Bond Case Briefs

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Muni-Bond Desks Stand to See Big Wins If Trump Loses.

- **Tax-the-rich plans of Democrats may boost muni-bond market**
- **Tax-exempt debt saw outsize gains early under Clinton, Obama**

Elizabeth Warren wants to tax those she calls ultra-millionaires. Bernie Sanders has targeted the top 0.1%. And Joe Biden is seeking to reverse President Donald Trump's tax cuts.

On the whole, Wall Street may not be very excited about the tax-the-rich push that's front and center in the Democrats' efforts to unseat Trump next year. But a $3.8 trillion corner of the bond market could reap big gains if one of them wins the White House.

That's because the value of tax-exempt state and local government debt tends to rise when taxes head higher as wealthy investors buy those bonds to hold down what they owe.

Continue reading.

Bloomberg Markets

By Amanda Albright

October 31, 2019, 6:30 AM PDT

Tax Relief for Replacing LIBOR in Tax-Exempt Debt and Swaps: Orrick

Many tax-exempt bonds and related hedges, such as interest rate swaps ("Exempt Instruments"), use a LIBOR-based interest rate. LIBOR is going away, and existing Exempt Instruments are going to have to be modified to replace the LIBOR index as a result. These changes can result in potentially serious tax consequences relating to a reissuance of the bonds or a deemed termination of the hedge, in addition to the business issues and document requirements that will arise.

On October 8, 2019, the IRS issued proposed regulations (the "Proposed Regulations") that propose broad relief from these tax consequences. The discussion below focuses on Exempt Instruments, but the Proposed Regulations address replacing any interbank offering rates (IBORs) in any debt instrument or non-debt contract. With some minor limitations, the Proposed Regulations can be applied to IBOR replacements before the final regulations are published.

Potential Tax Consequences of Replacing LIBOR

Prior to the publication of the Proposed Regulations, parties were hesitant to amend existing Exempt Instruments to replace LIBOR-based interest rates, because it was possible that the amendment might trigger a reissuance of tax-exempt bonds or a deemed termination of a related hedge, such as a swap.

If tax-exempt bonds are reissued, the tax treatment is as if the bonds are refunded by new bonds on the date of the reissuance. The new bonds must meet all the requirements for tax-exemption on the reissuance date or the new bonds are not tax-exempt. So long as the law has not changed and certain requirements are satisfied, a reissuance does not usually cause a loss of tax exemption, but that is not the case for other tax-advantaged bonds. For example, the authorization to issue build America bonds (BABs) has expired, and a reissuance of BABs would result in a loss of the subsidy payments to the issuer.

Likewise, if a swap is modified to replace LIBOR with a new index, the swap could cease to meet the requirements for a qualified hedge or could result in a deemed termination of the swap.

The Proposed Regulations provide safe harbors that allow parties to avoid these tax consequences.

In General

The Proposed Regulations provide that amending the terms of an Exempt Instrument to replace LIBOR with a "qualified rate" will not result in a reissuance of the debt instrument or a deemed termination of the hedging contract if the fair market value of the altered Exempt Instrument is substantially equal to the fair market value of the Exempt Instrument prior to being altered. Likewise, any alteration made in association with the replacement (an "associated alteration") will not trigger a reissuance or deemed termination if a fair market value test is satisfied.

In other words, the actual interest rate (and therefore the arbitrage yield) may change due to the substitution of the new index, but the bonds are still the same tax-exempt issue and the swap or cap is still a qualified hedge. This will be true regardless of whether the amendments are made through an amendment of the original instrument or by an exchange of a new instrument for the original instrument.

Qualified Rates

The following rates are considered "qualified rates"[1] under the general rule:

(i) The Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (SOFR);

(ii) Any qualified floating rate, as defined in §1.1275-5(b) (but without regard to the limitations on multiples), and

(iii) Any rate that is determined by reference to one of the rates listed above, including a rate determined by adding or subtracting a specified number of basis points to or from the rate or by multiplying the rate by a specified number.

This is a very broad definition of a qualified rate and, subject to the fair market value test, should accommodate almost all desired substitute rate.

Fair Market Value Test

In addition to using a qualified rate, the fair market value of the amended Exempt Instrument must be substantially equivalent to the fair market value before such amendment. The Proposed Regulations provide that the fair market value of an Exempt Instrument may be determined by any reasonable valuation method, as long as that reasonable valuation method is applied consistently and takes into account any one-time payment made in lieu of an adjustment to the index, such as adding basis points. Recognizing that fair market values tests often are difficult to implement, the

IRS provided two safe harbors for determining the fair market value.

First Fair Market Value Safe Harbor

Under the first safe harbor, the fair market value test is met if at the time of the alteration the historic average of the LIBOR rate on the Exempt Instrument is within 25 basis points of the historic average of the rate that replaces it. The parties may use any reasonable method to compute a historic average if

- the lookback period from which the historic data are drawn begins no earlier than 10 years before the alteration and ends no earlier than three months before the alteration,
- once a lookback period is established, the historic average must take into account every instance of the relevant rate published during that period, and
- the parties must use the same methodology and lookback period to compute the historic average for each of the rates to be compared.

Although this lookback test is relatively straight-forward, it too may be difficult to implement at times. For example, the Proposed Regulations are silent regarding the minimum length of the lookback period and the minimum number of data points that is acceptable, which raises the question if a lookback period designed to provide one data point would be sufficient. In addition, the Federal Reserve only began publishing SOFR in April 2018, and SOFR is calculated using data from overnight Treasury repo activity, whereas Exempt Instruments often use 30-day LIBOR.

On the other hand, the Proposed Regulations also provide that, for this purpose, an historic average may be determined by using an industry-wide standard, such as a method of determining an historic average recommended by the International Swaps and Derivatives Association (ISDA) for the purpose of computing the spread adjustment on a rate included as a fallback to an IBOR-referencing rate on a derivative or a method of determining an historic average recommended by the Alternative Reference Rates Committee (ARRC) for the purpose of computing the spread adjustment for a rate that replaces an IBOR-referencing rate on a debt instrument. We understand that ISDA and ARRC are working on guidance to assist in determining these historic averages for SOFR.

Second Fair Market Value Safe Harbor

Under the second safe harbor, the fair market value test is met if the parties to the Exempt Instrument are not related, and the parties determine that the fair market value of the amended Exempt Instrument is substantially equivalent to the fair market value of the Exempt Instrument before the amendment. In determining the fair market value of an amended Exempt Instrument, the parties must take into account the value of any one-time payment made in lieu of a spread adjustment (described below). This safe harbor should be satisfied in almost any arms-length rate substitution, but counsel will require certifications to support any opinion. This safe harbor may be the only one that applies if there is a substantial one-time payment.

Associated Alterations

“Associated alterations” are alterations that are both associated with the replacement of the LIBOR-based rate and are reasonably necessary to adopt or implement that replacement. This is also a broad concept. One example of an associated alteration is the requirement for one party to make a one-time payment to the other in connection with the replacement of the LIBOR-based rate to offset the change in value that occurs as a result of the replacement.

Importantly, the Proposed Regulations provide that any such payments have the tax character of the

associated instrument. For example such a payment by an issuer to a holder of a tax-exempt bond should be tax-exempt interest. Likewise, a payment from a bondholder to an issuer should be considered additional bond proceeds. It is unlikely that any payments made as a result of associated alterations would be able to be financed on a tax-exempt basis.

Multiple Alterations or Modifications

The Proposed Regulations provide that when alterations or modifications go beyond replacing an IBOR rate and making qualified associated alterations, the excessive portion of the alteration is tested under the normal reissuance rules. The portion of the alteration that is a qualified associated alteration is treated as part of the existing terms of the instrument when the reissuance test is applied. As a result, the qualified associated alteration becomes part of the baseline against which the excess portion of the alteration or modification is tested.

The Proposed Regulations do not address the simultaneous alteration of multiple instruments between the same parties. In such situations, parties may be inclined to maximize a payment made with respect to an Exempt Instrument and to minimize a payment made with respect to other instruments. These circumstances will require careful consideration to make sure that the simultaneous alterations do not result in problems that undermine the tax relief provided by the Proposed Regulations.

Proposed Effective Dates

The IRS has proposed that generally the final regulations ultimately adopted would apply to an alteration of the terms of an Exempt Instrument that occurs on or after the date of publication of the final regulations in the Federal Register. However, a taxpayer may choose to apply certain portions of the Proposed Regulations to alterations that occur before that date, provided that the taxpayer and its related parties consistently apply the Proposed Regulations.

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[1] Note that a rate is not a qualified rate if it is in a different currency than the rate being replaced or if the rate is not reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the same currency. This should not matter much for Exempt Instruments, because all such instruments should be US dollar-based. Accordingly, this alert does not discuss qualified rates in other currencies.

Orrick Public Finance Alert | October.28.2019

NASACT: Treasury/IRS Seek Comment on Potential Tax Consequences of LIBOR Transition

In the summer of 2017, the United Kingdom Financial Conduct Authority announced that all currency and term variants of the London Interbank Offered Rate (LIBOR), including U.S.-dollar LIBOR (USD LIBOR), may be phased out after the end of 2021. LIBOR is used globally as a "benchmark" or "reference rate" for various commercial and financial contracts, including floating rate mortgages, corporate and municipal bonds, asset-backed securities, consumer loans, swaps and other derivatives.

As a result of this announcement, several work groups were formed to recommend an alternative

rate to LIBOR. In the U.S., the Alternative Reference Rates Committee (ARRC) was formed and identified the Secured Overnight Financing Rate (SOFR) as the alternative rate for USD LIBOR. SOFR is a broad measure of the cost of borrowing cash overnight and collateralized by Treasury securities.

Earlier this year, the ARRC submitted to the Treasury Department and the Internal Revenue Service documents identifying various potential tax issues associated with the elimination of Interbank Offered Rates (IBOR). ARRC further requested that tax guidance be issued to address potential tax consequences so that an orderly transition may occur. The ARRC stated that existing debt instruments and derivatives providing for IBOR-based payments must be amended to address the transition.

