to Washington Supreme Court.

The Supreme Court held that:

- State law does not require heightened scrutiny with regard to state substantive due process challenges to laws regulating the use of property; state substantive due process claims are subject to the same standards as federal due process claims, and the same is true for substantive due process claims involving land use regulations, abrogating *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wash.2d 242, 218 P.3d 180, *Allen v. City of Bellingham*, 95 Wash. 12, 163 P. 18, *Amunrud v. Bd. of Appeals*, 158 Wash.2d 208, 143 P.3d 571, *Asarco, Inc. v. Dep't of Ecology*, 145 Wash.2d 750, 43 P.3d 471, *Biggers v. City of Bainbridge Island*, 162 Wash.2d 683, 169 P.3d 14, *Christianson v. Snohomish Health Dist.*, 133 Wash.2d 647, 946 P.2d 768, *City of Olympia v. Mann*, 1 Wash. 389, 25 P. 337, and other cases, and
- The use of property is not a fundamental right for substantive due process purposes.

Gov. J.B. Pritzker Rules Out Constitutional Change to Address Illinois' $134 billion in Unfunded Pension Liabilities.

Gov. J.B. Pritzker said Tuesday that a constitutional amendment voters will decide next year will help save the state's finances. He also dismissed any proposal to reduce the state's pension costs through a constitutional amendment to remove the state's pension protection clause.

During a wide-ranging fireside chat at the Economic Club of Chicago Tuesday, Pritzker promoted his constitutional amendment for a progressive income tax. Voters next year will be asked the binding question that Pritzker ushered through the legislature. Pritzker also campaigned on the issue of changing the state's existing flat income tax to a progressive system that has higher rates for higher earners.

During the discussion, Club Chair Debra Cafaro asked Pritzker why lawmakers shouldn't also let voters change the state's pension protection clause to control the growing cost of public sector pensions.

Continue reading.

By Greg Bishop | The Center Square

Nov 19, 2019

Fitch Rtgs: Shape of Next US Economic Cycle Will Inform USPF Macro Stress

Fitch Ratings-New York-21 November 2019: The federal government's two primary tools to stimulate the economy, fiscal and monetary policy, may be constrained relative to previous cycles, potentially exacerbating cyclical US public finance (USPF) funding deficits and delaying the rebuilding of issuer reserves during and coming out of the next downturn, says Fitch Ratings. More limited possibilities for aggressive macro policy easing could culminate in a slower path of recovery after any future recession. This has the potential to affect the USPF cyclical stress assumption used at that time in our three to five year forward look analysis, but would not represent a change in criteria, as Fitch's criteria anticipates the potential modification of standard sector scenarios in a period of economic decline. Any such change would be communicated publicly and applied consistently from that point.

Fitch's USPF group embeds a forward-looking stress to test the resiliency of its ratings through the cycle by incorporating a multi-year scenario consisting of a theoretical cyclical moderate decline and recovery, specified in GDP terms. While Fitch does not anticipate a recession in the near term, given the long duration of the current recovery, it is useful to explore certain factors, such as the strength of the next recovery, that might inform if and when to modify USPF's standard stress scenario during and coming out of the next recession.

Policy makers may be more limited in the future to confront a future slowdown in the economy. Over the past four recessions, short-term interest rates fell by over five percentage points shortly before the onset of the recession to the low point experienced after the trough or during early recovery. Currently, treasury yields through the intermediate part of the curve are less than 2%, so such a decline would imply interest rates of between negative 3.5% and negative 4%, which is virtually impossible. Consequently, considering even slightly negative rates as the floor, rates can fall less than 2% at most, less than half the average decline relative to past recessions, to help confront a recession and spur consumer and business demand.

Continue reading.

Trump Tax Cut Sets Off Boom in Once Sleepy Corner of Muni Market.

- **Vanguard, Eaton Vance say they're buying more taxable munis**
- **Refinancing causes biggest spike in issuance since 2010**

At Eaton Vance's daily 8:45 a.m. meetings with fixed-income executives, a usually overlooked segment of the bond world has been coming up more often.

That's because a deluge of debt sales unleashed this year in the $485 billion taxable municipal-bond market is luring buyers unfamiliar with the world of public finance.

So traditional corporate-debt investors are getting crash courses on concepts like a general-obligation security pledge — which is basically just a promise to repay — and gauging how easy it will be to resell the securities when they need to raise cash. Others are dialing up their longstanding municipal-bond teams as they wade into a market that dangles higher returns and low odds of default, a standout at a time of negative interest rates overseas and frequent speculation about mounting credit risks in corporate America.

So Vishal Khanduja, who heads Eaton Vance's investment-grade portfolio management, and Craig Brandon, who leads the firm's municipal-bond investing, have been talking about taxable municipals more and more.

"In the morning meeting, the discussions have been lively over the last two months," said Khanduja, who has been buying taxable munis for his corporate-bond portfolios, as his team has in the past on occasion.

Continue reading.

Bloomberg Markets

By Amanda Albright

November 22, 2019, 5:52 AM PST

Muni Returns Will Remain Strong in 2020, BlackRock's Carney Says.

Sean Carney, BlackRock Inc.'s head of municipal strategy, discusses the outlook for the municipal bond market with JOHCM Senior Fund Manager Lale Topcuoglu and Bloomberg's Alix Steel on "Bloomberg Daybreak: Americas."

Watch video.

Bloomberg Daybreak: Americas TV Shows

November 21st, 2019, 8:02 AM PST

Economic Expansion Doesn't Help Underfunded Public Pension Plans.

Tom Kozlik, head of municipal strategy at Hilltop Securities, discusses public pension funding liabilities. He speaks with Bloomberg's Taylor Riggs on this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

November 20th, 2019, 10:22 AM PST

U.S. States Boost Spending at Fastest Pace Since Recession.

- **Transportation sees the largest increase as projects revived**
- **Record economic expansion provides 'now or never moment'**

America's states are increasing their spending at the fastest pace since the end of the Great Recession.

Their budgets swelled by 5.9% in the 2019 fiscal year to about $2.1 trillion, the biggest annual increase since the recession ended in 2009, according to a report Thursday by the National Association of State Budget Officers. That's up from a 3.7% pace in the year before as state officials pumped more money into transportation projects, pensions and reserves that will help them weather the next economic rout.

The figures show how the record-long expansion is reviving the finances of states that were hit hard by the fallout from the real estate bust. That shift has lifted the credit ratings of California, Washington and Michigan and driven down the yield penalties that investors demand to buy bonds of states such as Connecticut and Illinois.

Continue reading.

Bloomberg Markets

By Romy Varghese

November 21, 2019, 10:35 AM PST Updated on November 21, 2019, 10:50 AM PST

Climate Change Disasters And Your Municipal Bonds.

There are numerous details for municipal bond investors to stress over: unfunded pensions, other post-employment benefits (OPEBs) owed, cyberattacks and their ransom demands. But the big headlines consuming municipal bond investors today is climate change and man-made disasters—flooding, droughts, hurricanes, tornadoes, and wildfires. Even the conflicted bond rating agencies are writing about this dilemma and their financial impact on states, cities and counties that lay in the path of mother nature's wrath. You can add to this list the huge man-made blunders causing California's wildfires.

Most do-it-yourself municipal bond investors haven't thought about or begun to reject issuers that can be affected by fires, climate change and other natural disasters. They should.

You may already own municipal bonds where the issuer has suffered from cyclones, hurricanes and flooding and you've come out fine. But that doesn't mean you'll still be fine going forward. Granted, a catastrophe doesn't mean a bond will default but the numbers and frequency continue to mount.

These disasters will eventually impact municipal bond ratings, debt service coverage, and in some cases may actually cause defaults.

When you analyze your municipal bond portfolio you must consider location (coastal or inland). Study enhanced infrastructure projects like flood systems, levee systems, storm drains, brush clearings, emergency preparedness to access if the city, school district, or hospital can survive and continue making interest and principal bond payments in the wake of a disaster. Stay away from areas that constantly are in a state of drought such as California's Central Valley. Risks are now everywhere. This isn't an apocalyptic warning, it's reality.

Today In: Money
I'm no tree-hugger. But as a native Californian having lived through multiple earthquakes, I expect the big one will happen someday as will other multibillion-dollar climate events that are increasing in frequency.

The collateral damage for municipalities suffering such events can be overwhelming: economic disruption, citizens leaving and taking with them the sales taxes, property taxes and personal income tax revenues the cities and states rely on. Each is essential to pay the interest on their municipal bonds.

If you invest in essential projects, you'll be better off if a disaster occurs. Los Angeles County can survive without Long Beach Airport. But it cannot survive without Los Angeles International Airport—it's the heart of the economy and the arterial system for commerce. Los Angeles International Airport is essential and one of the main reasons I love the top ten large U.S. airport municipal bonds.

In the past, assistance programs from the federal and state governments have been the climate and wildfire disaster safety nets. But those safety nets cannot coax residents into staying as time and time again floods, fires, hurricanes and tornadoes wreck lives and damage property.

Is having insured municipal bonds a safety net? Only if the insurer runs the business properly, doesn't over-commit and is profitable. We saw little of the above during the man-made financial disaster of 2008-2009.

Eventually all these factors appear in the Official Statements when newly issued municipal bonds come to market. Still, after 40 years of dealing with bonds and individual investors, I've met only a handful of people who have ever read such offering documents.

Bottom line: Geographic diversification is helpful as is investing in multiple different issuers. Make sure your issuers aren't in harm's way when a disaster hits. Remember, stadiums, aquariums, museums, hockey rinks, libraries and concert halls are not essential and don't deserve your bond investment dollars. But airports, municipal water districts and sewers are indispensable and worthy of investment. Just use common sense.

If you own municipal bond funds, you'll need to read their quarterly reports for climate change and disaster commentary. If the bond mutual funds aren't commenting, then they aren't being prudent with your money. You might need to change horses to one that doesn't just value yield and total return—but equally values preservation of your capital.

Forbes

by Marilyn Cohen

Nov 17, 2019

When Summer Reading and Public Finance Tax Intersect – Tax-Exempt Bonds, Pop Culture, and the Town of Windthorst

Early in my career, I learned to dread telling people that I was a lawyer because when I explained the niche practice of public finance tax law, their eyes started to get sleepy, then their eyes started to glaze over. That was usually when I would blurt out "I help finance airports, hospitals, schools, and infrastructure across the country." So when I came across the *D Magazine* article, The Tiny Town Bankrolling Texas Institutions during my summer beach reading,[1] I nearly spilled my Aperol Spritz[2] all over my Excel spreadsheets.

Continue Reading

By Taylor Klavan on November 25, 2019

The Public Finance Tax Blog

Squire Patton Boggs

With Overall State Spending Up, Transportation Sees Notable Gains.

At least 18 states raised spending on transportation programs by 10% or more in fiscal 2019, based on estimates in a new report.

State government spending across the U.S. increased to an estimated $2.1 trillion in fiscal year 2019, with the amount of money going toward transportation notably growing, according to a report that the National Association of State Budget Officers released on Thursday.

Overall spending was up from $2 trillion in fiscal 2018. That means spending grew in 2019 at an estimated rate of 5.7%, slightly above a 33-year average of 5.6%, NASBO said. The findings were included in the latest edition of the group's State Expenditure Report.

Brian Sigritz, NASBO's director of state fiscal studies, said the spending increases can be traced to some extent to more robust tax collections states have seen in the past two years. General fund revenues were more sluggish during fiscal years 2016 and 2017.

"The relatively strong national economy, that has led to gains in state revenues," Sigritz said.

Amid these windfalls, some states are putting more money toward transportation.

During 2019, NASBO's report indicates that 18 states increased spending of state funds on transportation by at least 10%. Overall state transportation spending, including proceeds from bonds and federal funds flowing to states, grew at a rate of 8.9%.

Transportation spending by states in 2019 was roughly $172 billion, about 8% of total expenditures.

Sigritz pointed out that there are both Democratic and Republican states that have prioritized transportation in the past five years or so.

In some places this has meant raising gas taxes, imposing fees on electric vehicles and adding toll lanes. Some of the revenue from sources like these is now working its way through budgets.

NASBO tracks spending in seven program areas, all of which saw estimated increases in spending during fiscal 2019, which ended on June 30 for most states.

Along with transportation, the area where spending grew the most was an "all other" category that can include a range of items, such as pension contributions, employee pay raises, "rainy day" or reserve fund savings, and expenses tied to natural disasters.

Seventeen states spent at least 10% more state funds in this "all other" category in fiscal 2019, while the overall growth rate was 7.5%. What share of this spending went toward specific areas, like pensions or rainy day funds for instance, isn't outlined in the NASBO report.

Education and Medicaid continue to be big cost drivers for states. Excluding federal funds and bonds, in fiscal 2019 about 25% of state spending went toward K-12 programs and 13% went toward higher education, while about 16.4% was allocated to Medicaid.

When including federal funds, Medicaid accounted for nearly 29% of state spending in fiscal 2019.

Medicaid has increased as a share of state spending since the Great Recession and after the Affordable Care Act, or Obamacare, was enacted, growing from around 20% in 2008 to its current level, although in 2019 it fell slightly as a proportion of state spending.

The Affordable Care Act gave states the option to expand Medicaid to cover more people. The program, which provides health insurance coverage for low income Americans, is "counter-cyclical," meaning costs tend to go down when the economy is better.

A copy of NASBO's report can be found here.

Route Fifty

by Bill Lucia

November 21, 2019

Lessons from FINRA's 2019 Report on Examination Findings and Observations.

The Financial Industry Regulatory Authority published its 2019 Report on Examination Findings and Observations (2019 Report) on October 16, 2019. This marks the third annual report of FINRA findings, but in a departure from the prior reports, the 2019 Report distinguishes "findings" (determinations that a firm or registered person has violated SEC, FINRA or other relevant rules) from "observations" (suggestions as to how a firm might improve its control environment, communicated separately from a formal examination report).

The 2019 Report focuses on a number of findings and observations, involving: sales practice and supervision; firm operations; market integrity; and financial management. In addition, the 2019 Report provides examples of effective practices, which can help firms improve their supervision, compliance and risk management programs. This OnPoint discusses key findings from the 2019 Report, as well as FINRA's observations regarding how firms might have avoided related weaknesses and risks.1

Sales Practice and Supervision

The 2019 Report focuses on a variety of supervision issues, as well as: suitability; digital communication; anti-money laundering (AML); and Uniform Transfers to Minors Act (UTMA) and Uniform Grants to Minors Act (UGMA) accounts. Noteworthy examination findings and observations include:

Continue reading.

Dechert LLP

by K. Susan Grafton, Elliott R. Curzon and Jennifer O'Brien

November 18, 2019

Ohio Supreme Court Rejects Residency Requirements for Public Construction.

Public construction in Ohio, as in most states, is subject to a myriad of statutory and administrative rules and requirements, many of which can impact a contractor's manner of performance, profitability and in some cases its eligibility to be awarded work. With respect to the issue of eligibility, a public authority mandating that contractors employ a specific number or percentage of its residents as a threshold requirement to perform public improvements is a particularly onerous limitation. Residency preferences or restrictions of this nature can effectively preclude or greatly limit the eligibility of contractors located in other political subdivisions to perform public construction work This, in turn, reduces competition, could potentially compel the use of unskilled construction workers and could result in increased costs for the construction of public improvements.

In a decision which benefits Ohio and out-of-state contractors as a whole, the Ohio Supreme Court has determined that residency preferences for public improvements imposed by municipalities under their home-rule authority are no longer valid based on R.C. 9.75, enacted in 2016, which prohibits a public authority from requiring a contractor to "employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority." Cleveland v. State, Slip Opinion No. 2019-Ohio-3820 (Sept. 24, 2019).

This case was initiated by the City of Cleveland, which sought to enjoin the enforcement of R.C. 9.75 as an infringement on its municipal home-rule authority, and which it claimed was otherwise unconstitutional. The residency requirement at issue, The Fannie Lewis Law, was enacted in 2003. The law was intended to alleviate unemployment and poverty in Cleveland by providing more employment opportunities to city residents on local public improvements. Specifically, the law required public-construction contracts in an amount of $100,000 or more to include a provision mandating that city residents perform a minimum of 20 percent of the total construction work hours under the contract. It also required the construction contract to specify penalties for a contractor's failure to comply with this contractual term. Those penalties included damages of up to 2.5% of the final total amount of the contract as well as the possibility of the city withholding payments, terminating the contract or disqualifying the contractor from future bids.

In reaction to these types of residency requirements, the General Assembly enacted R.C. 9.75 premised on its authority to provide for the general welfare of employees under the Ohio Constitution. R.C. 9.75 invalidates such requirements and provides, in part:

(B)(1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

(B)(2) No public authority shall provide a bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

R.C. 9.75(B)(1-2).

The trial court permanently enjoined the enforcement of R.C. 9.75, finding that the statute "does not provide for the comfort, health, safety, and welfare of its employees; rather, [it] seeks only to dictate the terms by which municipalities may contract for workers in construction projects within their realm." The trial court also concluded that R.C. 9.75 violated the Home Rule Amendment of the Ohio Constitution as the statute impermissibly limited the city's exercise of local self-government. On appeal, the Eighth District Court of Appeals affirmed this decision, determining that "R.C. 9.75 does not relate to the right of an individual to choose where to live or a matter implicating the general welfare of all employees," and further determined that R.C. 9.75 constituted an attempt to preempt the established powers of local self-government.

The Ohio Supreme Court rejected the lower court decisions and found that "the ordinance regulates the employment of workers hired under public-works contracts by requiring those contracts to exact binding promises dictating the eligibility of a worker to be hired on a construction project." According to the Supreme Court, by imposing a quota for the employment of Cleveland's residents, "the Fannie Lewis Law directly impacts hiring, the most basic condition of employment, for workers on public-improvement projects. In doing so, the city of Cleveland has legislated within a field subject to regulation by the General Assembly pursuant to Article II, Section 34." The Court further noted that the legislature expressly stated the intent of R.C. 9.75 was to "provide for the comfort, health, safety, and general welfare of those employees [working on Ohio's public-improvement projects]," and the Court refused to second-guess such a plain statement of legislative intent. The Court, therefore, determined that R.C. 9.75 is a valid exercise of the power granted by the Ohio Constitution, and it supersedes the Fannie Lewis Law, a local ordinance enacted by a municipality pursuant to its home-rule authority.

With respect to public construction projects, this decision is a definite win for contractors in general. While this decision invalidates similar residency preferences throughout the State of Ohio, contractors should be mindful that not all municipalities may be aware of this decision and they should be prepared dispute such requirements if imposed on a public improvement project. Outside of Ohio, similar regulations may exist and contractors should identify such requirements and determine whether they are enforceable.

by Lowell T. Woods Jr.

November 18, 2019

Taft Stettinius & Hollister LLP

The Bond Buyer to Celebrate 2019's Deal of the Year Honorees at Annual

[Gala.]

18th Annual Awards Ceremony to be held on December 4 at the Conrad New York Downtown.

NEW YORK, Nov. 22, 2019 /PRNewswire-PRWeb/ — The Bond Buyer has announced its finalists for the 18th Annual Deal of the Year Awards. Those honored will be recognized on December 4 at the annual Bond Buyer's Awards Gala at the Conrad New York for their outstanding achievement in municipal finance.

This year's awards include the addition of three new categories, ESG/Green, Public-Private Partnership (P3), and Innovation. The total number of categories of deals eligible for awards has been increased to 10; all 10 of these winners are also finalists for the national Deal of the Year Award, which will be presented at the NYC ceremony.

"This year's lineup reflects the full range of communities and public purposes this market comprises," said Mike Scarchilli, Editor in Chief of The Bond Buyer. "The deals honored vary in size, complexity and structure — as were the nominations we received, which were deeper and more diverse than ever. We're excited to honor these creative and resourceful institutions and highlight their incredible achievements. "

Submissions for the awards were open to all transactions that closed between October 1, 2018 and September 30, 2019. Those ultimately deemed finalists were selected by The Bond Buyer's editorial board. Judging criteria included the following: creativity, the ability to pull a complex transaction together under challenging conditions, the ability to serve as a model for other financings, and the public purpose for which a deal's proceedings were used.

A full list of finalists can be found below:

- Innovative Financing: Cities of Dallas and Fort Worth, Texas
- ESG/Green Financing: Los Angeles County Metropolitan Transportation Authority
- Public-Private Partnership Financing: Virginia Small Business Financing Authority
- Health Care Financing: CommonSpirit Health
- Smaller Issuer Financing: Vermont Municipal Bond Bank
- Northeast Region: Battery Park City Authority
- Midwest Region: Indianapolis Local Public Improvement Bond Bank
- Southwest Region: City of Austin
- Southeast Region: Solid Waste Authority of Palm Beach County, Florida
- Far West Region: San Diego Association of Governments

In addition to recognizing the Deal of the Year finalists, the December 4 gala will include the presentation of the Freda Johnson Award for Trailblazing Women in Public Finance to two public finance professionals, one from the public sector and the other from the private. The 2019 recipients are Ritta McLaughlin, most recently the MSRB's Chief Education Officer and Courtney Shea, the owner and managing member of Columbia Capital Management, LLC.

"The Bond Buyer has developed as an essential resource for municipal finance and real time market data. We are so honored to be presenting these prestigious Deal of the Year awards for the 18th annual year," said Gemma Postlethwaite, CEO of SourceMedia. "I am also truly pleased to recognize Ritta McLaughlin and Courtney Shea for their leading-edge work as public finance professionals."

For more details on each finalists and their award winning initiative, please visit bondbuyer.com.

The National Deal of the Year recipient will be announced at the December 4 gala and will be listed on bondbuyer.com that evening.

About The Bond Buyer
The Bond Buyer is the only independent information resource serving the entire municipal finance community. Its comprehensive paid-subscription package of news, analysis and data is unique in the industry, serving a complete spectrum of senior industry professionals, through its website, e-newsletters and alerts, and daily print edition.

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SourceMedia is a business information and marketing services company that advances professional communities. The company engages professionals in financial services, as well as leaders in advisory and data management, with deep, agenda-setting content, peer networks, and provocative research and benchmarking. Our brands drive the transformative conversations shaping these industries, and include American Banker, The Bond Buyer, PaymentSource, Financial Planning, Digital Insurance, Accounting Today, and National Mortgage News.

Seeing Green: Investing in Municipal Green Bonds to Support Local Climate Projects.

New York – Responsible investment vehicles seek to align investments with investors' values through programs and projects that contribute to local communities in a positive way. Green municipal bonds offer investors the opportunity to support climate-aligned projects in such sectors as transportation, water and waste infrastructure, pollution control and renewable energy, which includes wind and solar power.

Green bond issuance

Green bonds are standard municipal bonds whose proceeds are used specifically to fund environmentally beneficial projects, as well as social and governance improvements.1 These bonds can encompass not only climate-related issuers in public power, water and sewer, but also issuers in the education, health care and affordable housing sectors of the market.

Green-labeled issuance remains small. In 2017, there was $12 billion of green bond issuance in the US municipal market, an increase of 85% over the $6.5 billion of municipal green bond issuance in 2016.2 Total par declined to $4.9 billion in 2018 — a drop of 50% from 2017 and 33% less than was issued in 2016 — reflective of lower municipal issuance overall.

Continue reading.

Eaton Vance

by Lauren Kashmanian

Municipal Portfolio Manager
Eaton Vance Management

November 20, 2019

Future Returns: ESG Investing in Nonprofit Municipal Debt

The environmental, social, and governance (ESG) investing trend has taken a leap forward recently from a stock-centered approach to include fixed income, but it has largely overlooked debt issued by community-based organizations that can have direct, measurable impact on pressing local issues.

Municipal bonds issued by small nonprofit groups working to bring about change in their communities can satisfy investors' growing appetite for impact investing ideas while paying yields ranging from 4.5% to 6%, says Buck Stevenson, managing director and portfolio manager at Silvercrest Asset Management Group in New York.

In contrast to green municipal bonds issued by large entities such as the Massachusetts Water Resources Authority or San Francisco Public Utilities, many smaller municipal bonds with the potential for social rather than environmental impact—the "S" in ESG—have been strikingly absent from the values-based investing dialogue, Stevenson says, adding that he is working hard to change that.

"We are educating our clients that you don't have to look far to do good in your community," he says. "We're talking about issuers that fly under the radar—you wouldn't know them unless you were in their local area."

Nonprofits Fill Vital Needs With Debt

Community hospitals, charter schools, and organizations providing mental health care and veterans services are among the groups that are typically structured as nonprofit organizations with 501c(3) status, and can issue debt to raise funds for improvements, new facilities, equipment, and other needs.

These services fill a critical need and are nothing new, "but they've never been looked at as an impact investment, which is what they really are," Stevenson says. "We're not reinventing anything; we're trying to highlight the good that these financings do to communities. You can visit facilities and see exactly what your investment built."

Consider the New Dawn Charter School in the Carroll Gardens neighborhood of Brooklyn, N.Y. The school's mission is to draw kids back to school who have fallen out of the education system. Earlier this year, the school issued $20.6 million in 30-year debt to buy and renovate a new facility. The yield: a tax exempt 5.37%.

"This is a very good investment, and to top it off, the school focuses on finding kids who have dropped out and could have had problems down the road," Stevenson says. "It has 300 students with an 80% matriculation rate."

Another example in Silvercrest's portfolio is the Hopeway Foundation, a Charlotte, N.C., area provider of both outpatient and inpatient mental health services that focus on substance abuse rehabilitation, post-traumatic stress syndrome for veterans, and other issues.

A 30-year bond paying 6% is being used to renovate structures on 12 acres and attract top professionals. Hopeway has built referral services in its area, so when hospital services fall short, doctors can refer patients to its facilities.

These munis are considered to be riskier than investment-grade issues, because they are nonrated.

But that's typically because they are such small deals, "not because the credit is no good," Stevenson says. "If you're talking about a $20 million deal or a $7 million deal, to pay an extra $100,000 to get a rating doesn't make sense."

Making Sure the Deals are Strong

Due diligence is where Silvercrest's credit research team pulls its weight. Stevenson wants to see a solid balance sheet with manageable debt levels, strong demand, and sustainable revenues. He avoids rules of thumb when it comes to what constitutes too much debt, particularly for health-care facilities because their compensation methods vary. Medicare reimburses at a higher level than Medicaid, for example—so a manageable level of debt will vary depending on the composition of reimbursements, among other factors.

Beyond a financial analysis, Stevenson wants to see a good answer to the question, "Does this facility need to be there?" he says. "If there is a problem and people work together to solve it, that's an important factor that's not going to show on a balance sheet."

Strong community support is a powerful driver of these organizations' success and an important sign to investors that an issuer has the potential to make good on its debt. For example, when the folks in King Fisher, Okla.—a city with a population of roughly 4,900—voted overwhelmingly to raise the local sales tax by 1% to help support their local 25-bed hospital, the resounding support caught Stevenson's attention. The hospital's debt, issued to rebuild its facility, is currently a part of Silvercrest's portfolio.

Really, All Munis Have a Social Bent

Taking a step back from these smaller issuers, which account for about $220 billion, the $3.7 trillion municipal bond market in general can be viewed as strong investments for values-based investors. Muni bonds, by definition, bring about improvements in water systems, infrastructure, schools, and other aspects of daily life.

But it can be harder to feel as connected with, say, a massive international airport renovation than with solving a problem in a community you feel connected to. Says Stevenson, whose firm has relationships with 30 small broker dealers around the country that help scout out smaller deals, "these munis are the 'S' in ESG."

Barron's

By Karen Hube

Nov. 19, 2019 11:29 am ET

MSRB Investor Guide to ABLE Programs.

Read the MSRB's new investor guide for a better understanding of how ABLE programs work.

GFOA Releases New Financial Foundations Book.

Financial Foundations for Thriving Communities introduces GFOA's new Financial Foundations Framework. Organized into five pillars, the Framework shows you how to improve your financial position now and create a strong foundation for a thriving community over the long-term. Each pillar includes different leadership strategies and/or institutional design principles. Understanding that local governments cannot order people to collaborate, leadership strategies help inspire pride and public support for a strong financial foundation. Institutional design principles, meanwhile, are the "rules of the road." They provide the context for leadership strategies and ensure continuity of good financial practices through changes in leadership. Using case studies from many local governments, the book will help you develop a plan for implementing the Financial Foundations Framework in your community.

Purchase Online.

State Tax Debates Could Use Some (Customized) State Economic Data.

Politicians love to make claims about tax policy. This tax cut will create jobs! That one forced the school district to fire teachers!

But too often such claims are not supported with evidence. So the State and Local Finance Initiative made an interactive tool that gives you—whether you're a policymaker, journalist, researcher, or voter—the power of data. The updated State Economic Monitor lets users graph, analyze, and share statistics on state employment, earnings, gross domestic product (GDP), and housing—and for just the states you're interested in.

Before you take it out for a spin, I'll show you how the updated tool can provide evidence for three tax policy issues. Hopefully, you'll then use it to make customized graphs for your next memo, presentation, or tweet about state tax policy.

Continue reading.

Tax Policy Center

by Richard C. Auxier

November 12, 2019

SEC Enforcement Annual Report: Retail Focus Raises Regulatory Risk for Investment Advisers

The US Securities and Exchange Commission (SEC) Division of Enforcement recently issued its 2019 Annual Report (ENF Annual Report), which you can read in full here. Of course, the headline is always how many cases did the Enforcement Staff bring and how much money did they collect and distribute and, for fiscal year 2019,1 the Staff was likely relieved to announce that on each score they had, well, scored.

The Baker McKenzie Financial Regulation and Enforcement team will provide a deeper dive in the Enforcement Division's fiscal year 2019, the cases of note and a look ahead to 2020, but we wanted to offer some initial takes on our review of ENF Annual Report.

Fiscal year 2019 represented the best year that the Enforcement Division has had since 2016, as the chart below demonstrates.

Continue reading.

Baker McKenzie

by Jennifer L. Klass, Amy J. Greer, Peter K.M. Chan, Jerome Tomas and Kristal Petrovich

November 20 2019

TAX . - VIRGINIA

Virginia International Gateway, Inc. v. City of Portsmouth

Supreme Court of Virginia - October 31, 2019 - S.E.2d - 2019 WL 5607827

Taxpayer, believing that assessments for its real and personal property were above fair market value, filed separate applications to correct the real estate and personal property assessments.

City filed counterclaim to the real property application, contending that fair market value was actually several hundred thousand dollars more than the assessment. The trial court consolidated the two cases for trial. The Circuit Court dismissed both of taxpayer's applications, as well as the city's counterclaim, and taxpayer appealed.

The Supreme Court held that:

- Trial court abused its discretion when it excluded real estate appraiser's expert testimony, and
- Taxpayer did not rebut presumption of correctness of city's valuation of taxpayer's personal property.

In taxpayer's action, contesting city's real estate and personal property assessments, trial court abused its discretion when it excluded real estate appraiser's expert testimony; appraiser held active New York real estate appraisal license, he secured temporary Virginia appraisal license, and during this period of active licensure, he updated his initial valuation and brought it into compliance with standards governing real estate appraisals in Virginia, he completed his final appraisal report within period of active licensure, and his testimony addressed only the appraisal for which he was licensed.

There was sufficient evidence to support trial court's ruling that taxpayer did not rebut the presumption of correctness of city's valuation of taxpayer's personal property, and accordingly, trial court did not err in declining to adjust the personal property assessment; city assessed taxpayer's personal property at 50% of original value, city not only came forward with evidence of the assessment's correctness in the form of expert's independent appraisal, it also presented evidence that taxpayer's appraisal of the property was flawed, and city put on evidence that taxpayer's methodology was flawed because of its failure to adhere to recognized valuation approaches.

Electronic Disclosure, RIN 1210-AB90: SIFMA Comment Letter

SUMMARY

SIFMA provides comments to the Department of Labor in response to their proposal for a new, additional safe harbor for the use of electronic media by employee benefit plans. SIFMA strongly supports the Department moving forward with finalizing this proposal.

Read the Comment Letter.

Fitch Ratings: Review Completed for New Jersey Public Universities

Fitch Ratings-Chicago-25 November 2019: Fitch Ratings has completed its review of ratings on five public universities in New Jersey that were placed Under Criteria Observation (UCO) following the publication of revised U.S. College and University Rating Criteria in June. This review resulted in the following rating actions:

–The College of New Jersey, downgraded to 'A+' from 'AA-'; Outlook revised to Stable from Negative;
–Montclair State University, downgraded to 'A+' from 'AA-'; Outlook Stable;
–New Jersey City University, downgraded to 'BBB' from 'A-'; Outlook revised to Negative from Stable;
–Stockton University, affirmed at 'A-'; Outlook Stable;
–William Paterson University, downgraded to 'A-' from 'A'; Outlook revised to Negative from Stable.

Although four of the five ratings were downgraded, for all but one institution (Montclair), the downgrade was driven by changes in underlying credit characteristics rather than implementation of the revised criteria. Montclair's rating change was the result of both credit and criteria considerations. Fundamental credit considerations included a competitive demand environment and challenging demographic characteristics, broad reliance on student-fee generated revenue, and effectively flat state operating support which has not kept pace with expense growth. Importantly, Fitch expects that state support will remain generally flat for the foreseeable future, which may contribute to further pressure on margins. While other specific credit considerations played a role, the ratings reflect an increasingly competitive environment contributing to constrained ability to increase tuition rates and reduced expense flexibility, compounded by the presence of significant long-term liability burdens. High debt loads at most institutions are in part a result of historically minimal state capital support, and Fitch expects that the higher level of state capital support in the past few years will not continue.

Within our criteria framework, Fitch considers leverage only in the context of the institution's revenue and operating profile. While leverage is measured inclusive of all long-term debt and pension obligations, consideration of this metric is strengthened by the state of New Jersey's (IDR of A/Stable) consistent support of pension contributions for university employees, despite the absence of any legal requirement to do so. We also note that the state has taken some action to improve funding of its pension obligations, which should reduce the reported liabilities of the plans incrementally over time. At the same time, Fitch notes that increasing its pension contributions to the actuarial requirement may ultimately squeeze the state's other funding priorities in times of pressure, presenting some risk of volatility in state support of public higher education.