The Treasury Department and the IRS have issued guidance to minimize potential market disruption and to facilitate an orderly transition. Specifically, the guidance would address concerns about whether the replacement rate in a debt instrument or non-debt contract would result in a taxable exchange of the debt instrument or contract.

Generally, the proposed regulations provide that alteration of the terms of existing financial instruments that switch from LIBOR to another alternative rate will not be treated as a modification resulting in the realization of income, deduction, gain, or loss for purposes of section 1001 of the Tax Code. However, the proposed regulations provide more fully the circumstances in which the modification could result in a taxable exchange.

The Treasury and IRS are specifically seeking comment on any complications under any section of the Code or existing regulations that may arise from the replacement of an IBOR with a qualified rate and that are not resolved in the proposed regulations.

NASACT members are urged to provide comments, which may be sent to Cornelia Chebinou no later than COB on Friday, November 15. Should enough comments be received, NASACT will prepare an association response. You may also comment directly to Treasury and IRS no later than November 25, 2019.

How to Form Your Own Opportunity Zone Fund.

How can you form your own Opportunity Zone fund? What are the most important considerations when structuring your entity, and what are some best practices for regulatory compliance? Opportunity Zones Podcast host Jimmy Atkinson and OZ Consultants CEO Ashley Tison have teamed up to create OZ Pros — Qualified Opportunity Fund and Qualified Opportunity Zone Business entity formation made easy. Click the play button below…

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Opportunity Db

October 29, 2019

How to Form Your Own Qualified Opportunity Zone Business (QOZB).

Are you considering starting your own Qualified Opportunity Zone Business or converting an existing business into a QOZB? Or perhaps you need a QOZB for your Qualified Opportunity Fund? In today's episode, we highlight some of the most important considerations when structuring your QOZB entity, and best practices for regulatory compliance. Opportunity Zones Podcast host Jimmy Atkinson and OZ Consultants CEO Ashley Tison have teamed…

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Opportunity Db

October 31, 2019

Deep in No-Tax Texas, Shale Hub Weighs $569 Million School Bond.

- **Midland's leaders back funding to upgrade outdated facilities**
- **Oil-company honchos worry about quality of tomorrow's workers**

The hall lockers at Midland High School — Go Bulldogs! — sport a fresh coat of red paint, but the rest of the place looks like its best years were last century.

Some passageways in the West Texas public school are too narrow for wheelchairs and a number of classrooms have just two electrical outlets. A few of the 48 students in an AP economics class are without desks while another sits in the teacher's chair. Across town, Midland Lee High School — Go Rebels! — isn't much better.

An overlooked consequence of the American energy revolution is the stretching of municipal resources in small cities like Midland. The Permian Basin hub of 142,000 residents hasn't kept pace with the influx of families flocking to the shale patch, and now civic leaders are fretting over the long-term costs of outdated schools. To remedy that, Midland voters will decide Tuesday whether to issue a $569 million bond to build two new high schools and freshen up the old ones.

Per-pupil spending in Texas, famously hostile to government expansion, was in the bottom fifth of all states in 2016, according to Governing, a public-finance site. Nationally, capital spending on schools slowed after the recession that ended in 2009 and never recovered. The money spent in the U.S. in 2016 was less than it was 10 years ago even as enrollment grew.

Texas has no income tax and property taxes are frozen for senior citizens. Midland, the former home of the Bush family, has voted overwhelmingly Republican for years.

But Midland's antiquated schools are seen as so troubling that the usually tax-averse Chamber of Commerce voted unanimously to support a "yes" vote, and oil-company honchos have publicly backed the bond issue. They say that a lagging educational system is already an issue in wooing talented hires to town and could produce subpar employees of the future.

Biggest Drawback

"We've allowed the conservative nature of our community to not fund the facility improvements that have been needed over time," Travis Stice, chief executive officer of Diamondback Energy Inc., a

Midland-based independent with a $14 billion market value, said in an interview.

“As an employer, that’s one of the single biggest drawbacks I have when it comes to bringing people from the outside,” said Stice, who, like his wife and three children, attended Midland Lee. “They always ask, ‘What the heck is going on with your schools out here?’”

Last week, Scott Sheffield, CEO of Irving, Texas-based Pioneer Natural Resources Co., also came out in favor.

“For Midland to attract the professional and skilled workforce needed to take advantage of this vast opportunity, new modern school facilities providing critical added capacity are required,” Sheffield wrote in an opinion piece for the Midland Reporter-Telegram.

Midland is accustomed to fluctuations in fortune. During boom times, restaurants struggle to retain workers who leave for better jobs in the oilfield, traffic mishaps soar as droves of drivers hit the highway with fracking supplies and rents can spike so high that the school district bought apartments just to keep prices from pushing out teachers.

Spigot Off

Busts have kept the city aware that another downturn could always be lurking. But even with shale production growth slowing, folks say that schools could finally use some money.

“When there was the bust in the 80s, the spigot was turned off,” Joe Rhone, a 56-year-old Midland resident, said outside an early-voting location where he supported the bond. “The schools are in really bad shape.”

Texas employs a so-called Robin Hood funding model for its public schools, allocating tax revenue from wealthy districts to poorer ones. Thanks to shale, Midland ranked seventh in the state last year in revenue and next school year is projected to almost double its payment to the state to $118 million.

If the bond passes, the city estimates a net property-tax impact of $5.29 a month for a $300,000 home. Midland’s median home price is $261,800, according to Zillow.

The bulk of the debt would be used to build two new high schools while renovating the current Midland Lee location. The new Midland High is slated to be built on the 117-acre Ranchland Hills Golf Club, which the school district bought this year for $9.5 million.

Safety Concerns

The current buildings pose safety concerns for students, said Midland High School Principal Leslie Sparacello. She counts more than 50 entryways — a nerve-wracking layout at a time when school shootings are a concern.

Sparacello, who goes by Dr. S, said she’s looking at one workaround by turning a second-floor hallway into an internal entrance to the library. The fire marshal signed off, but the hall is too narrow to comply with the Americans with Disabilities Act.

Not everyone thinks the bond is the best way to turn things around. Tim Bryson, a financial adviser for Merrill Lynch Wealth Management who lives in Midland, says it’s “irresponsible” to buy a golf course and then build a school on the land.

“There’s only eight people in town who think that’s a good idea,” he said.

Orlando Riddick, the school superintendent, said he doesn’t have a lot of options.

“I’m being just as shrewd a business operator as any of our other industry partners here in the city,” he said in an interview. “We kicked the can so far down the road. There are half a billion dollars of needs that we’ve left behind.”

Bloomberg Markets

By Rachel Adams-Heard

October 31, 2019, 4:00 AM PDT

The Grand Experiment: The State and Municipal Pension Fund Diversification into Alternative Assets

By Jeff Hooke and Ken Yook, includes “Over a nine-year period (2008–2016), state and municipal pension funds embarked on a grand experiment. They boosted their commitments to alternative assets, spending tens of billions of dollars per year on additional third-party money management fees. … We conclude that the states and municipalities obtained neither lower risk nor higher returns with the higher level of active management and diversification implied by alternative assets. The experiment is thus a failure.”

Read the full article on: Portfolio Management Research

Truth In Accounting

Jeff Hooke, Ken Yook | November 1, 2019

S&P State Brief: Kansas

Read the Brief.

Risky Business: As Some Major Contractors Pull Back from P3s, Others Embrace the Approach

Most public-private partnership contracts are for design-build, fixed-budget, fixed-schedule work that Skanska, Fluor and others say is just too risky to guarantee profit.

When President Donald Trump announced his campaign pledge to upgrade the country’s infrastructure, he endorsed public-private partnerships (P3s) as a way to help finance and build the $1 trillion worth of projects subject to his proposal.

He said he would leverage the power of P3s to turn $200 billion of public dollars into $1 trillion of

investment, refurbishing crumbling infrastructure without emptying public coffers.

But just a year later, he had soured on the idea, telling a group of legislators in 2017 that private financing of public infrastructure isn't likely to work and that P3s are "more trouble than they're worth."

Continue reading.

Construction Dive

by Jenn Goodman

Oct. 25, 2019

Pension Vise Tightens on Illinois Towns.

As Pritzker considers consolidating hundreds of funds around the state, local governments face an urgent problem: Police and fire pension costs are growing at a greater rate than property taxes. "It's a hornet's nest with a snake inside," says one expert.

In the heart of Illinois, the city of Peoria cut its workforce by almost one-fifth to pay its annual obligations for police and firefighter pensions. In northern Illinois, Waukegan is selling bonds to keep the city operating. In the east, Danville closed one of its four fire stations following mounting pension bills. And in Springfield—for the first time—the state capital is pouring every dollar it collects in property taxes into public safety pensions.

All across Illinois, in many of the small towns and larger cities that manage some 650 independent police and fire retirement systems, those funds have placed an increasingly tightening vise on municipal finances.

Much of the focus on the pension problem in Illinois has been on the massive liabilities facing the five statewide funds as well as Chicago's citywide pensions. But in many ways, the more pressing pension issues can be found in the towns in every corner of the state.

Continue reading.

CRAIN'S CHICAGO BUSINESS

by TIM JONES & JARED RUTECKI

October 30, 2019

S&P: Chicago Ratings Hinge On Its Ability To Achieve Structural Balance By 2022.

CHICAGO (S&P Global Ratings) Oct. 25, 2019–On Oct. 23, the mayor of Chicago (BBB+/Stable) detailed her proposal to close a projected historic $838 million budget gap, or approximately 21.8% of forecast revenue, for fiscal 2020. Her budget would rely on roughly $313 million in one-time

measures, leaving the city with a deep 7% structural imbalance before accounting for actuarial pension funding shortfalls. Looking beyond fiscal 2020, S&P Global Ratings notes that the mayor also stated in her budget speech that if the city secures revised legislation for a Chicago casino and a graduated real estate transfer tax, it will be on a path to structural balance, funding all four pension plans on an actuarial basis by 2022. Based on our understanding of estimates for these two revenue streams, we think that these sources, coupled with continued moderate savings measures or revenue growth, could feasibly address the next two outyear gaps. However, we believe that these revenues carry significant implementation risk, and while the mayor asserts that a property tax increase remains on the table as a contingency, it still would require council support.

In S&P Global Ratings' opinion, the significant use of one-time revenue to close the fiscal 2020 budget gap is a reasonable one-year approach to closing such a sizable gap, particularly at the current Chicago rating level, even if it does not represent best fiscal practices. The current proposal buys the city time to execute structural revenue enhancements and operational efficiencies that require a longer time frame to implement. The city's ongoing ability to demonstrate a credible path to structural balance, including fully funding its pension ramp by 2022, whether it be through garnering state support for new revenue streams or evidence of political willingness to execute such contingent measures as a property tax increase, will be critical to our rating analysis.

Proposed fiscal 2020 structural revenue and savings appear feasible despite implementation risks

The mayor's budget proposal includes a number of structural revenue increases. Highlights include $163 million from emergency medical transportation and ambulance services reimbursements; $47 million from congestion initiatives such as increases to certain rideshare fees and new parking meters; $37.2 million in increases to existing service and sales taxes, including $20 million from restaurants and $17 million from lease transaction; and an $18 million library property tax levy increase. The proposal also assumes $50 million from a graduated real estate transfer tax (RETT), which is predicated on simple-majority state legislative approval for a July 1, 2020, implementation date. Other revenues totaling $23.6 million include a modest $3.5 million in estimated cannabis tax receipts.

While we don't expect that the city council will "rubber stamp" the mayor's proposal, we think that the proposed revenues are more politically feasible than alternatives such as a large property tax increase. Also, the assumption that the RETT would get a simple majority approval for a July 1 implementation is more conservative than assuming the two-thirds majority required for the law to take effect earlier, on Jan. 1. Although less attractive, the city has the option to enact a graduated RETT for fiscal 2021 without needing state support. In our view, current revenue estimates appear reasonable based on historical performance and implementation time frames.

The budget also identifies $249 million in structural savings and efficiencies. Highlights include $148.7 million from zero-based budgeting changes, $141.0 million from improved fiscal management, $19.7 million from vacancy reductions and reallocations, $25.0 million from improved revenue collections, and $3.2 million from department mergers. Based on underlying details behind savings assumptions, we view the city's expectations as reasonable. Also, in our opinion, efforts to control expenditures not only demonstrate good management but could also prove politically beneficial as the mayor asks for support for new revenue sources.

Identified one-time measures do not impair the city's liquidity or liability profile

Proposed one-time measures include $200 million from general obligation and Sales Tax Securitization Corp. (STSC) debt refunding, $31.4 million from a tax-increment finance (TIF) surplus, $43 million of the proposed ground emergency medical transportation fee, and fund balance sweeps. While we do not look favorably on the use of one-shot sources to close the budget gap, these

measures do not materially impair the city's finances beyond prolonging structural imbalance into fiscal 2021.

The city has no plans to extend final maturity dates as part of the refunding structure, and the bonds would still have net present value savings, distinguishing this structure from past "scoop-and-toss" practices. We also expect that the city will preserve capacity within the STSC structure for future capital needs and understand that it maintains sufficient liquidity such that planned further securitization of sales taxes would not result in cash-flow pressures.

Notably, the city did not include certain measures that we have identified as potential contributors to downward rating pressure. We would view negatively any measure that would lower annual contributions into Chicago's pension systems. Particularly given the city's low funded ratios (weighted average of 23%) and the fact that it already must liquidate assets to make annual benefit payments, reductions to annual contributions would increase the likelihood of asset depletion, necessitating contribution spikes in the not-too-distant future. We also consider the city's substantial reserves and liquidity crucial to the current rating, and we would view the significant use of reserves to offset ongoing expenses–rather than for "rainy day" or one-time purposes, such as a temporary shortfall during a recession–negatively.

Lingering structural imbalance is daunting but not insurmountable for 2021 and beyond
We consider the proposed structural imbalance as sizable relative to the city's budget, but manageable relative to potential available revenue sources. The mayor's budget speech identified $100 million of ongoing annual graduated real estate transfer taxes, potential casino revenue, and a property tax increase as potential revenue measures. In addition to these sources, we expect that the city will benefit from a full year of cannabis revenues although receipts will likely remain small relative to the budget. It also could receive a share of a statewide graduated income tax if the amendment passes in November 2020. In addition, we understand that the city is looking to identify other expenditure reductions that could offset revenue needs and that some of the structural changes it has already taken will result in additional outyear savings, providing a better course for structural alignment.

Looking ahead to fiscal 2022, the city's projected budget gap actually decreases by $30 million, even when accounting for $250 million in increased municipal/laborer contributions for the pension ramp. Therefore, to the extent that Chicago structurally addresses the next two fiscal year gaps, it will have largely tackled the fiscal 2022 budget. Even should an economic slowdown or mild downturn occur, based on its past performance, diverse revenue streams, and limited pension plan invested assets, we don't expect that the city's budget gap will significantly widen over this period.

Potential revenue from a casino remains uncertain given that tax structure negotiations are ongoing. Casino revenue often misses forecasts and takes longer than expected to realize. That said, we understand that if the state were to authorize revised casino legislation, the city could benefit from temporary casino revenues as early as fiscal 2021, providing the same type of short-term boost seen in other municipalities that added casino gaming tax revenues.

In our view, a modest property tax increase still remains a viable part of the solution to closing Chicago's budget gap. We recognize that city residents have property tax fatigue and have voiced a preference for other revenue streams. However, Chicago's property tax rates still remain competitive with those of neighboring suburbs, and its costs of doing business and housing remain affordable relative to those of other large cities such as New York, Los Angeles, Denver, Washington, and Boston. If Chicago were to raise property taxes by $300 million, this would increase the average tax rate by 0.34% from its current average tax rate of 6.79%.

While the mayor discussed pension reform, it is our understanding that the city's current budget plan does not count on legislated pension savings and that the city remains committed to funding pensions according to the current statutory amortization schedule. To the extent that the city could either trim liabilities through benefit reductions or secure a dedicated revenue stream toward pensions, this would improve its budget sustainability and bode well for long-term credit stability. However, in our view, these measures may prove challenging to attain and may not occur within the 2022 time frame.

Chicago teacher strike could pose indirect risks to the budget plan

The mayor did not propose additional funding for Chicago Public Schools (CPS) in her budget address despite an ongoing teacher strike although we understand that the schools will receive approximately $66 million more than CPS budgeted of the city's declared TIF surplus in 2020. We note that this is a one-time revenue source. Although the mayor appoints the school board, city and school finances have largely remained separate. The city has historically provided CPS minimal financial support, and the current budget proposal is in line with past practices. However, given the shared tax base, education's causal effects on city demographic and economic trends, and potential consequences for the mayor's political capital, we consider the relationship between the city and CPS significant.

In our opinion, the Chicago Teacher's Union strike has more potential to reverse CPS' recent financial gains than hurt the city's budget in the near term. Given Chicago's history of limited financial support for CPS and challenged financial position, we do not expect it to provide significant, if any, additional funding for CPS. Higher-than-budgeted contract costs for CPS would not necessarily result in the board levying property tax hikes, especially since they are subject to property tax limitations and would need special authorization from the state for additional property taxes. Therefore, we are not assuming that the strike would measurably reduce the city's tax capacity. The mayor's budget proposal, however, relies on council approval, and the resolution of the strike could potentially undermine public and council member support.

Rating stability hinges on the demonstrated ability to execute any necessary contingency plans

The Illinois General Assembly's veto session begins Oct. 28, and the city will then know whether it has secured state support for both the RETT and new casino tax structure prior to a planned budget vote at the end of November. Given that the city is not relying on casino revenue in the 2020 budget, this provides more time to either consider legislation during a later session or detail a contingency plan for the next two budget years.

Our analysis of rating stability extends well beyond the next fiscal year. If the city fails to receive legislative approval for new revenue streams or if revenues fail to materialize as the city has projected, we will be looking to see if not only the mayor, but also the city council, has the willingness to execute any necessary contingency plans to structurally close the gap by the identified 2022 target, including full statutory pension contributions. As stated in our current outlook (please refer to our full analysis on Chicago, published on RatingsDirect on March 14, 2019) increasing evidence of political resistance to raising revenues or an inability to make expenditure cuts could result in downward rating pressure. The city's long-term fiscal health also depends on major structural changes, and even if it is able to balance its budget by fiscal 2022, we expect that its financial position will remain challenged.

This report does not constitute a rating action.

sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information that helps to support the growth of transparent, liquid debt markets worldwide.

Building Demand in US Water Quality Trading Markets.

IN BRIEF

- WATER QUALITY TRADING MARKETS ALLOW THE OPERATORS OF POINT SOURCES OF WATER POLLUTION — such as sewage treatment plants or factories — to offset that pollution by purchasing credits representing reductions elsewhere.
- BUT DESPITE THE PRESENCE OF FUNCTIONING PROGRAMS ACROSS THE COUNTRY, the overall volume of trading remains low.
- TO EXPAND TRADING, STAKEHOLDERS NEED TO ADDRESS THE LACK OF NUMERIC DISCHARGE LIMITS, transaction costs, risk aversion, and the absence of empirical data on programs.

Environmental credit trading programs have gained traction for pollutants like carbon emissions, at least in concept. Is water quality trading the next frontier? The mechanism offers the possibility of more flexible and cost-effective water quality control, but in contrast to some environmental credits, markets have struggled to gain momentum.

Water quality trading markets allow the operators of point sources of water pollution — such as sewage treatment plants or factories — to offset that pollution by purchasing credits representing reductions elsewhere. Just as the purchase of a carbon offset gives its buyer credit for reducing their carbon footprint, a water quality trading market allows participants to buy and sell the credit for reduction of water pollution into a given water body.

Trading is a tool that may be well-suited to address the evolving nature of water pollution in the United States.

"The Clean Water Act was written at a time when the major pollution in our waterways was coming from pipes," said Kristiana Teige Witherill, clean water project manager at the Willamette Partnership, a nonprofit focused on market-based conservation in the American West. "Today, depending on what watershed you're looking at, 80 to 90% of pollution is coming from non-point sources, not coming from the end of a pipe."

After establishing parameters for water quality trading in 2003, the Environmental Protection Agency (EPA) reiterated its support for the tool in a statement in February. A 2017 Government Accountability Office (GAO) report tallied 19 water quality trading programs operating in 2014 in a diverse set of 11 U.S. states, from California to Idaho to Florida.