Overall, Fitch has reviewed substantially all 28 institutions placed UCO with release of the revised criteria. Of those, about two thirds saw rating changes with a nearly 60/40 split of upgrades to downgrades. Of the rating changes, approximately 30% were the sole result of the reframing of the criteria while the remainder were a combination of criteria and credit driven actions.

For more information on the individual rating actions, or for more information on the revised criteria, please go to www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Green Banks and Green Bonds are Bringing Billions to Utilities for the Energy Transition.

The financial mechanisms are bringing investors to renewables and distributed energy as utilities, co-ops and munis move away from uneconomic legacy assets.

Hundreds of billions of dollars in untapped new money can finance the U.S. power system's transition away from legacy fossil assets to renewables and distributed generation.

Utilities like Duke Energy and Xcel Energy have issued billions in green bonds to fund renewables development. Green banks in New York, Connecticut and other states are backing investments in distributed resources and energy efficiency. It appears much more institutional money wants in on the green opportunity.

"Green bonds are a capital-raising mechanism that a wide range of institutions could use to raise capital," Coalition for Green Capital Executive Director Jeff Schub told Utility Dive. "A green bank is an institution [capitalized by public funds] that invests capital in clean energy projects. [They] are complementary, capital raising and capital deploying."

Continue reading.

Utility Dive

by Herman K. Trabish

Nov. 19, 2019

Will Investors And Insurers Sink Or Save Florida?

New research shows that some 150 million people across the globe are now living on land that will be below the high-tide line by 2050.

That far-off date, huge number and uncertain location are probably too abstract and distant to matter to most, but here's another way to look at it: You, friends or loved ones might already be living too close to the rising high-tide line in Florida. What's more, the fate of Florida's citizens, homes, towns, businesses and overall economy depend on decisions being made right now on 30-year mortgages and bonds that will be critically impaired by that 2050 high-tide line.

Once investors and insurers decide that the value of too many 30-year mortgages face an unacceptable level of risk, many mortgages (including yours?) will go underwater or even be thrown into default. Even worse for the rest of Florida, financing for new long-term mortgages, utility debt offerings, and municipal bonds for schools, roads, bridges, sewers, etc., will dry up. That in turn will deflate real estate values overall and crush the backbone of the Florida economy—and send Florida into a deep and costly tailspin.

Continue reading.

Forbes

by Chunka Mui

Nov 18, 2019

S&P U.S. Not-For-Profit Health Care Rating Actions, October 2019

View the Rating Actions.

IRS Publishes 2020 Pension Plan Limitations: Day Pitney

IRS recently announced the cost-of-living adjustments applicable to certain dollar limitations for employee pension benefit plans for 2020. The resulting dollar limits are as follows:

- The annual benefit limit for defined benefit plans is increased from $225,000 to $230,000.
- The annual addition limit for defined contribution plans is increased from $56,000 to $57,000.
- The annual limit with respect to the exclusion for elective deferrals to a 401(k), 403(b) or 457(b) plan is increased from $19,000 to $19,500.
- The limit on annual contributions to an individual retirement arrangement (IRA) remains unchanged at $6,000. The dollar limit for an additional catch-up contribution to an IRA for individuals age 50 or older remains unchanged at $1,000.
- The annual limit on compensation that can be taken into account under a qualified retirement plan is increased from $280,000 to $285,000.
- The dollar limit for defining key employees in a top-heavy plan is increased from $180,000 to $185,000.

- The dollar amount for determining the maximum account balance in an employee stock ownership plan (ESOP) subject to a five-year distribution period is increased from $1.105 million to $1.150 million. The dollar amount used to determine the lengthening of the five-year distribution period is increased from $225,000 to $230,000.
- The dollar limit for catch-up contributions for 401(k) plans for individuals age 50 or older is increased from $6,000 to $6,500. In addition, the dollar limit under SIMPLE plans and SIMPLE IRAs for catch-up contributions for participants who are age 50 or older remains unchanged at $3,000.
- The limitation used in the definition of "highly compensated employee" is increased from $125,000 to $130,000.

A complete list of applicable pension plan limitations can be found here.

If you have any questions about the cost-of-living adjustments or any other employee benefits or executive compensation matter, please contact a member of Day Pitney's Employee Benefits and Executive Compensation practice group.

Publisher: Day Pitney Alert

Day Pitney Author(s) David P. DoyleKathy A. LawlerLiza J. HechtThomas F.J. O'Mullane

November 7, 2019

EIG Opportunity Zones Activity Map.

View the map.

New Approaches to Large-Scale Green Stormwater Infrastructure Investment Build Climate Resilience.

More frequent and intense rainstorms. Elevated heat and humidity. High water levels and increased shoreline erosion. The realities of climate change, combined with aging and outmoded stormwater infrastructure, create a crisis for Great Lakes stormwater managers.

The good news is many of these challenges can be mitigated through the construction of green stormwater infrastructure–constructed wetlands, porous concrete, and bioswales that help treat stormwater and take the pressure off traditional gray infrastructure like sewers, pipes, pumps, and tunnels. But communities are challenged to fund and implement projects at the scale needed to address the crisis.

Fortunately, new thinking and approaches to funding and constructing green stormwater infrastructure are emerging. These methods, which combine market principles with community benefits, are upending the traditional economics and practice of building green stormwater infrastructure and are bringing climate resilience within reach.

Continue reading.

S&P Bulletin: New York MTA's Proposed $51 Billion Capital Program Indeterminate As A Credit Risk

SAN FRANCISCO (S&P Global Ratings) Sept. 18, 2019–S&P Global Ratings said today that it cannot yet determine if the New York Metropolitan Transportation Authority's (MTA) Sept. 16 announcement of its proposed $51.5 billion fiscal 2020-24 capital program will affect S&P Global Ratings' A/Negative long-term rating and underlying rating (SPUR) on the MTA's transportation revenue bonds (TRBs) outstanding. Given the new program's preliminary nature, which still requires approval, timing of its implementation and impact to MTA key credit metrics is not yet available. Potential operating cost savings from MTA's Transformation Plan may offset potential higher debt service expenses from debt-financing the proposed program, if approved. The proposed capital program is 70% larger than the current fiscal 2015-19 program, and, according to the plan, as much as $35 billion, or 68%, will be debt financed, including as much as $15 billion secured with future revenue from implementation of congestion pricing. While we already consider the MTA's all-in debt burden of approximately $40 billion (as of fiscal 2018) very high, the proposed plan could almost double the MTA's consolidated debt burden and place additional pressure on liquidity and already thin debt service coverage metrics, as calculated by S&P Global Ratings on an all-in, net revenue basis. Mitigating this risk is the MTA's ongoing work on its Transformation Plan, which could produce as much as $530 million of annually recurring savings, once fully implemented, from consolidation and efficiency opportunities. The MTA anticipates that the unprecedented capital investments will result in improved reliability, accessibility, and efficiency of its overall transportation network. The proposed capital program is subject to modification and approval by the Capital Program Review Board later this year prior to finalization. We also understand that, over the next few months, the MTA intends to implement its previously announced Transformation Plan and potentially publish the revised savings estimates in its November 2019 Financial Plan. We believe the November Plan will likely shed additional light on the proposed capital program and its potential timing and impact. Thus, in our view, it is too early to conclude the proposed capital program's potential rating impact until additional information becomes available with regard to forecast bond issuance timing and the Transformation Plan's impact on key financial metrics. We will continue to monitor the developments related to the proposed capital plan and the MTA's progress with regard to the Transformation Plan and their combined impact on the MTA's TRB credit.

For more information with regard to our rating on the MTA's TRBs, see our report published Aug. 7, 2019 on RatingsDirect.

Primary Credit Analyst: Paul J Dyson

Secondary Contact: Joseph J Pezzimenti

NASBO State Expenditure Report.

This annual report examines spending in the functional areas of state budgets: elementary and secondary education, higher education, public assistance, Medicaid, corrections, transportation, and all other. It also includes data on capital spending by program area, as well as information on general fund and transportation fund revenue collections.

Overview: Fiscal 2017-2019

- Total state spending rose by 5.7 percent in fiscal 2019, compared to 3.4 percent in fiscal 2018.
- Spending from states' own funds increased at the highest annual growth rate since the last recession.
- Transportation and the "all other" category experienced strong spending growth from state funds in fiscal 2019, while Medicaid spending growth slowed.
- Spending from federal funds to states also rose in fiscal 2019, partly due to recent federal budget agreements.
- State tax collections experienced strong gains in both fiscal 2018 and fiscal 2019, following two years of slow growth in fiscal 2016 and fiscal 2017.
- Download Summary.
- Download Full Report.
- Purchase Hard Copy.

National Association of State Budget Officers

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2020 NAST Legislative Conference.

February 9-11, 2010 | Washington DC

Registration is now open for NAST's Legislative Conference and ABLE Expo in Washington, DC at the historic Mayflower Hotel located north of the White House. All events will take place at the Hotel unless otherwise noted. Sunday's events are business casual and business attire on Monday and Tuesday.

Click here to learn more and to register.

National Association of State Treasurers

The Curious Case of Aurelius Capital v. Puerto Rico.

How a hedge fund's efforts to take the island territory to the cleaners wound up before the Supreme Court — with ordinary Puerto Ricans arguing in the hedge fund's favor.

Puerto Rico filed for bankruptcy protection at 11:32 in the morning on May 3, 2017; by 11:33, the magnitude was obvious. No American territory had ever defaulted on so much debt. "A bankruptcy without precedent" ran a morning-after headline in the tabloid El Vocero, in an issue that also quoted leftist politicians warning readers not to be fooled: The filing, they claimed, was a prelude to more austerity. The island owed $72 billion. Already there was out-migration of 60,000 people a year and 10.5 percent unemployment. There were reports that vendors, owed millions of dollars, would no longer deliver food to Puerto Rican prisons.

The following month, an inconspicuous complaint was filed in federal court in San Juan. The plaintiffs were a group of hedge funds that had purchased Puerto Rican bonds around 2015 and were concerned that the bankruptcy would prevent them from recouping the bonds' full value. According to the complaint, the Puerto Rican Constitution mandated the repayment of certain types of bond debt, but the island's latest budget was instead pouring money into services that were "nonessential," leaving the bondholders high and dry. The hedge funds argued that this was illegal and sought to point out some "nonessential" expenses to the court.

The hedge funds scoured the island's budget. The Department of Sports and Recreation's allotment of $39.2 million: Nonessential, the lawsuit said. Ditto the $12.6 million for the Institute of Puerto Rican Culture; $7.3 million for the Corporation for Public Broadcasting; $1.8 million for the Boys & Girls Club; and the $88,000 commitment to a nonprofit ballet company. One assertion in particular stood out. Puerto Rico's budget had set aside $205 million in discretionary money for things like disaster relief. "While a 'rainy-day fund' is nice to have," the hedge funds conceded in Paragraph 159, "it is impossible to see how this is an 'essential service' or how it can be justified," in part because natural disasters were not "likely to occur" in the coming fiscal year. Three months later, Hurricane Maria made landfall. The presiding judge dismissed the complaint.

Continue reading.

The New York Times

By Jesse Barron

Nov. 26, 2019, 5:00 a.m. ET

The Biggest Misconceptions About Opportunity Zones.

What are some of the biggest misconceptions, inconsistencies, and disconnects surrounding the Opportunity Zone tax incentive? Bob Richardson is managing partner of Blue Cardinal Capital, a real estate private equity firm with Opportunity Zone projects in upstate New York. Click the play button below to listen to my conversation with Bob. Episode Highlights The key differences between tax credits and the Opportunity Zone tax incentive….

Read More »

Opportunity Db

November 20, 2019

FAA Focuses on Controlling Revenue Diversion.

The concern of the Federal Aviation Administration ("FAA") regarding the use by airport operators of airport generated revenues to soften budget shortfalls off the airport appears to be growing. In a speech delivered at the November 11, 2019 National Air Transportation Association Leadership ("NATA") Conference, Kirk Shaffer, FAA's Associate Administrator for Airports, solicited the assistance of the aviation community in working with jurisdictions on compliance. Mr. Shaffer went on to opine that jurisdictions that operate airports are sometimes unaware of the laws governing revenue diversion, or confused by revenue flows, particularly as related to state and local taxes. He illustrated the problem by sharing the fact that, of the 177 jurisdictions with which the FAA has worked over the past five years on revenue diversion issues, 107 still remain noncompliant.

That number of noncompliant jurisdictions is somewhat surprising as the rules governing the use of airport revenues from airports are fairly explicit. The general rule is that revenues generated by a public airport may only be expended for the capital and operating costs of: (1) the airport; (2) the local airport system; or (3) other facilities owned or operated by the airport operator and directly and substantially related to the air transportation of passengers or property. 49 U.S.C. §§ 47107(b)(1) and 47133(a). The use of airport revenue for purposes other than airport capital or operating costs is generally considered “revenue diversion” and is prohibited by federal law. See Policy and Procedures Governing the Use of Airport Revenue, 64 Fed.Reg. 7696, 7720 (February 15, 1999) (“Revenue Policy”). Airport revenues subject to the revenue use requirements include all fees, rents, charges, or other payments received from anyone who makes use of the airport and from the airport sponsor’s activities on the airport. Id. at 7716.

The third prong provides unique revenue allocation opportunities to airport sponsors that own or operate other facilities.

Specifically, the statute permits sponsors to use airport revenue for other facilities owned or operated by the airport owner and directly and substantially related to the air transportation of passengers or property. “Owned” means that the airport owner or operator holds legal title to the facilities for which airport revenue is used. FAA Bulletin 1: Best Practices – Surface Access to Airports (2006). “Operated” means that the local or state government or authority that owns or operates the airport is legally responsible for the operation of the facility and operates the facility either with its own employees or through a management contract with another public agency or private firm. Id. “Directly and substantially related to the air transportation of passengers” is a standard that FAA interprets on a case by case basis with a focus on whether the project of facility is intended primarily for users of the airport. Where revenues are not expended wholly or primarily for users of the airport, they must be prorated to the actual or forecasted use of the facility. For example, if 10% of actual or projected use of the facility will be for non-airport purposes, the airport revenues can only be used to pay for 90% of the project.

Finally, federal law and policy permit the use of airport revenues for certain costs of off-airport environmental mitigation incurred for an airport development project. “Airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA Record of Decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue.” Revenue Use Policy at 7720.

In short, airport operators are allowed to spend airport generated revenues on airport operation and development, including an off-airport project that contributes substantially to that operation and/or development. Off-airport uses that are unrelated, or marginally related, to airport operation or development are explicitly precluded by the airport revenue use policy.

This emphasis is particularly interesting in light of FAA’s recent decision to allow the City of Santa Monica to use airport revenues to tear up portions of its runway to make access by jets less likely. (See blog post FAA Ignores Its Own Regulations in Allowing Expenditure of Airport Revenue to Demolish Runway at Santa Monica Municipal Airport, November 11, 2019). Nevertheless, revenue diversion occupies a central position in the complex of policies directed at airport development. It is essential for any airport operator to understand and apply these policies scrupulously, for the purpose of avoiding FAA retribution, including, but not limited to, repossession of grant funds already allocated, sometimes amounting to millions of dollars. In the long run, being safe is more effective than being sorry.

by Barbara Lichman

November 15 2019

Buchalter

2020 Summer Internship Program - Public Finance Investment Banking

Piper Jaffray . | . Denver, CO, US

Apply on company website

Piper Jaffray is currently seeking an intern for Summer 2020 for our Public Finance business line in Denver, CO. Public Finance is an exciting area of investment banking, where bankers work with a diverse group of public sector, non-profit and developer clients. We have numerous Public Finance functional specialties in local markets.

Responsibilities

- Creation of Microsoft Excel spreadsheets
- Build information sources
- Assist Public Finance team with projects and assignments

Requirements

- Excellent oral, written communication and problem solving skills
- Strong analytical ability
- Detail oriented
- Knowledge of Microsoft Excel

Interns will participate in our firm-wide internship program consisting of a kickoff event in Minneapolis and a speaker series program where you will hear from top business leaders with the opportunity to network and learn about the various opportunities within finance .

This internship opportunity is open to undergraduate or graduate students who graduate in December 2020 or Spring 2021 and have a GPA of 3.3 or above.

- SEC Approves Changes to MSRB Guidance on Underwriters' Disclosure Obligations.
- Why Is It So Hard to Access Performance and Financial Data in Munis?
- Muni-Bond Trading Evolves.
- Please note that we have been diligently covering developments concerning Opportunity Zones, such as this week's Federal Tax Bulletin: Key Timing Issues for Qualified Opportunity Fund Investments and What You Need to Know About the New Opportunity Investment Draft Form. We

have, however, been hesitant to include OZ items in the Highlights due to lack of certainty as to how much OZ work is being done by Public Finance practitioners, as opposed to those tax wankers. Options include, a) letting us know that you'd like to see OZ news highlighted, b) going directly to the Tax section of the newsletter/website for OZ info, and/or 3) making the newsletter available to your tax practitioners.
- And finally, This Will End Well is brought to us this week by *In re Mathias H.*, in which the court was faced with the charming issue of whether or not to incarcerate a 12 year-old due to his repeated refusals to comply with the terms of his house arrest and ankle monitoring while awaiting trial on armed robbery charges. I think that we can all agree that we're looking at a monster understatement when the parent of the year "told the court that respondent repeatedly failed to listen to her." Indeed.