But despite the presence of functioning programs across the country, the GAO noted that the overall volume of trading remains low. "According to stakeholders, two key factors have affected participation in nutrient credit trading — the presence of discharge limits for nutrients and the challenges of measuring the results of nonpoint sources' nutrient reduction activities," the report stated.

Now, proponents of water quality trading are working to bring more participants into the fold. What can be done to scale up use of trading?

How Water Quality Trading Works

Under the U.S. Clean Water Act, states are responsible for regulating the quality of water discharged into water bodies. Water quality trading markets provide an alternate way for any point source regulated by the National Pollutant Discharge Elimination System to meet requirements set by states through the act.

Water quality trading credits most often deal with nitrogen and phosphorus pollution, but they can be generated for other purposes as well. To protect temperature-sensitive salmon species, for example, Oregon has a functioning trading market for water temperature, according to Witherill. Less commonly, markets can also facilitate trades for credits that represent reduced stormwater quantity.

Credits are frequently generated through reduced pollution from agricultural land, but can also come from point-source sites that have exceeded pollution-reduction requirements. States are responsible for approving and verifying credits.

Water quality trading has the potential to provide massive increases in the cost-effectiveness of pollution reduction. According to the World Resources Institute, reducing nitrogen pollution through water treatment plant upgrades costs an average of about $15 per pound of nitrogen, but under $5 per pound through planting cover crops on farms.

Generating Demand

The GAO's 2017 report stated that in the year they surveyed, 2014, the majority of trading occurred in Connecticut, Pennsylvania and Virginia. In those states, most point sources didn't purchase credits, resulting in a substantial share of generated credits going unused. State officials told the GAO, however, that trading programs still provided other benefits, like flexibility in complying with water quality regulations.

"I would say that there are a number of programs across the country that are working well, like here in Oregon where we have a number of facilities and municipalities that are successfully using water quality trading," Witherill said. "But I think we haven't yet reached a tipping point where water trading becomes a mainstream solution for meeting water quality regulations."

Often, the issue centers around the question of bringing buyers to the table.

In October 2018, the National Network on Water Quality Trading — facilitated by the Willamette Partnership — published its report "Breaking Down Barriers: Priority Actions for Advancing Water Quality Trading." The group aimed "to diagnose why, in contrast to other environmental markets, interest in water quality trading and demand for water quality credits has been slow."

Along with discharge limits, the "Breaking Down Barriers" report points to transaction costs, risk aversion, and the absence of empirical data on programs as deterrents to trading. When it comes to discharge limits, the regulatory structure of a given state plays a big role. Under the Clean Water Act some states, but not others, have set specific quantitative limits on pollution.

"In places like Wisconsin that have numeric criteria for nutrients, they have a really strong driver for cities and municipalities to be looking at options like water quality trading," Witherill said. "It's kind of a precondition for it to have some kind of regulatory driver."

Wisconsin has a statewide trading program for the variety of pollutants regulated by the state Department of Natural Resources, but the difficulty of conducting trades has limited its use, according to Wisconsin Public Radio. Critics of the program's current design have blamed low participation on inflexible rules and trouble connecting buyers and sellers.

In the absence of a "regulatory driver" like quantitative pollution limits, water quality trading programs have limited options for attracting buyers.

The Ohio River Basin Trading Program, run by the Electric Power Research Institute (EPRI), manages a trading market in Ohio, Indiana and Kentucky. The program aims to address nutrient pollution into the Ohio River — and ultimately, the Gulf of Mexico — by generating credits from conservation practices on agricultural land. According to Program Manager Jessica Fox, the Ohio River Basin Trading Project has over 100,000 of the $12 to $14 credits — each representing a pound of verified reduced nitrogen or phosphorus discharge — "on the shelf" waiting to be sold.

EPRI has sold credits to power companies, a university and individuals, Fox said, but not at the volume necessary to make the program self-sustaining. "When every transaction requires me to take a business trip," she said, "that's not going to work. It has to be more liquid than that."

There are other preconditions needed for water quality trading in addition to quantitative criteria, the "Breaking Down Barriers" report argues. First, unless the technology required for polluters to meet limits is expensive or nonexistent, managers of point sources are unlikely to turn to trading. Regulatory agencies must also support purchasers interested in pursuing credits. "We've also seen that the utilities who pursue water quality trading often have a champion supporting the program within their own organization," the report stated.

Building Markets and Confidence

Through stakeholder interviews and other research, the "Breaking Down Barriers" authors identified seven steps that stand to increase use of trading. They advocate for simplifying trading programs; making sure state regulators have the capacity and resources they need; clarifying the policies of EPA and states; reducing buyer risk, real and perceived; addressing the legal risk that stems from a lack of case law on trading; developing more direction for stormwater trading; and building relationships.

For its part, the Ohio River Basin Trading Program is looking to stimulate more demand of its own accord. In May, EPRI announced a partnership with First Climate, a firm that specializes in selling environmental credits, to sell credits on international markets and make them available to a wider range of domestic buyers. Before, the trading program wasn't able to accommodate transactions of less than $25,000, according to Fox. Through First Climate, however, the program is taking a more retail approach to trading.

"You can go on now, and you can buy one credit with a credit card or Paypal account," Fox said. The program has a calculator online that individuals can use to determine their personal nitrogen footprint, and provides buyers a photo of the farmer who generated their credit. It even sells t-shirts.

"It's kind of like 'adopt a sea lion,'" she said. "It's getting it to be a more publicly accessible thing."

First Climate and EPRI are also pitching large corporate buyers on water quality credits as a way to meet voluntary sustainability commitments.

But as trading programs continue to try to break into the mainstream, Willamette's Witherill cautioned that they are just one tool in the toolbox for "expanding the number of options utilities

have to invest in their watersheds," she said. "Maybe that doesn't necessarily look exactly like water quality trading, maybe that looks like a source water protection program or some kind of groundwater irrigation management."

On the policy front, Fox also wonders if EPA could do more to support markets. The agency's February memo was "a huge signal that the administration is strongly behind water quality trading," she said, but it doesn't actually change implementation on the ground.

One possibility worth exploring, Fox said, would be whether EPA could allow states to use their own share of funds from joint federal-state programs — such as Clean Water State Revolving Funds, for example — to buy credits.

"Any way to incent the buyer side is a great solution," she said.

Conservation Finance Network

Chris Lewis

September 25, 2019

A Reasonable Proposal: How U.S. Law Allows Puerto Rico's Legal Bills To Flourish

The Commonwealth of Puerto Rico was once known mostly for tourism, but is now recognizable for turmoil. The U.S. territory has been ravaged by natural disaster and political chaos, all while becoming the test case on how to free a financially overburdened municipality from its crushing debt load.

As Puerto Rico navigates through the first court-supervised public debt restructuring of its kind, one of the most watched aspects of its bankruptcy-style case is the amount of money earmarked to pay the professionals tasked with providing the island with advice. Having already run up a $400 million tab, current estimates predict the total bill for lawyers and advisors in the case to reach $1.5 billion through 2024.

For comparison, professional fees in the 2008 collapse of Lehman Brothers – a storied global financial institution that once had more than $600 billion in assets – amounted to $1.9 billion over four years to sort out the largest corporate bankruptcy filing in American history. In the municipal world, Detroit previously held the title of most expensive restructuring, spending $177.9 million in legal and advisory fees to turn its finances around.

Continue reading.

Forbes

By Maria Chutchian

Oct 29, 2019

Big Opportunities in Indian Country: How Tribal Nations Can Leverage Opportunity Zones for Economic Growth

The Opportunity Zone (OZ) program, a community development program created out of the Tax Cuts and Jobs Act of 2017, presents the largest potential capital equity infusion into tribal nations in the history of the United States. With an estimated $6 trillion of unrealized capital gains in the U.S. stock market, the legislation could transform development in these designated areas. Consider that almost 8,700 census tracts have been approved as designated Opportunity Zones, more than 300 of which are in Indian Country, according to the Native American Finance Officers Association (NAFOA).

The OZ program presents tribal nations with the opportunity to attract investors who may have never otherwise considered projects within those spaces. It could also encourage financial institutions that have solely worked on debt financings to also consider equity investments in Indian Country. While there are some concerns about the negative aspects of unchecked development, I believe that with smart planning and strategic thinking, the opportunities this program presents for tribal communities far outweigh the risks.

To take full advantage of the legislation, tribal nations need to develop strategic project plans that range in scale from large master-planned concepts down to neighborhood-level community investments. As part of that strategic effort, tribal nations will need to combine three actions to optimize potential OZ deal offerings that will attract investors:

Continue reading.

Faegre Baker Daniels

October 28, 2019

New York State Is Paying Up to Borrow With a Taxable Bond Sale.

The state of New York will pay high interest rates on $914 million of bonds it sold this week—high compared with peers, at least.

The extra cost isn't the result of bad credit; the state has the second-best credit rating available from Moody's and S&P Ratings. The typical 10-year muni bond with a comparable rating yields around 1.6%, according to FMSbonds. But New York's 10-year bond yields 2.55%.

Investors demanded higher yields because they will pay federal tax on the bonds' interest income. That is fairly unusual in the municipal bond market, and even more so among "general obligation" bonds, the type of debt New York issued. In other words, most G.O. bonds pay interest that is exempt from federal income tax. For example, the state of Minnesota sold tax-exempt 10-year G.O. bonds at a yield of 1.38% in August.

New York's bonds are taxable because of the way the state plans to use the proceeds from the sale. The state will use that $914 million to refinance outstanding bonds that mature between four months and 22 years from now. Such transactions are called "advance refundings."

Until 2018, investors could earn tax-exempt income from bonds sold in advance refundings. But a provision in the 2017 Tax Cuts and Jobs Act removed that exemption. That ostensibly killed the market for advance refunding bonds, and meant that municipalities had to find new projects to finance if they wanted the tax exemption.