ZONING & PLANNING - CONNECTICUT

Mayer-Wittmann v. Zoning Board of Appeals of City of Stamford

Supreme Court of Connecticut - November 5, 2019 - A.3d - 333 Conn. 624 - 2019 WL 5682694

Neighbor sought review of decision of city zoning board of appeals granting landowner's application for variances from setback requirements and height restrictions to reconstruct a sea cottage on his beachfront property after cottage was severely damaged by a hurricane.

The Superior Court dismissed. Neighbor appealed.

The Supreme Court held that:

- Sea cottage's status as a legally nonconforming accessory structure did not terminate due to lack of reconstruction within one year of hurricane, and
- Landowner established the existence of an unusual hardship warranting approval of application for variances.

Sea cottage's status as a legally nonconforming accessory structure with respect to setback and building height requirements did not terminate due to landowner's failure to reconstruct it within one year after it was severely damaged in a hurricane, notwithstanding city zoning regulation authorizing the reconstruction "as before" of buildings damaged in a calamity within 12 months of calamity, where it was not possible for sea cottage to be reconstructed and used as before it was damaged without any need to apply for variances from minimum flood elevation requirement.

Owner of beachfront property established existence of unusual hardship warranting approval of application for variances from setback requirements and height restrictions to reconstruct his hurricane-damaged sea cottage that was a legally nonconforming accessory structure and that was subject to city regulations applicable to flood prone areas, which required minimum elevation of structures; strict enforcement of regulations would have deprived owner of his constitutionally protected right to continue using sea cottage, and without variances in some form, owner would have been unable to reconstruct sea cottage, resulting in an inverse condemnation of his existing, legally nonconforming use.

ZONING & PLANNING - DISTRICT OF COLUMBIA

[Committee of Neighbors Directly Impacted by LAMB Application v. District of Columbia Board of Zoning Adjustment]

District of Columbia Court of Appeals - October 31, 2019 - A.3d - 2019 WL 5617815

Neighboring residents sought review of decision by Board of Zoning Adjustment (BZA) that approved application by prospective lessee of property for special exception that allowed it to operate and co-locate a public charter school with property owner’s existing private school in residential zone.

Prospective lessee intervened.

The Court of Appeals held that:

- Allowing continued use of existing, nonconforming parking lot did not violate intent and purpose of relevant zoning regulations;
- Prospective lessee, rather than property owner, was proper applicant to request special exception;
- BZA did not abdicate its authority by designating other entities to enforce certain conditions that it placed on its approval; and
- BZA conducted requisite “improved public review” prior to approving application.

IMMUNITY - GEORGIA

[Georgia Lottery Corporation v. Vasaya]

Court of Appeals of Georgia - October 31, 2019 - S.E.2d - 2019 WL 5616681

Lottery player initiated breach of contract action against State lottery corporation and filed motion for summary judgment.

The Superior Court granted motion for summary judgment and awarded player attorney fees and expenses. Corporation appealed.

The Court of Appeals held that:

- Lottery ticket constituted express waiver of sovereign immunity of corporation;
- Summary judgment testimony of corporation’s validation manager was too speculative to support inference that player was not bona fide purchaser;
- Trial court lacked authority to award attorney fees; and
- Player’s demand for interest sufficiently demanded prejudgment interest.

POLITICAL SUBDIVISIONS - GEORGIA

[Board of Commissioners of Lowndes County v. Mayor of Valdosta]

Court of Appeals of Georgia - October 21, 2019 - S.E.2d - 2019 WL 5304498

County board of commissioners brought action against Department of Community Affairs (DCA) officials in their official and individual capacities and cities for injunctive, declaratory, and mandamus relief after DCA imposed sanctions on county and cities for their alleged failure to comply with Service Delivery Strategy Act (SDS Act) requirements.

Trial court ordered sanctions to be held in abeyance and ordered DCA to reinstate qualified local government status to county and cities. Trial court granted officials' motion to dismiss on the bases of sovereign immunity and failure to state a claim for mandamus relief.

The Court of Appeals held that:

- Board's claims against DCA officials in their individual capacities for declaratory and injunctive relief were precluded by sovereign immunity;
- DCA officials did not have clear legal duty to stop notifying state agencies that county and cities were ineligible for state-administered financial assistance; and
- Adequate legal remedy existed by which board could resolve dispute with DCA over compliance with SDS Act.

County board of commissioners' claims against officials for Department of Community Affairs (DCA) in their individual capacities for declaratory and injunctive relief arising out of DCA's determination that county violated Service Delivery Strategy Act (SDS Act) were in fact claims against state as real party in interest, and, thus, were precluded by sovereign immunity; board of commissioners alleged that DCA, not its officers, was the entity imposing sanctions on county, including by posting on DCA website, board's requested relief sought to control actions of state by requiring DCA officials to "direct" the DCA to take actions, officials lacked authority in their individual capacities to direct DCA to do anything, and relief could only be granted by state under SDS Act.

Board members and commissioner of Department of Community Affairs (DCA) did not have clear legal duty to stop notifying state agencies that county and cities, which DCA concluded violated Service Delivery Strategy Act (SDS Act) by failing to review and revise service delivery strategy, were ineligible for state-administered financial assistance, grants, loans, and permits due to expiration of prior service strategy agreement, and, thus, county was not entitled to writ of mandamus requiring DCA to retract notifications of ineligibility; SDS Act contained no requirements for DCA board members and commissioner at all, and SDS Act contemplated that a prior service strategy agreement would not continue unaltered if a municipality failed to review or revise it as required.

Adequate legal remedy existed by which county board of commissioners could resolve dispute with Department of Community Affairs (DCA) over whether county and cities had complied with Service Delivery Strategy Act (SDS Act) and obtain relief from DCA's announcement that county was ineligible for state-administered financial assistance, grants, loans, and permits due to its non-compliance with SDS Act, and, thus, mandamus relief was unwarranted; SDS Act provided dispute resolution procedure applying to county's alleged noncompliance with requirements that it review and revise service delivery agreement, and trial court placed sanctions imposed by DCA in abeyance, such that county was still eligible for state-administered benefits.

INSURANCE . - ILLINOIS

Evergreen Real Estate Services, LLC v. Hanover Insurance Company

Appellate Court of Illinois, First District, First Division - November 4, 2019 - N.E.3d - 2019 IL App (1st) 181867 - 2019 WL 5704599

Insured, which was residential property manager, brought action against liability insurer, seeking declaration that insurer had duty to defend insured under professional liability insurance policy in tenants' class action and seeking damages for bad faith denial of insurance claim.

On cross-motions for summary judgment, the Circuit Court granted summary judgment in favor of insured as to issue of duty to defend but granted summary judgment to insurer on bad-faith claim. Insurer appealed, and insured cross-appealed.

The Appellate Court held that:

- City residential landlord tenant ordinance was not unequivocally consumer protection law that fell under policy's exclusion for claims arising from unfair and deceptive business practices, including local consumer protection laws;
- Claims in underlying class action did not unequivocally represent claims for unfair or deceptive business practices subject to policy's exclusion for claims arising from unfair and deceptive business practices; and
- Insurer put forth good-faith defense to coverage, and thus sanctions for bad-faith denial of insurance claim were unwarranted.

MUNICIPAL ORDINANCE - ILLINOIS

In re Mathias H.

Appellate Court of Illinois, First District, First Division - October 28, 2019 - N.E.3d - 2019 IL App (1st) 182250 - 2019 WL 554363

After 12-year-old with pending juvenile delinquency adjudication for robbery of a store violated electronic monitoring, and was arrested and placed in juvenile detention center, he filed emergency petition for habeas corpus.

The Circuit Court denied the petition. Juvenile appealed.

The Appellate Court held that:

- Issue of whether county ordinance lawfully proscribed juvenile court from detaining juvenile was not moot, and
- County ordinance prohibiting detaining child under age of 13 in county's jail or juvenile detention facilities conflicted with express limitations of state law and thus was preempted.

Issue of whether Cook County ordinance, which purported to bar county's jail and juvenile temporary detention facilities from accepting any minor under the age of 13, was proper exercise of county's home rule authority, so that juvenile court's order detaining 12-year-old juvenile was unlawful, was not rendered moot after juvenile completed sentence and was released, since detention of juveniles was matter of public concern that required authoritative determination, and which, due to time constraints, was likely to recur with other minors in future.

Cook County ordinance that prohibited county's jail and juvenile temporary detention facilities from accepting any minor under age of 13 conflicted with express limitations enacted by the General Assembly, and thus, was preempted as an invalid exercise of county's home rule authority, even though ordinance was an attempt by county to concurrently exercise its police power for the well-being of its juveniles within the justice system; ordinance conflicted with the Juvenile Court Act and the Detention Act, which together represented a comprehensive scheme for the treatment of minors 10 years of age and older who were under the jurisdiction of the Juvenile Court Act that required, or may have required, detention in a secure facility.

The Organizers and Officials Behind San Francisco's Push for a Public Bank.

Jacqueline Fielder has been working two restaurant jobs, but in increasingly unaffordable San Francisco, she's had trouble finding stable, safe housing she can afford. She moved to the Bay Area to go to Stanford, where she earned a bachelor's in public policy and a master's in sociology in just four years. But for the past six months, she's been couch surfing and living out of her van, a green Toyota Previa, model year 1994 — the same year she was born.

In her spare time between shifts, Fielder has continued volunteering as one of the lead organizers behind San Francisco's push for a city-owned public bank that would hold local taxpayer dollars and finance affordable housing, small businesses, student loans and other public needs that conventional banks aren't meeting.

That work takes another step closer with the introduction of local legislation in San Francisco that would begin the process for establishing a public bank — following the pathway laid out by AB 857, the landmark public banking bill passed into law earlier this year in California. That legislation is expected to be introduced today.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO

NOVEMBER 12, 2019

Homespun Firms Challenge Wall Street's Muni-Bond Supremacy.

The SEC is considering allowing advisers to arrange sales to skilled investors without the involvement of large banks and midsize brokers

Wall Street's longstanding hold on the $4 trillion municipal-bond market faces a challenge from an onslaught of small, independent firms known as municipal advisers.

The Securities and Exchange Commission is considering allowing these advisers to arrange private bond sales to skilled investors without the involvement of the large banks and midsize brokers that have for decades dominated the market for high-grade local government debt.

Though private sales make up only a small portion of the overall market, broker-dealers—as these banks and brokers are known because they price and sell new bonds and trade existing ones—aren't eager to face further inroads.

Continue reading.

The Wall Street Journal

By Heather Gillers

Updated Nov. 13, 2019 6:04 pm ET

Muni-Bond Trading Evolves.

Slowly but surely, change is coming to municipal bond trading.

For brokers, tech providers and trade-venue operators seeking to modernize transactions, the $3.8 trillion muni-bond market has all the challenges, in spades — small issue size, little standardization, and a highly dispersed network of buyers and sellers. When a local savings and loan needs to buy a municipal bond backing a toll road on behalf of a wealth management client, the S&L representative historically has picked up the phone to do so.

Electronic trading has gained traction in government and corporate bonds, so technology providers and trading-platform operators are looking to export advances in those markets to their fixed income cousin. It is expected to be a long path with incremental gains, very much an evolution rather than a revolution.

“It’s not going to be an overnight change where all the tools and protocols that happen over voice will appear on a platform on day one,” said Amanda Meatto, Head of Sales and Relationship Management at fixed income marketplace Tradeweb Direct. “The wide range of securities and deals in the municipal marketplace make it more complex.”

“What we see happening in munis is a phased approach, where step one is enhancing liquidity, connecting people with as many broker-dealers as possible, and automating small workloads that are very manual today,” Meatto continued. “Those are the simpler parts of electronifying a product. There will be multiple stages of innovation from there, driven by the needs of buy-side and sell-side institutions.”

While only 12 to 15 percent of municipal bond trading volume is conducted electronically, uptake by financial institutions is moving the needle. In 2018, 62% of buy-side firms traded munis on a screen, up from 51% two years earlier, according to a Greenwich Associates report published in 2Q 2019.

“Investors — primarily asset managers and hedge funds — are increasingly looking to e-trading platforms for order execution,” Greenwich wrote. “The largest institutions are a leading indicator of technology adoption.”

One unique characteristic of the muni market is a comparatively small average trade size, in the order of $100,000-$200,000. High net worth individuals are an important presence in the muni market, especially via the $6.8 billion parked in separately managed accounts; Tradeweb is aiming to better connect institutions with this retail order flow.

Last month, the platform operator announced a partnership with InvestorTools, a provider of portfolio management and credit analysis systems for institutions, to enable straight through processing for municipal bond trades executed by Tradeweb Direct clients.

“The portfolio manager sits in InvestorTools to make decisions, and the next part of the workflow is execution,” Meatto explained. “It was a natural progression for us to link up to streamline the PM’s or trader’s pivoting from choosing bonds, to looking for liquidity and then executing.”

Meatto noted that the muni-bond market lends itself to electronic trading in the sense that buyers often search on criteria, such as duration and coupon, rather than coming in to buy one specific issue as is often the case in corporates and Treasuries. As there were an estimated 1.02 million different muni issues as of February according to Greenwich, electronic platforms can make inventory searches manageable.

Going forward, the challenge for electronic trading is to move beyond just the smaller, so-called odd lot trades and make headway in deals north of $1-$2 million. “How do we electronify two people speaking to each other to agree on a price?” Meatto asked. “That is going to be a huge part of electronifying the round-lot marketplace for muni bonds.”

By Markets Media’

11.13.2019

[Municipal Bond CEFs - Pressure For The Sector After The Treasury Yields Increase]()

Summary

- All of the net asset values of the municipal bond closed-end funds finished the week in negative territory.
- We continue to follow the most important yields and municipal/Treasury spread ratio.
- Most of the funds from the sector are still trading at positive Z-scores, and we do not see a statistical edge to include some of them in our portfolio.

[Continue reading.]()

Seeking Alpha

Nov. 14, 2019

[How OZ Communities, Sponsors, and Investors Can Connect, with The Opportunity Exchange.]()

Can an Opportunity Zone marketplace connect communities, OZ project sponsors, and investors to advance capital deployment and community impact? Peter Truog is founder of The Opportunity Exchange — a marketplace that connects impactful Opportunity Zone projects to capital sources. Also joining today’s podcast episode from The Opportunity Exchange are Leo Peña and Ayat Amin. Click the play button below to listen to my conversation with…

[Read More »]()

Opportunity Db

November 13, 2019

[Municipal CUSIP Request Volume Surges in October.]()

NEW YORK, NY, November 11, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for October 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 increases in CUSIP request volume for municipal debt and a slight decline in requests for corporate debt identifiers in October.

Read Report.

34% Monthly Increase in Muni Requests Puts Year-to-Date Volume on Record Pace.

"The favorable interest rate environment for debt issuers has put municipal bond CUSIP request volume on pace for a record year," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "While we have seen some month-to-month volatility in the municipal bond category over the course of 2019, the general trend for the first three quarters has been toward steady growth."

Read Press Release.

The MSRB Adds Links to Additional Indices on EMMA®

View the new links.

MSRB's Quarterly Trade Statistics Report.

Municipal market trading declines to $723 billion in the third quarter.

Read the MSRB's quarterly trade statistics report.

Denver Supportive Housing Social Impact Bond Initiative: Housing Stability Payments

Abstract

In February 2016, the City and County of Denver and eight private investors closed on the city's first social impact bond, an $8.6 million investment to fund a supportive housing program for 250 of the city's most frequent users of the criminal justice system. The city will make outcome payments over five years based on the initiative's goals of housing stability and a decrease in days spent in jail by participants. This report details the third assessment of housing stability payment outcomes and interim housing stability outcomes for the program.

Read the full report.

The Urban Institute

by Mary K. Cunningham, Sarah Gillespie, Devlin Hanson, Mike Pergamit, Alyse D. Oneto & Prasanna Rajasekaran

November 12, 2019

Fitch Ratings: Upgrades Again Outpace Downgrades for U.S. Public Finance in 3Q19

Fitch Ratings-New York-14 November 2019: Last quarter saw a bump in rating activity for U.S. municipal credits with upgrades again exceeding downgrades, according to Fitch Ratings in its latest Rating Actions & Sector Updates report for U.S. public finance.

As of third-quarter 2019 (3Q'19), the quarterly special report consolidates content from previous U.S. Public Finance Rating Actions and Sector Briefing special reports, and discusses the latest key credit issues for each sector.

Fitch upgraded 45 U.S. public finance security ratings and downgraded 31 in 3Q'19, compared with 34 upgrades and 19 downgrades in 2Q'19. Positive Rating Outlooks and Watches also increased by four to 99 (from 95 in 2Q'19) while Negative Rating Outlooks and Watches fell to 102 in 3Q'19 compared with 106 in 2Q'19.