But then came this year's rally in the Treasury market, which pushed yields lower and reduced interest costs for all types of borrowers, including municipalities. That prompted municipalities to do advance refundings, anyway, and sacrifice the tax exemption altogether. Issuers have sold $50 billion of taxable muni bonds so far this year, according to Citigroup , the highest volume since a flood of Build America Bonds, also taxable, hit the market in 2010.

Advance refundings are a notable share of the supply of new taxable bonds, said Matt Fabian, partner at Municipal Market Analytics. The spread between yields on taxable and tax-exempt munis has narrowed as well, he said.

Part of the reason for the demand is that taxable munis could provide better value than corporate bonds, which are also taxable. The broader muni market has been trading at expensive valuations of late.

Corporate bonds provide less yield compared to Treasuries than they did at the start of the year, while taxable munis' yield spread has remained mostly steady, according to Citigroup strategist Vikram Rai.

"This is good news for prospective crossover buyers, because this under-performance has led to a moment of cheapness," Rai wrote in a Oct. 28 note.

Barron's

By Alexandra Scaggs

Oct. 30, 2019 12:54 pm ET

With Interest Rates Low, Colleges Get In On 100-Year Debt.

Colleges in need of capital are eyeing a financing option that lets them pay back their investment over a longer period than most bonds.

The University of Pennsylvania wasn't necessarily looking to issue bonds this summer, much less bonds that would take 100 years to repay. But as its analysts watched the debt markets, they saw an opportunity that was too good to pass up.

Colleges and universities regularly secure funds to improve their facilities by issuing bonds that they'll have to repay, with interest, over several years. Usually, the longest they will take to repay the bonds is 30 years. Since the Great Recession, however, a dozen elite public and private universities, including Penn, have issued century bonds, which don't mature for 100 years.

That timeframe lets schools pay off massive investments over a lifetime or more, usually at a fixed, low interest rate. For the investors that buy them, such as insurance companies, century bonds are a chance to lock in guaranteed returns even in tough market conditions. But the opportunity to issue them doesn't come up often.

So far this year, the pieces have fallen into place for four universities: Penn, the University of Virginia, Rutgers and Georgetown. Together, they have issued more than $1.23 billion in 100-year financing.

Penn's finance team knew the university was interested in issuing debt sometime in the next year, said MaryFrances McCourt, vice president of finance and treasurer. The university had issued century bonds once before — $300 million in 2012 — to help upgrade its facilities to meet environmental goals. Several developments moved university officials to consider those bonds again.

The first major signal was that interest rates were low — really low. In July, interest rates for 30-year municipal bonds were lower only about 1% of the time, while rates on 30-year U.S. Treasury bonds were only lower about 2% of the time, according to McCourt's office. "It kind of takes you aback," she said.

The second factor was that lenders weren't paying a significant penalty for long-term bonds. Investors usually demand higher interest rates for longer-term investments. But when Penn analysts looked at the market, they found little difference in interest rates for shorter- and longer-term investments.

Other market indicators were also favorable: The interest rates Penn would have to pay on its bonds were lower than usual relative to U.S. Treasury bonds. And the interest rates for taxable bonds were not significantly higher than the rates on the tax-exempt municipal bonds that public and private universities typically depend on.

Plus, Penn's fiscal models showed that the century bonds would help, not hurt, its financial situation in an economic downturn. If cash ran short or if interest rates in the bond market spiked, having access to a low-interest pool of money could let the university meet its capital needs.

"You don't know what's going to happen tomorrow. All we knew was what was staring at us then," McCourt said. "We decided we've got to move quickly on this."

Education Dive

by Daniel C. Vock

Oct. 29, 2019

- Moving on from LIBOR: Squire Patton Boggs
- Hawkins Advisory: Guidance from Treasury Regarding USD LIBOR Phase-Out
- Cities Prepare for Climate Risk. Bond Prices May Not Reflect It.
- Smaller Muni Issuers Face Some of the Biggest Climate Risks.
- Assured Guaranty Corp. v. Puerto Rico: SIFMA Amicus Brief
- And finally, Judge Wiley Ain't Having It is brought to us this week by *Dobbs v. City of Los Angeles*, in which Cynthia Dobbs sued the City of Los Angeles after walking into a concrete bollard designed to protect the Los Angeles Convention Center from car bombs. Judge Wiley was unamused. Here's his description of the bollards in question: "Key evidence included how this bollard looked on the sidewalk. It was big. It was designed to stop cars. It was obvious to pedestrians who looked where they were going." When an opinion ends with, "When one walks into a concrete pillar that is big and obvious, the fault is one's own," you've possibly picked the wrong forum.

IMMUNITY . - CALIFORNIA

Dobbs v. City of Los Angeles

Court of Appeal, Second District, Division 8, California - October 16, 2019 - Cal.Rptr.3d - 2019 WL 5206043

Pedestrian who walked into concrete bollard on sidewalk brought action against city for personal injury.

The Superior Court granted summary judgment in favor of city. Pedestrian appealed.

The Court of Appeal held that:

- Project manager's declaration regarding city agency's custom and practice of discretionary approval was sufficient to satisfy design immunity element of discretionary approval of a design, and
- Substantial evidence that city's approval of concrete bollard design was reasonable supported finding of design immunity.

Declaration by project manager for city agency regarding agency's custom and practice of discretionary approval of designs was sufficient to satisfy element of design immunity requiring discretionary approval of a design before construction, as necessary for city to be immune from liability for pedestrian's injuries from walking into concrete bollard that she claimed was negligently designed.

Substantial evidence that city agency's approval of bollard design was reasonable supported trial court's finding that design immunity applied to pedestrian's personal injury claim against city, arising from incident in which pedestrian walked into concrete bollard on sidewalk; bollard, which was large and designed to stop cars, was obvious to pedestrians who looked where they were going, and was placed conspicuously in its location.

PUBLIC PENSIONS . - ILLINOIS

Gilmore v. City of Mattoon

Appellate Court of Illinois, Fourth District - October 16, 2019 - N.E.3d - 2019 IL App (4th) 180777 - 2019 WL 5205476

Retired city employees brought claim against city alleging violations of Insurance Code, equal protection, breach of contract, promissory estoppel, unjust enrichment, and violation of pension protection clause of Illinois constitution, based on employees' cost of contributions to health insurance premiums.

The Circuit Court granted city's motion to dismiss for claims of violations of Insurance Code, breach of contract, promissory estoppel, unjust enrichment, and violations of pension protection clause. Employees appealed.

The Appellate Court held that:

- Employees waived any claim of private right of action under Insurance Code;
- Statute of frauds precluded employees' breach of contract and promissory estoppel claims;

- Retired city employees failed to allege specific facts to show that state municipal retirement fund representative was invested with any authority to bind city to any promise or agreement; and
- City's actions did not violate pension protection clause.

IMMUNITY . - KANSAS

Williams v. C-U-Out Bail Bonds, LLC

Supreme Court of Kansas - October 11, 2019 - P.3d - 2019 WL 5090403

City resident and occupants of resident's home filed amended petition against city, on theory of respondeat superior, based on police officers' negligent failure to protect plaintiffs in response to resident's 911 call that armed bail bondsmen were attempting to forcibly enter resident's home.

The District Court granted city's motion to dismiss for failure to state claim. Plaintiffs appealed. The Court of Appeals affirmed. Review was allowed.

The Supreme Court held that:

- Allegations that bondsmen intended to forcibly enter resident's house "without legal authority" and that police officers who had responded to plaintiff's call left scene knowing that bondsmen "were attempting to enter the house illegally" were not bare legal conclusions, for purposes of city's motion to dismiss for failure to state claim;
- Plaintiffs adequately alleged that police officers undertook to render services to resident and occupants of resident's home, as would trigger duty of care, under exception to public duty doctrine; and
- Plaintiffs adequately alleged that officers' actions fell outside scope of "discretionary function" exception to waiver of governmental immunity, under Kansas Tort Claims Act (TCA).

Allegations in petition by city resident and occupants of resident's home that armed bail bondsmen intended to forcibly enter resident's house "without legal authority" and that police officers who had responded to resident's call left scene knowing that bondsmen "were attempting to enter the house illegally" were not bare legal conclusions to be disregarded, on city's motion to dismiss for failure to state claim resident's petition on claims for negligent failure to protect; rather, issue whether bondsmen's entry into home was illegal raised questions of fact, subject to later proof regarding source of bondsmen's authority to enter home, whether by common law privilege, by statute, or by contract between bail bond company and principal on whose behalf bond was posted.

City resident and occupants of resident's home adequately alleged that police officers undertook to render services to them when they responded to resident's call concerning attempts by armed bail bondsmen to forcibly enter resident's home to search for principal under bond, as would trigger duty of care owed by officers, and by city under theory of respondeat superior, to resident and occupants in rendering of such services, under exception to public duty doctrine, in action against city for negligent failure to protect; plaintiffs alleged that, after arriving at resident's home, officers remained at scene and observed bail bondsmen's actions, and that officers spoke to one of bondsmen, thereby at least initiating an investigation into resident's complaint.

City resident and occupants of resident's home adequately alleged that police officers' actions in response to resident's 911 call that armed bail bondsmen were attempting to forcibly enter resident's home to search for principal under bail bond fell outside scope of "discretionary function" exception to waiver of governmental immunity, under Kansas Tort Claims Act (KTCA), in action against city for negligent failure to protect, on theory of respondeat superior; plaintiffs alleged that

officers remained on scene and even spoke with one of bondsmen, thus at least initiating investigation, but then left scene without having taken any action to prevent or protect plaintiffs from bondsmen's forcible entry into home and resulting harm.

EMINENT DOMAIN . - LOUISIANA

Department of Transportation and Development v. Motiva Enterprises, LLC

Court of Appeal of Louisiana, Fifth Circuit - October 2, 2019 - So.3d - 2019 WL 4855042 - 19-32 (La.App. 5 Cir. 10/2/19)

Department of Transportation and Development (DOTD) brought action against owner and lessee of land seeking to expropriate land for road construction project.

During jury trial, the District Court granted directed verdict for DOTD against lessee. Lessee appealed.

The Court of Appeal held that lessee failed to establish damages for diminished value of its leasehold interest in expropriated land.