On Oct. 7, 2019, Fitch resolved all 42 public power long-term ratings placed Under Criteria Observation after revisions to the U.S. Public Power Rating Criteria in April 2019. Nine out of 16 public power long-term rating upgrades and all four downgrades in 3Q'19 were the result of the criteria revision.

'U.S. Public Finance Rating Actions & Sector Updates: Third-Quarter 2019' is available at 'www.fitchratings.com'.

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Fitch Ratings' View of Wildfire Credit Risk for LADWP Posed by Getty Fire.

Fitch Ratings-New York-11 November 2019: Fitch Ratings has not taken rating action on the Los Angeles Department of Water and Power (LADWP) or any publicly owned utility (POU) in California, to date, related to wildfire risk and the potential liability resulting from California's strict interpretation of inverse condemnation. However, wildfires have become more prevalent in California and present an ongoing business risk to POUs. POUs in California have inherent characteristics and strategies in place that mitigate wildfire risk and its impact on credit quality. These include largely urban service areas with quick fire service response times, vegetation management and wildfire prevention programs, robust cash reserves and the legal ability to recover costs associated with wildfire related liabilities from ratepayers. The new wildfire liability fund created by California Assembly Bill 1054 in July 2019 is exclusive to investor-owned utilities and not considered one of the strategies in place for POUs. Given these factors, coupled with the low likelihood of a massive liability event, Fitch considers the occurrence of a catastrophic event sizable enough to prompt a rating action as a remote event risk that is therefore not factored into the ratings. If a massive liability event occurs, ratings could be affected.

Getty Fire

The Getty fire that began on Oct. 28 in Los Angeles burned approximately 745 acres and was fully contained as Nov. 5, 2019, according to the Los Angeles Fire Department (LAFD). The LAFD reports there were no fatalities, although five fire-fighters sustained injuries considered to be 'non-life threatening'; ten homes were destroyed and 15 were damaged. According to the LAFD, its preliminary investigation determined the cause of the fire was an accidental start from a tree branch that broke off and landed on nearby power lines during high wind conditions, causing sparking and arcing of the power lines and igniting nearby brush.

The power lines are owned and operated by LADWP. LADWP reports they had recently completed vegetation management trimming and inspection in this area in July 2019. There is no alleged failure to act or failure of equipment. However, due to California's application of inverse condemnation that can impose liability against utilities regardless of fault, LADWP may face financial liabilities as a result of the Getty fire.

What Circumstances Would Prompt Fitch to Take Rating Action

LADWP has an Issuer Default Rating (IDR) of 'AA'/Stable. As Fitch indicated in its rating action commentary on LADWP published earlier this year on April 12 and Aug. 26, a rating action could occur if LADWP is found liable for a specific wildfire event of such a magnitude that it exceeds insurance and liquidity resources and outstrips LADWP's ability to recover the costs through rates and maintain rate flexibility. The potential development related to wildfire risk that could change Fitch's rating is the magnitude of the liability, not whether or not a wildfire occurs. It remains to be determined whether LADWP will face a liability for the Getty fire and, if so, the size of the liability.

Fitch expects that the initial recourse for LADWP will be to seek coverage under its wildfire liability insurance policy ($177.5 million), with additional coverage available to LADWP through its general excess liability coverage policy ($160.0 million) and self-insurance reserve ($192.5 million). In addition to insurance, LADWP has sizable cash reserves that could be used to meet any potential liability, although these reserves protect against multiple business risks and their use may be more of an interim step, depending again on the magnitude of the liability. LADWP's unrestricted cash for the power system at the end of fiscal 2018 was approximately $1.3 billion, including the debt reduction fund and rate stabilization fund.

If a potential liability exceeds LADWP's insurance policies and cash reserves, Fitch assumes LADWP could borrow to pay part or all of the liability, with repayment expected over the long term. If a wildfire results in a liability that is massive enough to alter LADWP's financial profile, the deterioration would appear in Fitch's net leverage ratio that measures long-term, fixed obligations, net of cash reserves, in relation to annual cash flow.

LADWP's net leverage ratio is currently expected to decline and the 'AA'/Stable IDR is based on that expectation. LADWP's net adjusted debt to adjusted FADS ratio was 7.8x in fiscal 2018. Fitch's Analytical Stress Test (FAST) model, a forward five-year look, indicates that net leverage should trend down slightly, closer to 7x by year three of the forecast period, while liquidity and coverage levels remain robust. Although Fitch assumes that LADWP would spread payment of any wildfire-related liability over the long term and recover those costs through its power rates, a new, large fixed obligation that alters our expectation of lower leverage could be enough to trigger downward rating action.

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[Haskell and Richbourg on Municipal Bond Market (Podcast)]

Lisa Abramowicz and Paul Sweeney speak with Patrick Haskell Managing Director of Municipal Securities at Morgan Stanley and Scott Richbourg, Head of Public Finance at Build America Mutual.

[Play Episode]

Bloomberg Markets

November 14, 2019 — 8:19 AM PST

Fitch Ratings: U.S. Water Utilities' Financial Profiles Strengthen

Fitch Ratings-Austin-11 November 2019: Net margins accelerated for U.S. water utilities over the last year while sector leverage declined, according to a new report from Fitch Ratings.

Surplus cash flows climbed to 135% of annual depreciation in the current median cycle as revenues expanded over 5% and expenses were held in check. Most of the revenue growth occurring continued to come from rate adjustments. Water sales were marginally positive while sewer flows were flat, similar to recent results. 'Revenue growth is expected to continue expanding at about 3% annually based on planned adjustments, with revenue volatility sufficiently mitigated by residential rate structures that typically recover 40% of charges from fixed components,' said U.S. Public Finance Managing Director Doug Scott.

With the current medians, sector debt service coverage reached its highest levels observed by Fitch. Strong operations and robust reserves allowed the sector to utilize more pay-go funding for capital, which in turn drove virtually all debt metrics lower. Despite some drawdown of cash balances, liquidity levels continue to be among the highest seen and are more than 55% above those a decade ago, providing a significant degree of flexibility to utilities in managing their business.

Capital spending dipped to a four-year low of around 130% of depreciation, but was sufficient to maintain the age of facilities. The drop in capital deployment appears to be relatively short-term as utility capital projections for the next few years jumped around 20% relative to the last medians. 'While planned outlays have increased, sector leverage is expected to remain relatively unchanged given two-thirds of capital funding is anticipated to come from available resources,' said Scott.

Fitch's '2020 Water and Sewer Medians' is available at 'www.fitchratings.com'.

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Muller and Dewey on Municipal Bond Market (Podcast)

Lisa Abramowicz and Paul Sweeney speak with Mark Muller, Senior Portfolio Manager at Loews Corporation and Grant Dewey, Head of Municipal Capital Markets at Build America Mutual.

Play Episode

Bloomberg Markets

November 14, 2019 — 8:44 AM PST

Bond and Market Analysis from Build America (Podcast)

Paul Sweeney and Lisa Abramowicz broadcast from Build America in New York City. Their guests include: Sean McCarthy, CEO Build America Mutual, Scott Richbourg, Build America Mutual Head of Public Finance, Patrick Haskell, Morgan Stanley Head of Public Finance, Grant Dewey, Build America Mutual Head of Capital Markets, Mark Muller, Head of Municipal Investments at Loews Corp, David McIntyre, Build America Mutual Chief Information Security Officer and Jonathan Couch, Sector Cyber-Security Expert. Hosted by Paul Sweeney and Lisa Abramowicz.

Listen to podcast.

Bloomberg Markets

November 14, 2019 — 9:17 AM PST

California Governor Newsom Fielding More PG&E Takeover Calls.

- **Governor Gavin Newsom under pressure to act on bankrupt PG&E**
- **Options include turning PG&E into co-op or giant muni utility**

For California Governor Gavin Newsom, sitting back and watching PG&E Corp.'s bankruptcy run its course is no longer an option.

The mayors of 22 cities are pressing him to turn the embattled power giant into a customer-owned cooperative. San Francisco, the city he once served as mayor, wants to take over the company's local wires. On Wednesday, a board member of a statewide consumer group sent Newsom a proposal that would have the state run PG&E like a massive municipal utility. And the former chief of California's utility commission joined a coalition of groups to similarly press him for public control.

"It is time for California to take over PG&E and stop letting profits stand in the way of a safe, clean energy future we all need and deserve," the coalition, including former California Public Utilities Commission president Loretta Lynch, said in its letter to Newsom Thursday.

Continue reading.

Bloomberg

By David R Baker and Romy Varghese

November 13, 2019, 2:27 PM PST Updated on November 14, 2019, 12:21 PM PST

California Senator Drafts Bill to Turn PG&E Into Public Utility.

- **Scott Wiener wants to force bankrupt utility to become public**

- **Preliminary plan underscores frustration amid outages, fires**

California State Senator Scott Wiener said he's planning to introduce a bill next year that would force bankrupt power giant PG&E Corp. to become a public utility.

"We are looking at legislation to force PG&E to become a public utility, but that's still in the early planning stages and we haven't settled on the exact details yet," the San Francisco Democrat said in a phone interview. He intends to introduce "some sort of legislation forcing them to become a public utility" by the mid-February deadline for new bills, Wiener said.

The plan, while preliminary, shows the growing impatience lawmakers and municipal leaders have with PG&E, which plunged millions of Californians into darkness during mass power outages last month to prevent wildfires that still occurred. Government leaders representing nearly a third of PG&E's customers have urged California regulators to consider turning the company into a customer-owned cooperative.

Wiener's proposal would help protect the people of California, since the bankruptcy court's focus is generally to help creditors, he said. Wiener considers some form of public control of PG&E "desirable." The government of San Francisco has already made a $2.5 billion bid for the wires that PG&E runs within the city's limits. The company has so far rebuffed its efforts.

Cases of successful transitions of investor-owned utilities into public entities have occurred in smaller, more confined areas, said A.J. Sabatelle, an associate managing director at Moody's Investors Service.

Asked if his bill signals that the legislature is showing momentum toward a public model, Wiener said he couldn't speak for others and that lawmakers have "diverse views." California Governor Gavin Newsom pressed PG&E Chief Executive Officer Bill Johnson in a meeting last week to reach a swift resolution to the company's bankruptcy or face a potential state takeover.

"Ultimately, the governor's view is going to be extremely impactful," Wiener said.

Bloomberg

By Romy Varghese

November 12, 2019, 2:01 AM PST

— With assistance by David R Baker

Multifamily Private Activity Bond Issuances Decline 3.7 Percent in 2018.

Housing finance agencies issued $14.7 billion in tax-exempt multifamily rental housing bonds in 2018, a 3.7 percent decrease in multifamily issuance from last year, according to the Council of Development Finance Agencies (CDFA).

The issuance of single-family mortgage revenue bonds increased more than 50 percent, from $5.6 billion in 2017 to $7.4 billion in 2018. The combined multifamily and single-family mortgage revenue bond issuances increased by 5.3 percent to $22.1 billion. The percentage of volume cap private activity bonds (PAB) issued in 2018 for single and multifamily housing in the 50 states and the

District of Columbia was 91.5 percent of all volume cap PAB activity, a record high.

The decrease in multifamily PAB issuance is not surprising, because of the risk of repeal of PABs at the end of 2017 as part of the tax law commonly known as the Tax Cuts and Jobs Act (TCJA) of 2017. Many planned 2018 multifamily issuances were accelerated into 2017 to eliminate the risk, evidenced by the fact that multifamily PAB issuance in 2017 was nearly $15.3 billion, compared to $14 billion in 2016.

This year's CDFA report, "CDFA Annual Volume Cap Report: An Analysis of 2018 Private Activity Bond & Volume Cap Trends," states that total annual private activity bond cap in 2018 increased 5.1 percent to $37.1 billion. The CDFA report surveys agencies from the 50 states and District of Columbia that allocate private activity bond cap among the eligible uses.

In addition to the $37.1 billion in new 2018 bond volume cap available, state agencies had an additional $53.1 billion in existing carryforward allocation. The resulting total available amount of national volume cap was approximately $89.8 billion in 2018. Of that, $24.1 billion in bond volume was issued, a slight 2.9 percent decrease from 2017.

CDFA also reported a total of $4.75 billion in total private activity bond cap abandoned, as states have three years to use such authority before it expires. Such a total represents a more than 50 percent decrease from the last time CDFA reported on abandoned cap in its 2016 report. However, 10 states—Alaska, Arizona, California, Florida, Iowa, Mississippi, Missouri, New Hampshire, New York and Tennessee (a list that includes some significant bond-issuing states)—did not report on how much bond cap was abandoned in 2018, and so the total 2018 reported amount likely under-reported the actual amount. See list below for full details.

Published by Michael Novogradac on Tuesday, November 5, 2019 – 12:00am

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Big Housing Bonds Pass in San Francisco and Durham, N.C.

When you think of a city with a housing market that caters to the wealthy and provides few options for people earning average wages or below, chances are good that you think of San Francisco before you think of Durham, North Carolina. But officials in both cities have good reasons to invest in a range of affordable housing types, and last week, voters in San Francisco and Durham each approved the largest housing bond in their city's history.

In Durham's case, it was a $95 million bond to be spent over the next five years. Durham Mayor Steve Schewel proposed the bond in February, saying that if Durham carried on its existing housing efforts without an infusion of funding, downtown neighborhoods would remain "the province of upper-middle-class white people, while people of color are pushed to the margins, farther and farther from good jobs and the public transit to get them to those jobs," according to a report in the Indy Week.

Durham currently has around 8,600 income-restricted affordable units, according to city estimates. If it wants to provide enough housing just for the residents who are currently facing a severe cost burden — spending more than half their income on rent — it will need to build 16,000 new affordable housing units, the city estimates. Despite being the biggest housing bond the city has ever approved, the $95 million would still only provide for a fraction of the need.

Continue reading.

NEXT CITY

by JARED BREY

NOVEMBER 14, 2019

SEC Approves Changes to MSRB Guidance on Underwriters' Disclosure Obligations.

The SEC approved changes to an MSRB interpretive notice concerning the conduct of municipal securities underwriting activities. The MSRB indicated that the changes are to codify underwriters' disclosures and focus on the risks and conflicts associated with their transactions.

As previously covered, the amendments to the interpretive notice concerning MSRB Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") are intended by MSRB to reduce disclosure burdens on underwriters, as well as the burden on issuers to acknowledge and review disclosures of risks that are (i) unlikely to materialize, (ii) not unique to a particular transaction or underwriter where a syndicate is formed, or (iii) otherwise duplicative.

The MSRB will provide a compliance date within 90 days of publishing the revised guidance in the Federal Register.

November 12 2019

Cadwalader Wickersham & Taft LLP

Federal Tax Bulletin: Key Timing Issues for Qualified Opportunity Fund Investments

Time is running out to clearly maximize the tax benefits available under the qualified opportunity zone (QOZ) program. Under current guidance, it seems that you must invest in a "qualified opportunity fund" (QOF) by December 31, 2019 to be eligible for all possible QOZ tax benefits (though most QOZ tax benefits will still be available for QOF investments made after 2019). Additionally, if your capital gain this year is from the sale of property used in a trade or business, you must wait to make the related QOF investment until the last day of the taxable year (which for most taxpayers is December 31, 2019). These two critical timing requirements are woven into the QOZ rules, which are discussed in more detail below.

BASIC QOZ RULES AND BENEFITS

Under QOZ program, QOZ tax benefits are available to a taxpayer who recognizes capital gain on the sale of property to an unrelated buyer, makes a qualifying equity investment in a QOF up to the amount of that capital gain, and holds the QOF equity interest for a certain specified period of time. Such a taxpayer has the ability to defer and partially eliminate federal tax on that capital gain, as well as to avoid all federal tax on the taxpayer's eventual sale of their QOF equity interest.

A QOF is an investment vehicle created to invest in QOZs. Any corporation or partnership (including an LLC treated as a corporation or partnership for tax purposes) can be a QOF, so long as it follows the applicable QOZ rules and self-certifies by filing a Form 8996 with its federal income tax return. The QOZ requirements (which are beyond the scope of this Bulletin) primarily are designed to ensure that QOF investments result in new or significantly refurbished assets deployed and used in QOZs.

There are 3 potential tax benefits available to taxpayers who make qualifying QOF investments. A taxpayer's eligibility for 1 or more of these benefits depends on when the taxpayer invests in a QOF, and how long the taxpayer holds their QOF equity interest. These 3 tax benefits include:

1. Deferral of Capital Gain Recognition. A taxpayer who invests capital gain into a QOF in compliance with the QOZ rules is not subject to immediate tax on that capital gain. Rather, taxation of that capital gain is deferred, and no federal income tax is required to be paid on the gain until the end of 2026 (or upon the investor's disposition of the QOF equity interest, if earlier).
2. Reduction of the Deferred Capital Gain. When a taxpayer is required to pay federal tax on their deferred capital gain, if they have held their QOF equity interest long enough by that point, a portion of the deferred tax will be eliminated. Specifically, if the QOF interest has been held at least 5 years, then 10% of the deferred tax liability will be eliminated, and if the interest has been held at least 7 years, an additional 5% of the deferred tax liability will be eliminated. Thus, the maximum reduction of the deferred federal tax liability is 15%.
3. No Federal Tax on Ultimate Sale of QOF Equity Interest. Any increase in value of a QOF equity interest that a taxpayer holds for at least 10 years prior to disposition is not subject to federal tax upon the sale of that QOF equity interest.