Lessee failed to establish damages for diminished value of its leasehold interest in land expropriated by Department of Transportation and Development (DOTD) for road construction project, although it presented testimony in which project manager involved in previous sale of land estimated value of land, where project manager had no input into actual valuation of land for purposes of sale, and lessee did not present evidence of any methodology used to determine value of leasehold interest either before or after expropriation.

REFERENDA . - MINNESOTA

Clark v. City of Saint Paul

Supreme Court of Minnesota - October 16, 2019 - N.W.2d - 2019 WL 5198831

City residents filed petition, challenging city's refusal to put on the ballot referendum on city ordinance, stating that all trash collected in city had to be pursuant to written contract with the city and stating that all previous private contracts between solid waste haulers and residents were null and void.

The District Court granted petition. City appealed to the Court of Appeals, and Supreme Court granted city's petition for accelerated review.

The Supreme Court held that:

- Referendum on city ordinance that established organized waste collection services did not conflict with requirements in state statute, and
- Referendum on city ordinance that established organized waste collection services did not impair city's contract obligations under the contract clauses of the United States or Minnesota Constitutions.

Referendum on city ordinance that established organized waste collection services did not conflict with requirements in state statute, that municipalities ensure that residents have waste collection

services, including through appropriate local controls, because other municipal ordinances that were not subject to the referendum fulfilled those requirements and legislature intended that municipalities have broad authority in process for establishing organized waste collection; it was reasonably possible for city to comply with statutory mandate to ensure that residents have waste collection services, even if ordinance was subject to referendum petition, appropriate local control could include an ordinance, and there was no legislative intent to exclude exercise of referendum authority over ordinance used as the local control.

Referendum on city ordinance that established organized waste collection services in home rule charter city did not impair city's contract obligations under the contract clauses of the United States or Minnesota Constitutions because, whatever result of the referendum, city's contract obligations were not impaired; city was contractually obligated to allow city waste haulers the exclusive right to provide waste collection services, and outcome of referendum on ordinance that established waste collection would not terminate the contract and did not rise to level of constitutional impairment of contractual obligation.

PUBLIC UTILITIES . - OHIO

In re Application of Ohio Edison Company

Supreme Court of Ohio - October 15, 2019 - N.E.3d - 2019 WL 5150987 - 2019 -Ohio- 4196

Electric distribution utilities sought review of Public Utilities Commission order approving their portfolio plans concerning energy-efficiency and peak-demand-reduction statutory benchmarks, but with annual cost caps on recovery of costs incurred in implementing utilities' energy-efficiency, peak-demand-reduction, and shared-saving programs.

The Supreme Court held that Commission lacked statutory authority to impose a cost-recovery cap.

Public Utilities Commission lacked authority under statute governing energy efficiency programs to impose annual cost caps on recovery of costs that electric distribution utilities incurred in implementing energy-efficiency, peak-demand-reduction, and shared-saving programs, as set forth in utilities' portfolio plans concerning energy-efficiency and peak-demand-reduction statutory benchmarks; statute contained no language authorizing Commission to impose such a cap, unlike a renewable-energy-resource statute that was enacted at same time and that contained cost-cap language.

WATER DISTRICTS . - UTAH

Metropolitan Water District of Salt Lake & Sandy v. SHCH Alaska Trust

Supreme Court of Utah - October 16, 2019 - P.3d - 2019 WL 5256348 - 2019 UT 62

Water district brought action against owner of land on which district held easement, seeking injunctive relief to require landowner to comply with district's property regulations.

The Fourth District Court granted summary judgment to district. Landowner appealed.

The Supreme Court held that:

- Provision of Limited Purpose Local Districts Act granting district authority to "acquire or construct

works, facilities, and improvements necessary or convenient to the full exercise of [district's] powers, and operate, control, maintain, and use those works, facilities, and improvements" did not grant district authority to impose land use restrictions on real property across which district held easement;
- Provision of Act granting district authority to negotiate with owner of property on which district had right-of-way regarding use of property also did not grant such authority;
- Provision of Act granting district authority to "perform any act or exercise any power reasonably necessary for the efficient operation of the local district in carrying out its purposes" also did not grant such authority; and
- In determining scope of easement, which was created under Canal Act of 1890 or 1890's Act, trial court could not simply accept Federal Bureau of Reclamation's written description of easement as dispositive of its scope.

Cities Prepare for Climate Risk. Bond Prices May Not Reflect It.

An analysis covering 620 municipalities shows there's plenty of room for improvement.

Climate change is no longer the problem of the future—some 70% of cities worldwide are already experiencing its effects. The good news is that many of them are doing what they can to prepare, according to an analysis of global disclosures by the nonprofit CDP.

There's a direct connection between identifying climate-related threats and taking steps to reduce them, according to Kyra Appleby, global director of CDP's program on cities, states and regions. Climate change "is affecting cities now," she said. That reality is not, however, always reflected in local real estate and municipal bond markets.

The three U.S. cities identified by CDP as having the highest climate hazard scores (St. Louis, Boynton Beach, Fla., and Lakewood, Col.) have about $218 million in outstanding municipal bonds, including utility debt sold by Boynton Beach.

The hazards outlined by CDP aren't reflected in the prices of state- and local-government securities, which continue to hover near record-low yields. "These risks will undermine your tax base. They'll undermine your economy, and ultimately they will undermine the ability to pay back the debt, which is what investors really care about," said Eric Glass, a portfolio manager for fixed income impact strategies at AllianceBernstein. "They are material risks, and I don't think investors are entering this into their credit analysis."

CDP asks companies and sub-national governments to submit reports every year explaining the specific concerns they have about climate change and what they're able to do about them. At least 620 cities filled out those surveys for 2018, which the British nonprofit scored by type and quantity of threat, in its eighth annual assessment. Fewer than half of those cities have conducted citywide climate vulnerability assessments, which Appleby linked to increased action to lessen risk.

More than 40% of the hazards that cities reported last year are likely to occur in the relatively short-term, according to the group's seven-page analysis, well-within that 30-year time-frame of a typical muni bond. That's an improvement compared with trends before the 2015 Paris Agreement, Appleby said, but still insufficient. Climate threats are going to keep increasing, particularly after mid-century, according to the UN's Intergovernmental Panel on Climate Change, which means, theoretically, that cities should report more threats in the future, not fewer.

“What cities are reporting doesn’t line up with what the science tells us the future will be like,” Appleby said.

St. Louis, for example, is planning for drought when it’s also at risk of flash floods, which can bring water-borne diseases. The city was struck with outbreaks of Legionnaires’ and cryptosporidium in 2014 and 2015. Heavy rain and ever-higher tides threaten low-lying businesses in Boynton Beach. In its 2018 survey, the city noted local snorkeling and scuba trips could diminish as more coral reefs die. Lakewood is staring down the barrel of extreme heat, heavy snow, drought, forest-fires and greater insect infestation.

Banks and other businesses are preparing for future threats as well. The Federal Reserve Bank of San Francisco last week published an 18-chapter volume dedicated to climate risks in low- and moderate-income U.S. communities. The report calls for an entirely new system for financing resilient infrastructure.

“Historically, cities have taken the approach of willful ignorance because actual notice of a problem often legally required them to do something about it,” said Jesse Keenan, a climate risk and adaptation specialist at Harvard University and the editor of the new Federal Reserve volume. “Some cities are actively disclosing the risks and uncertainties with the hopes that they can dictate the terms of how they will invest in the adaptation.”

Bloomberg

By Eric Roston and Danielle Moran

October 22, 2019, 1:00 AM PDT

Smaller Muni Issuers Face Some of the Biggest Climate Risks.

The threats posed by a changing climate spell trouble for a number of small municipal-bond issuers, including some in South Carolina, Kentucky, and Texas.

Muni investors face long-term risks in the $3.8 trillion market, *Barron’s* wrote recently, because climate change raises an issuer’s credit risk by damaging its assets and tax base. Absent efforts to curb emissions, BlackRock estimates that within a decade more than 15% of the S&P National Municipal Bonds index will come from metropolitan issuers that probably will suffer climate-related losses of 0.5% to 1% of local gross domestic product a year.

The recent article looked at some of the largest constituents of the popular ICE U.S. Broad Municipal Index and their climate risks, based on analysis by HIP Investor, a San Francisco-based sustainability ratings, data and analytics provider. (HIP stands for “Human Impact plus Profit.”)

Continue reading.

Barron’s

By Leslie P. Norton

Oct. 22, 2019 5:30 am ET

Climate Change Has Probably Hit Your City Already.

Some 70% of cities around the world are already experiencing the effects of climate change, according to a new study by the CDP, formerly known as the Carbon Disclosure Project.

Flash floods, heat waves, rainstorms, extremely hot days, and droughts are among the top hazards.

Investors in municipal bonds are already facing climate risk. Smaller cities and counties, in particular, are already struggling to generate sufficient cash flow to deliver city services, let alone funding efforts to mitigate damage from climate change.

In addition to plans to address risks such as storms, cities will need to provide more public services, given that changing temperatures are likely to allow diseases to spread.

Continue reading.

Barron's

By Leslie P. Norton

Oct. 22, 2019 12:56 pm ET

Assured Guaranty Corp. v. Puerto Rico: SIFMA Amicus Brief

Amicus Issue:

Whether Bankruptcy Code Section 928(a), which provides that post-petition pledged special revenue remains subject to a lien, and Section 922(d), which provides that the automatic stay does not stay the application of pledged special revenue, provide authority for a court to either compel the flow of pledged special revenues, or lift the stay to allow bondholders to compel the flow of pledged special revenues.

Counsel of Record:

Chapman and Cutler LLP
Laura E. Appleby
Steven Wilamowsky

Read the Brief.

A Tailored Opportunity Zone Incentive Could Bring Greater Benefits to Distressed Communities and Less Cost to the Federal Government.

Abstract

Brett Theodos, senior fellow, testified before a subcommittee of the US House Committee on Small

Business about Opportunity Zones and how the OZ incentives could be tailored to provide greater benefits to distressed communities at less cost to the federal government. His testimony noted the promising aspects of Opportunity Zones and detailed the limitations and challenges to the program as it currently exists. He also provided options for both the Congress and Administration to act to help redefine Opportunity Zone incentives to bring clearer investments to communities.

Download PDF.