180-DAY QOF INVESTMENT WINDOW: WHEN DOES IT BEGIN?

When a taxpayer recognizes capital gain in a qualifying sale, the taxpayer has a 180-day window in which to make a corresponding equity investment in a QOF. Generally, that 180-day window begins on the day of the sale; however, there are exceptions to this rule.

1. Sale of Business Property. If the capital gain that you wish to invest in a QOF resulted from the sale of property used in a trade or business, special rules apply. Firstly, only your net capital gain for the year from sales of business property is eligible for QOF investment. Secondly, because that net gain amount cannot be determined until the end of the year, the 180-day QOF investment window for this gain does not begin until the last day of the year. Although this delay in the start of the 180-day window can be a benefit to many taxpayers by providing a later deadline for investment in a QOF, it can also be a potential trap. If a taxpayer were to recognize gain from the sale of business property and unwittingly make a QOF investment before year-end, that investment would not be eligible for any QOZ tax benefits.
2. Flow-Through Entities. When capital gain is recognized by a flow-through entity (e.g., an entity taxed as a partnership or an S corporation), either the entity itself may invest that capital gain in a QOF, or (in the event that the entity elects not to so invest) the entity's owners may directly invest their respective shares of the capital gain in QOFs. Where a flow-through entity invests in a QOF, normal rules relating to the 180-day window apply. Where an owner invests, however, their 180-day window begins on the last day of the flow-through entity's taxable year (though an owner may make an election to use the 180-day window of the flow-through entity).

THE SIGNIFICANCE OF DECEMBER 31, 2019

As stated above, in order to obtain the maximum 15% elimination of federal tax on deferred capital gain, a taxpayer must have held their QOF interest for 7 years by the time they are required to pay federal tax on that gain. The latest date that any taxpayer can defer tax on capital gain is December 31, 2026. Only QOF interests acquired on or before December 31, 2019 will satisfy the 7-year holding period on December 31, 2026. Therefore, under current guidance, it seems that taxpayers must invest in a QOF no later than December 31, 2019 to be eligible for the total maximum 15% federal tax elimination.

Taxpayers making QOF investments on or before December 31, 2021 would still be eligible for the 10% federal tax exclusion. Additionally, QOF investments made on or before December 31, 2028 will be eligible for the permanent exclusion from tax on the sale of those QOF interests, described above.

The foregoing rules create a tight timetable for most taxpayers hoping to maximize their QOZ benefits from the sale of business property this year. Those taxpayers have just one day—December 31, 2019—to achieve their desired tax results. Happy New Year's Eve!

11/13/19

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Note that the above discussion is based upon QOZ rules currently described in proposed regulations, which may be modified when released in final form. Until such time, the Treasury Department has indicated that taxpayers may rely on these proposed regulations. If you have any questions about these QOZ rules or the QOZ program generally, please contact your Vorys tax attorney.

What You Need to Know About the New Opportunity Investment Draft Form.

In October, the U.S. Treasury Department released a draft form designed to help it and the IRS collect information about how opportunity zone investments — a concept established by the 2017 Trump tax cuts — are affecting the economy. If implemented, it will gather data about whether these investments are living up to the project's original goal, which is to spur economic development in undercapitalized American communities.

What Are Opportunity Zones?

The opportunity zone concept comes from the Trump tax cuts — introduced in Congress as the Tax Cuts and Jobs Act (or TCJA) — passed in December of 2017. The zones are designed to encourage investment in areas that are federally certified as economically distressed.

Investors can sell stocks or other investments and assets and delay the capital gains tax they would normally pay on those investments, so long as they invest the proceeds into an opportunity zone. Profits made from projects in these zones can be written off entirely and results in reduced or no federal tax. These projects can include stock or partnership interests held in local businesses, as well as direct ownership of companies in opportunity zones.

The first set of opportunity zones, designated shortly after the passage of the tax breaks, only covered 18 states. Now, there are more than 8,700 opportunity zones across all 50 states — roughly 12 percent of all census tracts.

The opportunity zone investment idea was one of the few components of the tax cuts that were met with bipartisan support.

However, even the idea's supporters were concerns that the concept didn't have much in the way of guidelines. As the legislation was written, the IRS and Treasury were not required to collect information on where the opportunity zone investment money was going. It was not clear what sorts of projects were being constructed as a result of the tax break.

Treasury outlined new regulations on opportunity investment since the spring. There has also been pressure from Congress. The draft form comes after a bipartisan group of lawmakers — including presidential candidate Cory Booker — introduced legislation that would require the IRS to collect information about opportunity zone investment. It's not clear when the bill will be voted on, but the Treasury has already moved to start collecting information about opportunity zone investments.

Breakdown of the Opportunity Investment Draft Form

The draft form is designed for the 2019 tax year, but it's not clear when Treasury will begin requiring taxpayers to disclose this additional information about their opportunity zone investments. The form primarily requires corporations and partnerships to do so.

Under the form, corporations and partnerships would be required to report employer identification numbers for each business in which they hold stock or partnership interest. They would also be required to report the census tract number the investment is in, as well as its overall value.

The form would also collect information about businesses in which corporations and partnerships hold a direct stake.

Because no instructions have been published for the form yet, it's not clear what noncompliance will mean for taxpayers. The IRS may [leverage a penalty or fine] if a corporation or partnership fails to properly disclose all its opportunity zone investments.

Treasury noted that the information collected as a result of the draft form would be available to lawmakers.

What Investors Need to Know About Opportunity Zones

It's not clear when the IRS will begin requiring taxpayers to report additional information about their opportunity zone investments. The draft form is designed for the 2019 tax year, but taxpayers may not have to worry about providing more details just yet.

Lawmakers, in the meantime, will likely continue to push for stricter regulations on opportunity zones and look to pass laws that require the IRS and Treasury to ensure compliance with the provisions established under TCJA.

Tech Bullion

By Kayla Matthews

November 14, 2019

Fitch Ratings: U.S. Water Utilities' Financial Profiles Strengthen

Fitch Ratings-Austin-11 November 2019: Net margins accelerated for U.S. water utilities over the last year while sector leverage declined, according to a new report from Fitch Ratings.

Surplus cash flows climbed to 135% of annual depreciation in the current median cycle as revenues expanded over 5% and expenses were held in check. Most of the revenue growth occurring continued to come from rate adjustments. Water sales were marginally positive while sewer flows were flat, similar to recent results. 'Revenue growth is expected to continue expanding at about 3% annually based on planned adjustments, with revenue volatility sufficiently mitigated by residential rate structures that typically recover 40% of charges from fixed components,' said U.S. Public Finance Managing Director Doug Scott.

With the current medians, sector debt service coverage reached its highest levels observed by Fitch. Strong operations and robust reserves allowed the sector to utilize more pay-go funding for capital, which in turn drove virtually all debt metrics lower. Despite some drawdown of cash balances, liquidity levels continue to be among the highest seen and are more than 55% above those a decade ago, providing a significant degree of flexibility to utilities in managing their business.

Capital spending dipped to a four-year low of around 130% of depreciation, but was sufficient to maintain the age of facilities. The drop in capital deployment appears to be relatively short-term as utility capital projections for the next few years jumped around 20% relative to the last medians. 'While planned outlays have increased, sector leverage is expected to remain relatively unchanged given two-thirds of capital funding is anticipated to come from available resources,' said Scott.

Fitch's '2020 Water and Sewer Medians' is available at 'www.fitchratings.com'

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Additional information is available on www.fitchratings.com

Why Is It So Hard to Access Performance and Financial Data in Munis?

Issuers look to the municipal bond market to refresh our nation's infrastructure, but who will update the municipal bond market's obsolete data infrastructure? Almost 20 years into the new century, the functional systems for identifying issuers and their performance are still being served up with 20th century technologies. To move the market forward, we believe that market participants, including regulators, adopt the best of breed technologies from other markets. The first step forward is to build a consortium of private, nonprofit, and academic interests who have been promoting alternative systems for identifying, indexing and analyzing capital market data.

The "who's who" is important

Associating securities with standard issuer identifiers makes it easier for investors to track exactly who owes what. In the municipal market, we often rely on the first six positions of the CUSIP number to identify issuers — but this 1960s-vintage technology is no longer fit for purpose.

CUSIPs have a total of nine positions, but the last position is a so-called check digit used to verify that there are eight characters do not contain a typo. So, for any given issuer, only the seventh and eighth positions can be used to uniquely identify a given bond. Since those positions can be filled with either letters or numbers, there is a theoretical maximum of 36*36=1296 CUSIPs per issuer . Since municipal bond issues often contain a dozen or more serial bonds and since CUSIPs are not reused after maturity, bigger issuers can easily exceed this limit.

Continue reading.

By Mark Campbell

BY SOURCEMEDIA | MUNICIPAL | 11/13/19 12:25 PM EST

New Jersey Edges Toward First Public Bank to Bypass Commercial Lenders.

- **North Dakota is only U.S. state to own bank; it opened in 1919**
- **State-run bank would be 'a force for good,' Murphy says**

New Jersey Governor Phil Murphy took a first step toward the potential creation of a state bank that would encourage some loan seekers to bypass commercial lenders.

Murphy, a retired Goldman Sachs Group Inc. senior director, signed an executive order on Wednesday creating a panel to study how to establish the bank, as he had promised prior to taking office in January 2018. A report is due in 12 months.

"I still believe in the ability of a public bank, owned by the people of New Jersey, to be a force for good," Murphy, a first-term Democrat, told an audience Wednesday in Newark.

Such an institution would keep cash in state, Murphy said. Loans likely would be at rates lower than those from commercial banks, contributing to economic growth, he said.

North Dakota is the only U.S. state that permits such an institution, whose risk is shouldered by taxpayers. California Governor Gavin Newsom last month signed legislation allowing counties and municipalities to form public banks.

"We want to work with community banks," Murphy said. "But it turns out a lot of those dollars go to money-center banks, including non-U.S.-headquartered banks."

Bloomberg Politics

By Elise Young

November 13, 2019, 9:51 AM PST

MSRB Proposes Enhancements to EMMA Website.

The MSRB proposed amending the organization's Electronic Municipal Market Access ("EMMA") system to more prominently display certain financial disclosures and related information.

Under the proposal, the Security Details pages of EMMA would provide, among other things:

- a link to annual financial information disclosures and/or the most recent fiscal period's audited financial statement;
- a calculation of the number of days between when the first disclosure was posted for the fiscal period and the financial period's end date for the same disclosure.

In an FAQ, the MSRB also provided information on how the information as to the timing of disclosure will be presented.

Cadwalader Wickersham & Taft LLP

Proposed Changes to Wisconsin Tax Incremental Financing Laws Could Harm Extra Collateral to Development Loans.

When lenders finance commercial real estate development in Wisconsin, part of the total financing "stack" is often TIF, or Tax Incremental Financing. In essence, TIF is financing provided by the local municipality to help facilitate the project's completion, in return for the local municipality receiving future tax revenues from the new development, after the initial investment is paid back.

TIF grants are often required to bring the property up to the point of being developable, including extending water and sewer lines to the property, expanding roadways and intersections, and resolving contamination or drainage issues. While extending utilities or improving roadways should be the municipality's job, at its expense, municipalities just do not have the tools to do this work, especially with levy limits in place and very little federal or state infrastructure funding.

TIF financing has been the workhorse for economic development for years, and is used by cities, villages and towns all over the State, large and small. The State of Wisconsin Department of Revenue TIF page provides detailed, up-to-date information on each TIF in a clear and transparent way.

One of the major benefits of TIF law is it allows local municipalities to determine exactly what is needed for their community, including how to tailor the TIF plan, and any development agreement with a developer to the facts of the specific project at hand: as well as phasing parts of the project; determining what preconditions the developer must meet before it receives any TIF money; and allowing the developer to assign the stream of money payments to a lender as extra collateral for a construction loan.

Over the last several years, a small group of lawmakers in the State Legislature has introduced bills to severely limit the use of TIF. In the last few weeks, another effort began to severely limit TIF in a number of ways.

If you are a bank that lends on new development, you ought to be aware that lending regulations will only permit you to lend a percentage of the total project costs, and the TIF financing is used to fill the "gap" in funding to pay for many of these municipal and infrastructure improvements. If TIF is not available to fill this gap, current regulations may not allow you to lend sufficient funds to make the project happen.

Several trade groups in the real estate field are working to educate legislators on the risks to development and to Wisconsin's ability to be competitive with surrounding states, as well as the benefits of keeping TIF as a necessary tool.

November 11 2019

Michael Best & Friedrich LLP – Nancy Leary Haggerty

New Report Shows Some States Are In Terrible Financial Shape.

By Jose Nino, includes "… The bottom three states — Connecticut, Illinois, and New Jersey — have the highest debt burden per taxpayer. … These states are also known for having forced unionization, sub-optimal tax policies, bad environments for starting a business, and their lack of affordable housing options thanks to heavy land-use restrictions. None of these are policy coincidences. …"

Read the full article on: Advocates for Self-Government

Jose Nino | November 14, 2019

Learnings from the Private Sector for Local Government Operations.

The concept of public private partnership is nothing new and you will often see a strong presence of private companies in local, state and federal government operations – including IT, public finance consulting, wealth management, HR and many other areas where public finance relies heavily on the industry experts from the private sector.

These partnerships are often formed either because there isn't enough in-house knowledge/expertise to take on the project or simply because the private sector has already completed similar projects for other jurisdictions and has the experience to complete the work. For example, let's assume that a local government is looking to raise capital to build a public library. Many of the local and state government will hire the right private sector partners to see the project to fruition, from the municipal advisor to the bond counsel to the fixed income underwriters.

It's quite evident that, given the business potential, there are many private companies that are rapidly changing their business models to include and go after local government business pretty aggressively. However, you may also hear the term "red tape" often used when describing the local government operations, or government operations in general, which simply means "excessive bureaucracy or adherence to rule and formalities".

In this article, we will take a closer look both at private sector involvement in local government operations and learnings for local governments from the private sector.

Continue reading.

municipalbonds.com

by Jayden Sangha

Nov 13, 2019

TAX . - GEORGIA

B.C. Grand, LLC v. FIG, LLC

Court of Appeals of Georgia - October 29, 2019 - S.E.2d - 2019 WL 5558651

Property owner filed action against purchasers of tax executions for delinquent ad valorem taxes on property, asserting claims for negligence, unjust enrichment, conversion, and conspiracy, alleging that purchasers bought tax executions on property to collect higher interest amounts and penalties than were due because executions were based on initial tax assessments that were later reduced.

The trial court granted purchasers' motions to dismiss for failure to state claim. Property owner appealed.

The Court of Appeals held that:

- Tax executions were validly issued, and
- Property owner failed to establish that purchasers were not authorized to levy executions and demand payment.

Tax executions for delinquent ad valorem taxes on property were validly issued by County Tax Commissioner, where property owner failed to pay taxes after 30-day notice period while pursuing appeal of assessment and awaiting refund.

Property owner failed to establish that purchasers of validly issued tax executions for delinquent ad valorem taxes were not authorized to levy executions and demand payment, in property owner's action against purchasers, asserting negligence and other claims; property owner failed to allege that County Tax Commissioner cancelled tax executions, or that tax executions were void as a matter of law based on post-issuance reduction in tax assessment.

CDFA // BNY Mellon Development Finance Webcast Series: Sourcing Local Capital for Community Projects

Tuesday. December 17, 2019 . | . 1:00 PM Eastern

Click here to learn more and to register.

Moore: Michigan Cities Not Ready to Endure Another Long-Lasting Recession

Are Michigan's cities ready for the next recession? Simply put, no. For several years now the Michigan Municipal League, through our SaveMICity initiative has been sounding the alarm that we need to take steps to fix our municipal finance system.

It is an obsolete and dysfunctional system that doesn't track with the economy, and we need to take some major strides soon to build a system that works before the next recession hits.

Historically Michigan is the first in and the last out of a recession, but what we never experienced before was the apocalyptic declines that occurred during the last recession. It exposed the flaws in our system in a deep and painful way, and we have done nothing to correct it.

The fact is that Michigan was already hurting from the effects of a national downturn before the last recession. Median household income in the Great Lakes State was at its highest point in 1999, where the average household was earning approximately $67,000 per year.

Michigan's median household income has never truly recovered — in 2018, median household income in Michigan is still only $57,000 per year — and shows no signs of returning to its previous high in 1999.

Like it or not, an economic recession in Michigan is inevitable. The short and long-term effects damage our communities, and by extension negatively impact our residents and business.

Attraction and retention is ever more difficult if communities aren't thriving. Michigan's leaders need to cut through the partisan gridlock and realize that our cities are not prepared to endure another long-lasting recession.

Our lack of preparation could be a fatal mistake for our state's economy. We need to be focused on real solutions to solve the financial stresses facing our own backyards.

Our challenges are many, but not insurmountable. We believe Michigan and its economy can only be as strong as its communities. It is the very foundation of everything from schools to neighborhoods, storefronts to offices. They all need a strong and vibrant community to thrive.