The Urban Institute

Brett Theodos

October 17, 2019

Fitch Rtgs: P3s Can Fund Higher Ed Projects While Preserving Balance Sheets

Fitch Ratings-New York-21 October 2019: Public private partnerships (P3s) can help fill infrastructure funding gaps for colleges and universities, says Fitch Ratings. In the face of flat or reduced state funding, public universities in particular will need to find other sources of funding to address aging infrastructure and ongoing capital needs. By allocating costs to the private sector, universities are able to preserve balance sheet capacity. While potential benefits make P3s a useful funding tool, the strength of a P3 is dependent upon sensible risk allocation and the university's and operator's contractual commitments.

Most four-year institutions face limitations in tuition-raising flexibility to offset operating and capital expense pressures, especially public universities, which are facing a persistent expense and revenue mismatch. State appropriations remain below pre-recession highs compared with rising operating expense levels. Subsequently, universities are entering into P3s for a wide variety of infrastructure needs. Recent P3s have been used for major capital projects, notably campus utilities at Ohio State University, Dartmouth University and the University of Iowa. Projects requiring specialized technical expertise, such as campus utility systems or laboratories, necessitate a qualified operator and contractor and available replacements that have the technical and organizational resources to manage major projects with intensive capital needs.

Continue reading.

Hawkins Advisory: Guidance from Treasury Regarding USD LIBOR Phase-Out

The attached *Hawkins Advisory* discusses recently published Proposed Treasury Regulations that provide guidance as to the ability of parties to variable rate debt and other contracts that currently rely on LIBOR as an interest rate benchmark to alter the documents for these transactions for the purpose of incorporating interest rates reflective of other reference rates. The Advisory also reviews the status of other regulatory efforts to prepare the capital markets to transition from broad reliance upon LIBOR.

The Proposed Treasury Regulations generally provide that such changes will not be treated as

"substantial" modifications of existing transactions that might otherwise result in a variety of federal tax consequences, including termination, if the new reference rate is a "qualified rate" and certain other requirements are met. This would create an exception from the current rules governing alterations.

- Qualified rates generally may include a reference rate selected, endorsed or recommended for this purpose by a governmental capital markets regulator (such as the Federal Reserve Bank of New York's Secured Overnight Financing Rate), a rate that is calculated on the basis of such a rate or a "qualified floating rate", defined, with certain variations, as in the existing variable rate debt instrument rules).
- To qualify for the proposed exception, the change to a qualified rate must result in an instrument that continues to have substantially the same fair market value as it did prior to the change. Safe harbor rules are provided for valuations that are based upon historic averages of the relevant reference rates and for new reference rates resulting from arm's length negotiations.

This proposed exception may extend to changes to "fallback rates" and to "associated alterations" that are reasonably necessary to implement the underlying reference rate changes.

The Proposed Regulation comment period expires on Saturday November 23, 2019. Taxpayers may rely upon the Proposed Regulations for permitted changes that occur prior to the Final Regulation publication date, provided that the taxpayer and its related parties consistently apply the proposed regulations prior to such date.

Read the Advisory.

Century Bonds Make No More Sense Than Millennium Bonds.

- **Century bonds are not an appreciably "safer alternative" to corporate bonds.**
- **Taking on more interest-rate risk when rates are at near-record lows is not an attractive idea.**
- **The current bond rating for a 100-year bond is meaningless 10, 20 or 80 years from now.**

Except for bonds that are rated CCC-, I can think of few decidedly worse investments for an individual fixed-income investor than so-called "century bonds" that are touted in an article titled, "For Yield, Look to 2119" (available behind the Barron's paywall, or in the print edition) in the Oct. 7, 2019 issue of Barron's magazine. Virtually all of the purported benefits cited in the article are flawed.

First, these bonds, most of which are municipals, are presented as a "safer alternative" to corporate default because they enormously extend the maturity date and thereby take on more interest-rate risk. That's quite a leap of logic. How does that make them safer? Municipal-bond defaults do, in fact, occur, and the odds only increase over a 100-year period. Moreover, taking on more interest rate risk at a time when rates are at near-record lows can hardly be an attractive idea. They're not going to stay that way forever, and when rates inevitably rise, a bond's value will fall. When, precisely? Well, that's the problem: no investor will hold a bond for 100 years, but where will rates, and the principal value, be when he does want to sell 10, 20… or 80 years from now? That's not just rate risk – that's a lot of rate risk.

Although the article earnestly tries to make a case for these bonds, such as tax exemption in the issuer's home state (so what, that's true of most munis), and inconsequential track records about

particular issuers' payout histories ("Rutgers has been around in some form since 1766, and hasn't had any problems repaying debt in recent decades"), I simply can find no silver lining for individual investors unless they've been given medical, actuarial or divine assurance that they'll live past 100 – at least as to bonds bought at issuance.

And stellar investment grades? How can any long-term bondholder take seriously a current high-quality rating for a bond of virtually infinite maturity? Changes in bond ratings occur on a regular basis, and the likelihood increases substantially over a period of 10 decades. For a century bond, therefore, the current rating is practically meaningless.

The article ends by noting that a century bond issued by a hospital in 2016 is currently yielding 3.8% compared to the 3.2% offered by the lowest tier of investment-grade debt. Well, there's a good reason for that: the hospital bond is at the far reaches of the maturity spectrum, and, as with junk bonds, investors demand to be paid for taking unattractive risk, in this case time risk. Perhaps some audacious municipality will offer a millennium bond sometime soon, at an irresistible rate of 4%! Who could turn that down?

It would be far more judicious for an income-oriented investor to buy, say, a 2028 target-date exchange-traded fund that is currently yielding about 3.3%.* Why would you go out 100 years on a single bond when you can hold one for just 10 years for only slightly less yield?

* Note: The 3.3% yield cited for a 2028 target-date ETF pertains to the Invesco BulletShares 2028 Corporate ETF (BSCS), priced at $22.08 on 10/7/19, the Barron's issue date. The distribution of $0.0613 on Sept. 23, 2019 would result in an annualized yield of 3.3%: $0.0613 x 12 = $0.7356. $0.7356/$22.08 = 3.3%.

Oct. 23, 2019 2:05 PM ET|2 comments | Includes: BSCS
John Gerard Lewis

Chicago's New Mayor Grapples With Nation's Worst Pension Debt.

Lori Lightfoot vows to avoid excessive parking fees and other nickel-and-dime strategies

CHICAGO—Mayor Lori Lightfoot has been in office only five months, but she is facing the prospect of having to ask a lot of residents in the nation's third-largest city.

Chicago has the most pension debt of any major U.S. city, a shrinking population and an $838 million budget gap—and the city's teachers have been striking since Thursday. At the same time, Ms. Lightfoot, a former federal prosecutor, has eschewed some of the nickel-and-dime approaches taken by many cities, ending Chicago's practices of turning off residents' water for nonpayment and suspending drivers' licenses for unpaid parking tickets.

Ms. Lightfoot will deliver her first budget to the city council Wednesday. Her efforts to make the math work as Chicago's pension payments increase rapidly will provide a window into the challenge of addressing the burdensome legacy costs weighing on many older American cities.

"Cities that have pension challenges are facing the same sort of question, which is 'How do you cover future liabilities and current costs without driving people away with higher taxes?'" said Michael Pagano, dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago.

Cities' net pension liabilities grew 76% in nominal dollars in the five years ending in 2017, according to a study by Moody's Investors Service of cities rated by that firm. The number of large cities that have on hand less than half of the assets they need to pay promised future benefits doubled between 2009 and 2015, according to a study by the Pew Charitable Trusts.

Philadelphia, Providence, R.I., and Fort Worth, Texas, are all in that situation, as is Chicago, according to 2018 data from Merritt Research Services.

The reasons: Amounts owed to workers and retirees for pensions have lagged behind the assets on hand to pay them. Losses in 2009, plus years of falling short of investment targets, left pension funds with far less than projected, while governments have also contributed to the shortfall by skimping on annual pension contributions to balance budgets. Court protections in many states have made it difficult to cut benefits for already hired workers.

Rising costs for pensions and other expenses "have become a new normal since the recession," said Mary Murphy, project director at the Pew Charitable Trusts.

In an effort to shore up Chicago's finances, former Mayor Rahm Emanuel, a former congressman and White House chief of staff who served eight years, raised property taxes and also helped attract new investment and construction to the city's downtown. But decades of paltry contributions to the city's four pension funds have left Chicago $30 billion short of what it needs by the city's own estimates. The city has the largest pension liability of any major city, according to Moody's.

"The pressure is building on Chicago," said Laurence Msall, president of the Civic Federation.

Now the city's pension cost jumps each year, and Ms. Lightfoot must find $1.7 billion for pensions, up from $1.3 billion last year, according to the city's 2020 budget forecast. Total spending by the corporate fund, which pays the city's general operating costs—aside from pensions and debt, is $3.8 billion this year.

"There's no more road to kick the can down," Ms. Lightfoot told attendees at the Chicago Investors Conference last month.

Ms. Lightfoot must also contend with the teachers' strike, going on since Thursday over pay, class size and other issues.

The school district, which is run by a mayor-appointed board, sets its own budget and levies property taxes that are in addition to the taxes levied by the city on the same properties, and are subject to a state cap. Ms. Lightfoot has more latitude to raise property taxes and has made clear she may do so.

Two strategies touted by Ms. Lightfoot—additional taxes on real-estate sales and a casino in Chicago—will likely require cooperation from state lawmakers. Ms. Lightfoot's administration has also talked about plans to go after businesses delinquent on their taxes, to add ride-share and restaurant taxes, and to refinance city debt at lower interest rates. Along with pensions, Chicago also faces escalating bond payments.

The city's finance chief said Monday that 40% of the budget gap will be filled by one-time revenues and 60% will be structural solutions such as recurring revenues or lasting cuts. She said the city plans to save $200 million next year by refinancing existing debt. A spokeswoman said Ms. Lightfoot isn't currently considering shoring up the city pension fund with borrowed money, a possibility contemplated by Mr. Emanuel.