We must act now to position ourselves differently. Not just for the next recession but for generations to come. Our current system cannot do that.

Aging infrastructure and skyrocketing growth in legacy costs, such as health and retirement benefits for current employees and retirees, constrain a community's ability to invest in critical services that are important to current and prospective residents.

We should change existing laws to discourage wasteful duplication of infrastructure and services and equip local governments with tools to modernize the delivery of legacy benefits.

The state must reverse nearly two decades of disinvestment in our communities and begin restoring revenue sharing. The $8.6 billion diverted to state programs and away from local services is a bad investment.

Additionally, Michigan places far too many restrictions on local municipalities' revenue-generating options. These rules significantly limit a community's ability to invest in itself.

We should provide more options for communities to fund critical services, including additional special assessment authority, expansion of local taxing authority and grants for public safety.

Property taxes are the largest source of revenue for local government services, but Michigan's current system doesn't allow for property taxes to rebound after a recession.

We need lawmakers to decouple Proposal A and Headlee to allow local governments to grow with the economy when times are good. These laws are antiquated and are our single biggest vulnerability in a recession.

More importantly, they no longer work or deliver value to cities, townships and counties across Michigan and are an impediment to a strong Michigan.

We're encouraging leaders across Michigan to take action, such as the possible solutions mentioned above to ensure that a future impending recession doesn't have a catastrophic impact.

It is a problem we can solve, but only if we come together and are willing to admit the status quo is our enemy and we begin to invest in a better future for Michigan.

Crain's Detroit Business

by Brenda F. Moore

November 17, 2019

Brenda F. Moore is president of the Michigan Municipal League Board of Trustees and mayor pro tem for the City of Saginaw.

WEBINAR – Are State and Local Governments Prepared for the Next Recession?

Wednesday, Jan 29, 2020 . | 2:00 PM – 3:30 PM EST

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The Brookings Institution

Clinton Township Found Liable in Religious Land Use and Institutionalized Persons Act Lawsuit.

The Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") is a federal law which establishes certain land use protections for religious organizations in connection with land use decisions—such as decisions related to permitting under ordinances—made at the local government level.

On July 24, 2019, the United States District Court for the Eastern District of Michigan granted summary judgment to a religious organization, River of Life Ministries ("River of Life"), in a RLUIPA lawsuit brought by River of Life against Clinton Township.

Background of the Case

In 2001, River of Life's pastor acquired property located in Clinton Township. The property is located within a "Multiple-Family Low Rise District" zone pursuant to Clinton Township's Code of Ordinances that governs the use and development of real property located within the township.

The zoning district at issue is intended to promote the development of multiple-family dwelling structures. However, the court found that other uses in the district—outside of “Multiple-Family Low Rise District”—are permitted by Clinton Township as a matter of right, without the need to obtain a special land use permit.

In the court’s order granting River of Life’s motion for summary judgment, it explained that publicly-owned libraries and parks, municipal buildings, and swim clubs, among other things, are allowed to locate and operate within the district as a matter of right. Houses of worship, however, must acquire a special land use permit.

In 2014, River of Life applied for a special land use permit from Clinton Township. In June of 2015, the township board denied the permit request.

In July of 2015, River of Life brought suit alleging, among other claims, that Clinton Township’s zoning ordinance violates the “Equal Terms” provision of RLUIPA because, by requiring houses of worship such as River of Life to obtain a special land use permit, it treats religious uses of property on less equal terms than other, non-religious uses.

The Court’s Decision

On July 24, 2019, the court entered an order granting summary judgment on River of Life’s RLUIPA claim, finding that the Clinton Township zoning ordinance treats churches less favorably than others who are entitled to operate schools, libraries, swim clubs, and other non-religious organizations as a matter of right within the district.

The court held that the Clinton Township zoning ordinance “fails to treat religious uses on equal terms with comparable nonreligious uses.” It is important for municipalities to consider whether their land use ordinances and practices may give rise to lawsuits under RLUIPA because a judgment can result in significant liability, including a prevailing plaintiff’s legal fees. With proper planning and preparation, however, municipalities can avoid, and, if necessary, defend against these claims.

November 14 2019

Foster Swift Collins & Smith PC – Laura J. Genovich

Building a Data-Driven Future: Digital Cities 2019 Revealed.

The winners of this year’s Digital Cities Survey from the Center for Digital Government are those making smart investments in technologies from infrastructure and citizen engagement to data storage and cybersecurity.

This past year could be dubbed “the year of the refresh” for the winners of the 2019 Digital Cities Survey, presented by the Center for Digital Government.*

The IT leaders and elected officials of these top cities have braced themselves for the next decade by leveraging vendor solutions, identifying infrastructure upgrades and making government-wide changes to philosophy. Many of these initiatives were implemented during the past year, but other winners have thrived on existing foundations in IT operations.

None of these winning cities wants to be hindered by hindsight, and they share the belief that the user, whether it be a city resident, business owner or passing tourist, should be the guiding factor in the deployment of new or emerging technologies.

Continue reading.

GOVERNING.COM

BY PATRICK GROVES, GOVERNMENT TECHNOLOGY | NOVEMBER 16, 2019 AT 3:01 AM

Washington, D.C. Joins Muni Selling Spree With Record Bond Deal.

- **City is selling about $1 billion of bonds on Wednesday**
- **Muni sales increase 20% this year as interest rates fall**

Washington, D.C., is planning its largest-ever bond sale on Wednesday, joining state and local governments that are inundating the market with debt to seize on interest rates that are holding near a more than half-century low.

The nation's capital plans to sell about $1 billion of bonds to refinance outstanding debt and pump some money into a community revitalization project. It comes amid a flood of activity from municipalities that's pushed the amount of bond sales this year to $338 billion, a 20% increase over the same period last year, according to data compiled by Bloomberg.

Washington's finances have benefited from the city's economic boom, marking a stark shift from the period when its chronic fiscal strains left it under the control of a federally appointed management board from 1995 to 2001. Its population has swelled by about 17% since 2010 and its median household income of about $78,000 a year is some $20,000 more than the broader U.S.

The improvement has been recognized by Wall Street. S&P Global Ratings grades the new tax-backed securities AAA. Moody's Investors Service rates the bonds at its second highest level, one step below the city overall.

The city is utilizing that standing to make changes to "an unusually strong set aside structure" in its bond contracts that has required the city to put cash in escrow to make interest and principal payments nearly a year before they are due, according to Moody's analyst Nicholas Samuels. With that change — which Moody's expects to occur by 2021 — the city will set aside funds just four months ahead of payments.

District of Columbia bonds trading in line with AAA benchmark
These changes could free $80 million or more for the city, said Bruno Fernandes, Washington's deputy chief financial officer and treasurer.

"We've been wanting to take advantage of our ratings," said Fernandes. "That's really why we took the time to modernize the agreement. There's been some drastic changes in terms of improvement of the district and improvement of the credit rating."

A $944.8 million chunk of the bond sale is tax-exempt and will be used to refinance some of the city's outstanding debt and pay for projects, according to documents released ahead of the offering. The remaining $60 million will be taxable, with some set aside to revamp public housing facilities and provide those communities with increased social services.

The district is selling the bonds in an environment of high demand from investors, who have dumped record amounts of cash into the municipal market as the cap on state and local property deductions leaves some investors looking for other ways to shelter their income. Municipal-bond mutual funds have seen an influx of $54.1 billion over a 44-week period this year, shattering a record set over a 64-week stretch between 2009 and 2010, according to Refinitiv Lipper.

The Washington bonds could be attractive for investors looking for security as the record-long economic expansion raises speculation about when the next recession will occur, said Karel Citroen, the head of municipal-bond research at Conning. Similar bonds offered by the district last traded at an average yield of 1.56%, four basis points below the top-rated benchmark, according to data compiled by Bloomberg.

There's a strong argument for looking at "high credit quality munis, especially at this part of the cycle when you want to put your money somewhere you're going to feel safe," Citroen said. "It's very good to look at what credits you believe are well positioned during the next downturn."

Bloomberg Markets

By Fola Akinnibi

November 12, 2019, 5:00 AM PST

This Tax-Free 5.1% Dividend Is Hiding In Plain Sight.

I'm going to show you my favorite (perfectly legal) way to pay *0%* tax on your dividend income.

To show you the big savings this could mean, let's look at two fictional investors who are nearing retirement: Jane and Janet.

We'll assume both are single, are earning $50,000 per year and live in a state with no income taxes. Now let's assume Janet has taken the so-called "right" path, as suggested by her financial advisor, while Jane has steered her own course. A quick look at both will show how that "right" path can create a hefty tax problem.

Let's say Janet put a million dollars in the Vanguard S&P 500 ETF (VOO) because she's been told that a low-cost index fund is best for retirement. VOO is giving her $14,100 in annual dividends as a result, but because Janet is still working, she'll have to give Uncle Sam $1,864 in taxes on her dividends for just one year—and that doesn't include tax she'll pay when she eventually sells her shares.

Over to Jane. Instead of following the herd and buying VOO, she's put her million in a lesser-known fund called the Nuveen Municipal High Income Opportunity Fund (NMZ), which pays a 5% dividend yield, giving her an income stream of $50,000 from her investment. Not only is her nest egg now *entirely* replacing her work income, but she's also getting *all* of it.

That's right. Of that $50,000 a year NMZ is giving Jane, zero is going to Uncle Sam. And it doesn't matter if she gets a promotion at work and makes more, or if NMZ starts paying her more (which it did for its shareholders at the start of the year; more on that later).

She will not have to pay *any* of her income from this fund to the tax man.

Of course, the more Janet gets paid, the more taxes she'll have to pay out. If her work pay rises 20%, for instance, the tax on her dividends will climb to $2,115 per year, meaning her tax burden has gone up by almost as much as her raise!

Municipal Bonds: Your Tax-Free Income Option

Municipal bonds, the investments NMZ holds, are popular because they're one of the few ways Americans can legally get paid without having to pay taxes. It's all thanks to a 1913 law exempting municipal bonds from federal income tax. Since then, investors have been using "muni" bonds to generate a high income stream—and keep all of it.

Dispelling the Biggest Muni Myth

How popular are muni bonds? Right now, the market is worth nearly $4 trillion in the US, which is about 13% of the size of the total stock market. Considering municipalities aren't in the business of making a profit, it's surprising that muni bonds are as big as they are.

While many muni bonds are gobbled up by wealthy investors looking to cut out the tax man, the middle class often ignores them. One reason why is fear: headlines about municipalities going bankrupt and leaving investors in the cold result in paranoia—and many bad investment decisions.

Here are the facts: according to Moody's, the total default rate of muni bonds since 1970 is 0.09%. In other words, for every 10,000 muni bonds issued, nine go into default. Put another way, you're 1,442 times more likely to get in a car crash than to hold a muni bond that defaults.

The Power of Diversification

Here's another crucial point: when a municipality defaults, it doesn't mean investors get nothing. In reality, municipalities will restructure their debts on new terms, which could mean a small loss for bondholders. But one way to limit this risk even further is to hold a fund like NMZ.

With $1.5 billion in assets, NMZ can diversify across many bonds (it currently holds 598 of them) to slash the risk of being exposed to a default.

This doesn't just make NMZ safer, it's also made the fund's returns impressive. Thanks to NMZ's unique market access and expertise, it's crushed a muni-bond index fund like the iShares National Muni Bond ETF (MUB).

It's rare to get superior returns *and* greater safety, but NMZ delivers both.

Finally, a Word on Rates

There's one last reason why Jane would be smart to buy NMZ: the Federal Reserve.

In 2019, the Fed cut interest rates three times, which has had two effects on muni bonds. The first is that they're more attractive to investors than before. From 2015 to the start of 2019, when the Fed was raising interest rates, muni bonds were struggling to make headway.

There are two reasons why munis stalled in this period: first, many investors thought they could get higher income streams elsewhere as rates rose. Second, and more important, bonds fall in value as interest rates go up, which meant the resale value of these bonds dropped with the Fed's aggressive rate-hike cycle.

Fortunately, the opposite is also true: lower rates mean muni bonds go *up*, which is why you see that huge hockey stick at the end of the chart above. It's also why NMZ raised its dividend earlier in 2019, and why it may raise it again. The Fed's aggressive rate cuts have been a blessing for munis this year, and with the central bank likely to continue lowering rates, that hockey stick will get bigger.

Forbes

by Michael Foster

Nov 12, 2019

Michael Foster is the Lead Research Analyst for Contrarian Outlook. For more great income ideas, click here for our latest report "Indestructible Income: 5 Bargain Funds with Safe 8.5% Dividends."

- FINRA Files for 4210 Effective Date Extension to March 2021.
- MSRB Proposes Changes to Content Outline for Muni Principal Exam.
- S&P Proposed Methodology For Rating U.S. Public Finance Rental Housing Bonds ***and*** S&P Request for Comment: Methodology For Rating U.S. Public Finance Rental Housing Bonds.
- S&P Credit Conditions: In The Mist Of Mixed Economic Signals, U.S. State And Local Credit Quality Remains Strong
- Are Taxable Advance Refundings Leaving Money On The Table?
- Fitch North American Project Finance: Lessons Learned
- *Long v. Development Authority of Fulton County* – Court of Appeals holds that hotel, office, and retail portions of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority were authorized under catchall provision of statute identifying projects that development authorities can finance.
- And finally, You Poor, Poor Bastard is brought to us this week by *City of Alpharetta v. Hamby*, in which Toby Hamby sued the city after he fell from atop an 18-foot retaining wall hidden in the woods, sustaining serious injuries. What was he doing in the woods, you ask? Dealing with a medical emergency. Would the court be good enough to gloss over or otherwise euphemize the medical issue in question. It would not. "Hamby was driving home when he experienced a sudden bout of colitis and soiled himself. He exited the highway at Mansell Road in Alpharetta looking for a place to clean up." We've all seen our share of pharmaceutical ads, but nothing could possibly be more effective than, "If you or a loved one have experienced a catastrophic fall with your pants down while covered in fecal matter, you might want to ask your doctor about *bunghola.*"

MUNICIPAL GOVERNANCE . - ALABAMA

Melton v. Bowie

Supreme Court of Alabama - October 25, 2019 - So.3d - 2019 WL 5485271

Mayor brought action against city council members, in their official capacities, for a declaration that city ordinance giving the council power to appoint the city's tax collector, chief of police, and chief of the fire department, which was an ordinance that the council passed over the mayor's veto, violated state statute on powers of municipal mayors, and mayor sought preliminary and permanent injunctions preventing the implementation of the ordinance.

The Circuit Court granted council members' motion to dismiss for failure to state a claim. Mayor appealed.

The Supreme Court held that ordinance did not violate statute on powers of municipal mayors.

City ordinance giving the council power to appoint the city's tax collector, chief of police, and chief of the fire department did not violate statute on powers of municipal mayors; statute provided that mayors had the power to appoint officers whose appointment was not otherwise provided for by law.

UTILITIES . - ARIZONA

Contreras Farms Limited LLC v. City of Phoenix

Court of Appeals of Arizona, Division 1 - October 29, 2019 - P.3d - 2019 WL 5556333

After city denied developer's request for an extraction appeal to challenged city's decision to require installation of a water main on property on which it planned to build a charter school, developer sought declaratory relief and damages.

The Superior Court granted city's motion for summary judgment. Developer appealed.

The Court of Appeals held that developer was not entitled to an extraction appeal.

Water main requirement in city ordinance was a legislative act that did not afford a city official or agency discretion to determine its nature or extent, and thus developer was not entitled to an extraction appeal of city's decision to require installation of a water main on property on which it planned to build a charter school; water main requirement in city ordinance was subject to only one interpretation, that an owner seeking to develop property was required install water mains along each street that bounds the proposed development.

ZONING & PLANNING - CONNECTICUT

Wozniak v. Town of Colchester

Appellate Court of Connecticut - October 29, 2019 - A.3d - 193 Conn.App. 842 - 2019 WL 5538240

Property owners brought action against town, seeking a writ of mandamus to compel town to file a Letter of Map Revision (LOMR) to the Federal Emergency Management Agency (FEMA) to correct alleged error on flood map, and alleging inverse condemnation, and negligence.

The Superior Court granted town's motion for summary judgment. Property owners appealed.

The Appellate Court held that:

- FEMA's pending field study of body of water did not render moot property owners' appeal;
- No physical change affecting flooding conditions had occurred on property owner's property;
- Determination by town that no practicable alternatives existed to revising boundaries was discretionary; and
- Property owners were permitted to file LOMR individually.

Federal Emergency Management Agency's (FEMA) pending field study of body of water did not render moot property owners' appeal of trial court's dismissal of property owners' action seeking mandamus to compel town to submit Letter of Map Revision (LOMR) application regarding body of water; order of mandamus had potential to provide more expeditious resolution of mapping issue than FEMA's pending field study, which had unknown terminal date.

No physical change affecting flooding conditions had occurred with respect to property owners' property, and thus town had no duty to initiate Letter of Map Revision (LOMR) application to Federal Emergency Management Agency (FEMA) on property owners' behalf for purported map inaccuracy relating to body of water.

Determination by town that no practicable alternatives existed to revising boundaries of previously adopted floodway was discretionary, and thus, town had no ministerial duty to file Letter of Map Revision (LOMR) to Federal Emergency Management Agency (FEMA) on behalf of property owners to correct alleged inaccuracy relating to body of water.

Property owners were permitted to file Letter of Map Revision (LOMR) to Federal Emergency Management Agency (FEMA) individually to correct alleged inaccuracy relating to body of water, and thus, precluded need for mandamus relief to compel town to file LOMR on property owners' behalf.

BOND VALIDATION . - GEORGIA

Long v. Development Authority of Fulton County

Court of Appeals of Georgia - October 30, 2019 - S.E.2d - 2019 WL 5588765

County district attorney filed petitions for the validation of three revenue bonds authorized for issuance by county development authority.

After granting motion to intervene and denying intervenor's motion for a continuance, the Superior Court entered final orders validating the bonds for all three portions of the project. Intervenor appealed.

The Court of Appeals consolidated appeals and held that:

- Petitions substantially complied with statutory requirement to set forth the purpose for which the bonds were to be issued;
- Hotel portion of project was properly evaluated under catchall provision of statute identifying projects that development authorities can finance, rather than under provision governing hotels constructed in connection with and adjacent to convention, sports, or trade show facilities;
- Office portion of project was properly evaluated under catchall provision of statute;
- Retail portion of project was properly evaluated under catchall provision of statute;
- Leasehold valuation methodology set out in memoranda of agreement between development authority, county board of assessors, and companies, was appropriate; and
- Trial court did not abuse its discretion in denying intervenor's motion for a continuance of bond validation hearing to allow for discovery.

Petitions for validation of three revenue bonds authorized for issuance by county development authority substantially complied with statutory requirement to set forth the purpose for which the bonds were to be issued; each of the petitions stated that the bond proceeds were to be used to acquire, construct, and equip land, improvements, and related building fixtures and building equipment in county, to be leased to specific company for use as a mixed-use commercial facility and an economic development project.

Hotel portion of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority was properly evaluated under catchall provision of statute identifying projects that development authorities can finance, rather than under provision governing hotels constructed in connection with and adjacent to convention, sports, or trade show facilities; there was no evidence of a meeting room or any other convention facility being constructed with and adjacent to proposed hotel, but rather, adjacent space at issue was an outdoor area that would be free and open to the public, that would serve as a gathering space for the community, that could be rented for events in the evening, and that would help generate traffic at the mall.

Trial court properly evaluated office portion of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority under catchall provision of statute identifying projects that development authorities can finance; although there existed another provision specific to office projects, catchall provision also expressly authorized office projects, construing both provisions together, development authority had the power to proceed with an office project under either provision, and development authority expressly determined that it was proceeding under catchall provision, that project would be for the public good and general welfare of the county and state, and that project would be in furtherance of the public purposes.

Trial court properly evaluated retail portion of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority under catchall provision of statute identifying projects that development authorities can finance.

Leasehold valuation methodology set out in memoranda of agreement between county development authority, county board of assessors, and companies, was appropriate, for purposes of project for which attorney general filed petition for validation of revenue bond authorized for issuance by development authority; memoranda merely provided a formula utilized by the board for valuing the leasehold interests, and such methodology was not arbitrary or unreasonable.

IMMUNITY - GEORGIA

[City of Alpharetta v. Hamby]

Court of Appeals of Georgia - October 25, 2019 - S.E.2d - 2019 WL 5538086

Pedestrian, who fell over an 18-foot retaining wall and injured his right heel, left leg, shoulder, and back, brought a negligence action against city.

City filed a motion for summary judgment, which was denied, and the case went to trial. The trial court entered judgment on jury verdict awarding pedestrian $459,575. City appealed.

The Court of Appeals held that:

- City was immune from liability for its discretionary decision not to erect a barrier above retaining wall, and
- Pedestrian failed to establish that city’s failure to construct a barrier at the top of retaining wall constituted a defect.

Pedestrian failed to establish that city’s failure to construct a barrier at the top of retaining wall constituted a defect, as the term was used in statute imposing liability upon a city for defects in the public roads and municipal street system, in negligence action filed by pedestrian after he fell over an 18-foot retaining wall; there was no evidence showing the retaining wall was part of the physical road on which the general public traveled, and even assuming that the retaining wall was part of the physical condition of the road, expert testified that the structure of the retaining wall was sound.

Pedestrian failed to establish that the area where retaining wall was located was intended by city to be used by the general public such that city was required to keep it reasonably safe, in negligence action against city after pedestrian fell from 18-foot retaining wall; testimony showed that the retaining wall itself was not a sidewalk, expert admitted that there was no path along the side of the retaining wall for public use, and there was no evidence that the City intended for the area near the retaining wall to be used by the public.

IMMUNITY . - MISSISSIPPI

Reverie Boutique LLC v. City of Waynesboro, Mississippi

Court of Appeals of Mississippi - October 29, 2019 - So.3d - 2019 WL 5566059

Clothing store brought negligence action against city arising from damage caused by flooding sewage system.

The Circuit Court granted city's motion for summary judgment. Clothing store appealed.

The Court of Appeals held that city was not immune under Mississippi Tort Claims Act from clothing store's negligence action.

City was not immune under Mississippi Tort Claims Act from clothing store's negligence action arising from damage caused by flooding sewage system, despite fact that creation of sewage system was within city's discretion, where claim was based on allegation of a simple act of negligence, not a consideration of public policy.

ZONING & PLANNING - OHIO

Shelly Materials, Inc. v. City of Streetsboro Planning and Zoning Commission

Supreme Court of Ohio - November 5, 2019 - N.E.3d - 2019 WL 5699511 - 2019 -Ohio- 4499

Mineral lessee sought review of city zoning and planning commission's denial of its application for a conditional use permit for surface mining of sand and gravel in a rural-residential district.

The Court of Common Pleas reversed. Commission appealed. The Court of Appeals reversed. Lessee appealed.

The Supreme Court held that Court of Appeals exceeded the scope of its review by addressing the credibility of lessee's expert appraiser.

Court of Appeals exceeded the scope of its review in zoning appeal involving a dispute about grant of a conditional use permit for surface mining of sand and gravel in a rural-residential district, where Court of Appeals reversed common pleas court's judgment on the basis that city zoning and planning commission had a justifiable reason to reject the opinion of applicant's expert appraiser; this was a question concerning the weight of the evidence to be given to an expert's opinion, and Court of Appeals had no authority to second-guess the decision of common pleas court on questions going to the weight of the evidence supporting the commission's findings.

America's Housing Crunch Is So Bad It May Hurt City Bond Ratings.

- **Moody's foresees long-term impact if problem keeps worsening**
- **San Francisco approves $600 million bond for affordable homes**

Not only is the shortage of affordable housing and the number of homeless on America's streets a social and public policy crisis, it's increasingly becoming a risk for municipal-bond buyers as residents of high-cost cities struggle to make ends meet.

Home prices are up 33% nationwide over the past five years and the homeless population increased in Los Angeles, New York City and the Seattle metro area between 2014 and 2018, according to a report from Moody's Investors Service. Failure to deal with these changes puts local governments's bond ratings at risk as residents move to cheaper jurisdictions, spend less and use more social services.

It's an issue that has a growing importance for investors in the $3.8 trillion municipal-bond market, especially those with long-term horizons like life-insurance companies. That's because bad economic development policies and housing stresses can factor into decisions to buy a bond or not, said James Lyman, director of research for the municipal fixed-income team at Neuberger Berman.

"This has been evolving more quickly as a credit factor in recent times," Lyman said. "It really depends on the type of client, the duration of the bond you're buying and the speed at which the problem is evolving."

The rising cost of living in America's major cities isn't posing much of an immediate risk for investors, with governments including San Francisco, Los Angeles County and New York City all winning bond-rating upgrades as the rising values increase property tax revenues that are one of their biggest sources of cash. But widening inequality could pose a challenge if it continues to run its course over the next decade, particularly in places like California where housing already eats up a large share of residents' incomes.

Related: America's Worst Housing Market Is Desperate to Find More Supply

The growing problem has pushed municipalities to try addressing these issues. San Francisco residents Tuesday approved selling $600 million of bonds to pay for public housing rehabilitation and the purchase of new affordable housing units, according to preliminary results, seeking to address the city's increasingly visible homelessness epidemic.

University campus housing expansion and hospital housing for the homeless have also emerged as options to stem the housing issues, according to Moody's.

Bloomberg Markets

By Fola Akinnibi

November 6, 2019, 10:35 AM PST

Muni Bonds Contain New Fine Print: Beware of Climate Change

The underwriters of municipal bonds are disclosing more about cities' exposure to higher temperatures and rising seas.

Investment banks have begun quietly sounding alarm bells about climate change. Their worries are showing up in the documents that accompany municipal bonds they underwrite.

When state and local governments issue debt, federal securities laws hold their bankers accountable for making sure that states and cities adequately disclose the risks bond buyers are taking on. These might include any lawsuits a town is facing, or how the sales taxes used to pay back bondholders could fluctuate in a recession. Now many of these documents include language about climate change, hurricane risks, and rising seas. "Every bank should be asking their clients about this risk," says Christopher Hamel, a senior fellow at Municipal Market Analytics and former head of municipal finance at RBC Capital Markets.

Bloomberg News analyzed more than a dozen due diligence questionnaires prepared by banks or legal counsels and sent to governments in coastal Florida, and over 40 official statements for prospective bond investors. About half of the questionnaires and the majority of the statements included language on storm-related risks or climate change. The questions about climate risk sometimes come from the banks or their lawyers, and sometimes from disclosure counsels who are hired by cities to prepare for a bond deal.

During the preparations for Jacksonville's sale of $197 million in bonds in August, a disclosure counsel asked if the city had long term plans to implement projects that increased resilience against storm related risks. Questions like that are new, says Randall Barnes, the treasurer of Jacksonville, Florida's largest city. "We had been asked about impacts of hurricanes before, but not specifically on what we are doing for the future," he says.

Scientists predict that global warming and rising seas could lead to more intense storms such as Hurricane Maria, which devastated Puerto Rico in 2017. Tidal flooding—already happening in Miami Beach and other cities—could force residents to move inland. BlackRock Inc. says that within a decade, more than 15% of debt in the S&P National Municipal Bond Index will come from regions that could suffer average annualized losses from climate change of as much as 0.5% to 1% of their gross domestic product.

The questions asked by the banks or legal counsels in the documents Bloomberg reviewed varied in specificity. For example, before JPMorgan brought $162 million in bonds to market for Miami Beach, one of its counsels asked the officials to answer three questions that directly address climate change and its effects on the city's financial health. The Florida Keys Aqueduct Authority was asked by Citigroup to explain the impact of Hurricane Irma on the utility system. Michael Carlson, JPMorgan's head of public finance infrastructure, says that the climate discussion is "very much a part of our due diligence," and he's seen an "exponential increase" in disclosures in recent months.

Thomas McLoughlin, head of munis at UBS Financial Services, says the turning point in awareness came when Superstorm Sandy hit the New York area in 2012. As the storm forced the Hudson River into the streets and subways of lower Manhattan, Wall Street financiers saw first-hand the damage those types of events could do to cities' infrastructures, most of which are financed by muni bonds. McLoughlin says concern was elevated in the last two years as fires ravaged California and hurricanes slammed the East Coast.

Climate risk isn't necessarily showing up in muni bond pricing yet—communities that that are more susceptible to these hazards do not seem to pay any penalty in the form of higher yields. Even so, some investors say many bond issuers still aren't disclosing enough. "Climate disclosure has to increase," says Daniel Rabasco, head of municipal bonds at Mellon Investments Corp. "There is a broad trend to do it, but more needs to be done." Most official statements analyzed show a paragraph or two, mentioning that climate change is an investment consideration. Tom Doe, president of Municipal Market Analytics, says these are usually "enough to satisfy investors today," but he thinks bond buyers will be demanding more within the next five years. "Vague presentations of adaptation strategies and cursory actions taken will not suffice," he says.

Florida's director of bond finance is trying to get ahead of that shift. Ben Watkins says he's talking with investors to get an understanding of what kind of climate-risk information they want. "What we have now is just the start," he says. "We have more work to do about that."

Bloomberg BusinessWeek

By Danielle Moran

November 5, 2019

Investing In Senior Housing Muni Bonds Amid Demographic Change.

Summary

- Continuing care retirement communities (CCRC) fall within a broader category of municipal bonds called private activity bonds (PABs).
- The overall size of the CCRC market is still relatively small ($5 billion of issuance in 2018), but it's doubled in size over the past decade.
- With a potential yield advantage over AAA munis, CCRC issues can offer attractive tax-exempt income in a well-diversified portfolio.

This credit sector can offer attractive opportunities, but investors shouldn't be drawn in by high yield alone.

Continuing care retirement communities (CCRC) and senior housing facilities have historically been a sought-after category by institutional investors, who are often attracted to this credit sector because of its higher yield. Yield aside, investing in the senior living sector is supported by positive demographic fundamentals that should expand opportunities in this sector.

Continue reading.

Columbia Threadneedle Investments

By Catherine Stienstra, Head of Municipal Investments; Douglas Rangel, CFA, Vice President, Fixed Income Client Portfolio Manager

Nov. 8, 2019

S&P Criteria | Governments | Request for Comment: Methodology For Rating U.S. Public Finance Rental Housing Bonds

Read the S&P Request for Comment.

S&P Proposed Methodology For Rating U.S. Public Finance Rental Housing Bonds.

CENTENNIAL (S&P Global Ratings) Nov. 4, 2019–S&P Global Ratings is requesting comments on its proposed update to its methodology for rating rental housing bonds in the U.S. (see "Methodology For Rating U.S. Public Finance Rental Housing Bonds").

This proposed methodology, if adopted, would apply to ratings on bonds backed by rental income from residential properties that serve a public purpose. In particular, the proposed methodology would apply to bonds backed by revenues from:

- Affordable multifamily housing (including mobile home parks);
- Age-restricted independent or assisted-living rental housing;
- Privatized military housing;
- Privatized student housing affiliated with a university, college, or community college; and
- Pools of loans secured by affordable multifamily housing.

The primary purpose of the proposed methodology update is to recalibrate our rating analysis, following observed volatility and sharp deterioration in creditworthiness within subsectors of the issues in scope.

S&P Global Ratings is seeking responses to the following questions, in addition to any other general comments on the proposed criteria:

- What is your view of the overall structure of the proposed methodology and clarity of its scope (type of entities rated with the proposed methodology)?
- In your opinion, does the proposed methodology contain any significant redundancies or omissions?
- Are our proposed criteria principles and adjustments comprehensive and clearly defined?
- Do you believe that the proposed methodology appropriately captures credit risks and do you agree with the manner in which we propose to assess these risks (selection of key factors, their weighting, associated ratios and measures to assess these risks, associated caps)? If not, what alternative(s) would you propose?
- Do you agree with our proposal to focus on borrower default risk rather than property liquidation value, and therefore to use DSC as the key quantitative metric of our coverage and liquidity reserves analysis rather than loan-to-value?
- Do you agree with our proposal to apply a negative adjustment to the rating for transactions with multiple tranches of varied seniority that include a "springing-lien" provision, which results in a pro rata distribution of recovery proceeds following a default of the most senior tranche (see Table 1, and the proposed guidance document in Appendix B)?
- Are there any other views regarding this methodology proposal that you would like to bring to our attention?

We encourage interested market participants to submit their written comments on the proposed criteria by Dec. 18, 2019, to http://www.standardandpoors.com/en_US/web/guest/ratings/rfc where participants must choose from the list of available Requests for Comment links to launch the upload process (you may need to log in or register first). We will review and take such comments into consideration before publishing our definitive criteria once the comment period is over. S&P Global Ratings, in concurrence with regulatory standards, will receive and post comments made during the comment period to www.standardandpoors.com/en_US/web/guest/ratings/ratings-criteria/-/articles/criteria/requests-for-comment/filter/all#rfc.

Comments may also be sent to CriteriaComments@spglobal.com should participants encounter technical difficulties. All comments must be published but those providing comments may choose to have their remarks published anonymously or they may identify themselves. Generally, we publish comments in their entirety, except when the full text, in our view, would be unsuitable for reasons of tone or substance.

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S&P Credit Conditions: In The Mist Of Mixed Economic Signals, U.S. State And Local Credit Quality Remains Strong

Table of Contents

Despite some indications of a weakening economy at the national level, state and local government credit quality has not shown any signs of broad deterioration. States continue to project revenue growth, and local revenues also appear to be on solid footing. Signs that we typically look for to indicate economic slowness, such as an increase in Medicaid enrollees or falling sales tax revenues, haven't materialized and therefore the end of 2019 looks to be on track for states and locals.

Even with cautious revenue projections, most states expect that fund balances will be maintained or grow in fiscal 2020, helping to project stability over the near term. Supported by this solid financial backdrop from states, local government credit quality remains stable with limited signs that state governments intend to cut aid or otherwise negatively impact local government operations. Overall we expect most local governments will be able to weather the changes; however, a confluence of events such as a weakening economy and a cyber- or weather-incident would result in a different scenario.

Continue reading.