Ms. Lightfoot will also forego an expected $15 million in revenues, following through on a campaign promise to offer relief to residents burdened by parking fines and fees. Ms. Lightfoot has said that she expects the city to recoup some of the revenues as residents take advantage of new installment plans. The initiative has won kudos from residents but attendees at the Chicago Investors Conference were underwhelmed.

“Most of the investors don’t live there,” said Howard Cure, director of municipal bond research at New York City-based Evercore Wealth Management, which holds some Chicago debt. “They’re just looking at ‘How best can they pay their debt service and balance their budget?’”

The Wall Street Journal

By Heather Gillers

October 22, 2019

Munis In Focus: Amanda Albright (Radio)

Amanda Albright, Municipal Bond reporter, will discuss the huge uptick in supply of taxable bonds. Hosted by Lisa Abramowicz and Paul Sweeney.

Play Episode

Bloomberg

October 25, 2019 — 8:36 AM PDT

Fixed Income Is Still a Mystery to Many Investors.

A survey underscores a lack of understanding, but the bond market doesn’t have to be an impenetrable enigma.

The top-line takeaway from a BNY Mellon Investment Management national survey on fixed-income investing was stunning: A measly 8% of Americans were able to accurately define fixed-income investments.

The 29-question online survey of just more than 2,000 adults, conducted in July, clearly shows that many Americans admit to having little knowledge about various fixed-income markets and how to invest in them. Here’s a rundown of those who answered “I do not understand it at all” with regard to the following types of bonds: Treasuries, 39%; municipal bonds, 45%; high-yield bonds, 46%; corporate bonds, 51%; structured products, 53%; Treasury Inflation Protected Securities, 63%. Of the 849 respondents who don’t own fixed income or don’t have any investment portfolio, 44% said they don’t buy bonds because they don’t understand the different types of securities.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

October 24, 2019, 3:00 AM PDT

San Jose to Propose Turning PG&E Into Giant Customer-Owned Utility.

San Jose, California's third-biggest city, is proposing to convert PG&E Corp. into the country's largest customer-owned utility, its mayor told The Wall Street Journal on Monday.

The most populous city served by PG&E hopes to persuade other cities and counties in coming weeks to line up behind the plan, which would strip PG&E of its status as an investor-owned company and turn it into a nonprofit, electric-and-gas cooperative.

The buyout proposal amounts to a revolt by some of PG&E's roughly 16 million customers as the company struggles to keep the lights on and provide basic services while preventing its aging electric equipment from sparking wildfires.

San Jose Mayor Sam Liccardo said in an interview that the time has come for the people dependent on PG&E for essential services to propose a new direction. A cooperative, he said, would create a utility better able to meet customers' needs because it would be owned by customers—and answerable to them.

"This is a crisis begging for a better solution than what PG&E customers see being considered today," said Mr. Liccardo. He said recent power shut-offs initiated by the company were poorly handled, adding, "I've seen better organized riots."

PG&E did not immediately respond to a request for comment. In the past, the company has said its energy systems are not for sale and it has repeatedly beaten back efforts on the part of dissatisfied cities to form municipal electric utilities.

The idea represents a dramatic twist in the debate over how PG&E could emerge from bankruptcy, compensate fire victims and address its many safety problems. It likely will face stiff opposition from PG&E, which sought chapter 11 protection in January from what it estimated at more than $30 billion in wildfire-related liabilities. The company's bondholders also will likely contest the idea after putting forward a rival reorganization plan in bankruptcy court.

California officials are running out of patience with PG&E after the company shut off power to roughly two million Californians in 34 counties earlier this month to ensure that its power lines, transformers and fuses didn't ignite fires that could spread quickly amid warnings of high winds. PG&E warned Monday that winds could trigger another round of shut-offs for parts of 17 counties later this week.

PG&E may have accidentally galvanized support for the public buyout proposal last week when Chief Executive Bill Johnson told state regulators that the utility may need to rely on power shut-offs for up to 10 years. That is a horrifying prospect for public officials, who note that the blackouts affect public safety and the delivery of other basic services such as clean water.

"We need to align the financial interest with the public interest," Mr. Liccardo said. "We hope there will be recognition that this structure better addresses the public need and we're looking to start the drumbeat to enable all of us to march together."

By Dow Jones Newswires

Oct. 21, 2019 3:43 pm ET

Housing PABs See Increase of More than $1.1 Billion in 2018.

Combined multifamily and single-family tax-exempt private activity bond (PAB) issuance was $22.1 billion in 2018, an increase of more than $1.1 billion over 2017, according to a report issued by the Council of Development Finance Agencies (CDFA). Today's report contains revised numbers from an original report that was posted Oct. 15. Housing bonds made up 91 percent of total PAB issuance, the highest percentage since the CDFA began tracking the amounts in 2007. Multifamily housing bonds–which are paired with 4 percent low-income housing tax credits–totaled $14.7 billion in 2018, a decrease of $600 million from 2017. States used 65 percent of their PAB allocation 2018, a drop of 5 percent from 2017. California ($4.3 billion) was one of five states to top $1 billion in total PAB issuance, with New York, Texas, Florida and Tennessee also topping that figure.

Wednesday, October 23, 2019 – 3:15pm

Is Public Finance Ready to Rely on Blockchain Technology?

Governments often contend with many issues when attempting to link public dollars to real-world outcomes captured by data in disparate systems. EY claims its OpsChain Public Finance Manager will reduce those struggles.

The stewardship of public dollars is a challenge as old as government itself, but nascent technologies are coming into the space with the intention of streamlining it. Blockchain-enabled tools are one such example.

The OpsChain Public Finance Manager (PFM), a new blockchain-based tool from Ernst & Young, is designed to allow governments to "focus more directly on the things that matter," said Mark MacDonald, EY global public finance management leader.

The potential of this tool lies in helping governments track the "financial integrity of the way public money is spent" and the related outcomes that are achieved, MacDonald said. Essentially, the PFM promises to enhance the ability of governments to see how public dollars are connected to actual results, which should support further decision-making.

"In simple terms, it's the integration between a financial view and non-financial view that can really help public managers manage more effectively, public budgeters budget more effectively, and ultimately it's about trying to advance that cause of 'better finance, better government,'" MacDonald said.

The PFM is based on the EY Ops Chain, which is a blockchain platform that entered its second generation earlier this year. According to EY, this platform can "support up to 20 million transactions per day on private networks" and has reportedly led to efficiency gains of more than 90 percent in certain cases.

Most governments utilize an enterprise resource planning (ERP) system to keep up with public funds. MacDonald said those systems are generally well understood, but he suggested a critical piece of the organizational puzzle is missing when it comes to linking ERP data to outcome data in other systems.

“The question becomes when I have an opportunity to try and connect financial data and information to another system that perhaps has my non-financial information in it, how easily am I able to do that?” MacDonald said.

Mike Mucha, deputy executive director of the Government Finance Officers Association, said his organization helps governments prepare and procure ERP systems, so he understands the challenge that MacDonald refers to. Mucha cited an example involving a school district. A district will have its financial data in one system (ERP), but student performance data will be stored in a student information system (SIS).

“If you’re trying to calculate like an academic ROI … you need to basically, through some sort of third-party tool or some sort of third tool, correlate your spending on various programs with the academic return that you’re getting out of your student data system,” Mucha said.

Additionally, MacDonald said governments often deal with a “complicated array” of contractors, partners and not-for-profits in delivering public services. The chances of these external agents being on the government’s ERP system are essentially zero, which creates a “hard organizational interface to try to overcome.” The blockchain component can help manage this kind of chaos, almost acting as an “ERP across ERPs.”

Another challenge is simply the idea of the government running multiple systems itself. Almost no organization runs just one ERP system, Mucha said. Then there’s the fact that public entities frequently house their own information even though those entities might need to work together for the common good. Although Mucha admits that he doesn’t know anything about the EY tool, he can imagine great potential for public entities wishing to work together.

“From a business intelligence perspective, you might want to pool that information together … so if you had an ERP across ERPs, then you could conceivably use data from each one of those individual entity’s ERP system in sort of a shared resource,” Mucha said.

MacDonald stressed that the blockchain aspect of the PFM is not “technology for technology’s sake.” Rather, the blockchain platform presents a logical opportunity for technology to address long-standing business challenges within the complexity of a government system.

“It [blockchain] has the ability to work at that network level across organizational boundaries, across different authorities, and so forth,” MacDonald said.

According to EY, the PFM has been tested by multiple governments around the world. MacDonald would not reveal all of those governments due to concerns related to privacy and confidentiality. It is public knowledge, however, that Toronto has tested the tool, but Toronto’s chief financial officer Heather Taylor could not be reached for further comment.

GOVERNING.COM

BY JED PRESSGROVE / OCTOBER 25, 2019

CityLab University: Tax Increment Financing

Behind the dry-as-dust name is a powerful (and controversial) tool for financing urban redevelopment. Here's a quick guide to understanding TIF.

It's time again for CityLab University, a resource for understanding some of the most important concepts related to cities and urban policy. If you have constructive feedback or would like to see a similar explainer on other topics, drop us a line at editors@citylab.com.

Urban development professionals, neighborhood activists, and diligent readers of local newspapers have very likely come across the term "Tax Increment Financing" (TIF). Whether all of these groups understand what it means is another matter.

This mechanism for financing redevelopment is a powerful and controversial force in American urbanism. Every state except Arizona currently allows it, as does the District of Columbia, and it has become the most popular incentive tool for economic development in the United States as the federal government has decreased its urban development spending. TIF plays a role in megaprojects such as Chicago's Lincoln Yards and Amazon's HQ2 in Arlington, Virginia, as well as in smaller-scale neighborhood improvements, affordable housing, and transit projects.

Continue reading.

CITY LAB

BENJAMIN SCHNEIDER

OCT 24, 2019

TAX . - OKLAHOMA

Shadid v. City of Oklahoma City

Supreme Court of Oklahoma - October 14, 2019 - P.3d - 2019 WL 5106715 - 2019 OK 65

Objector brought action, seeking assumption of original jurisdiction, for declaratory and injunctive relief, challenging constitutionality of ordinance creating temporary term of excise tax.

The Supreme Court held that:

- Supreme Court would exercise discretion to assume original jurisdiction over action, and
- Even if contents of resolution of intent which accompanied ordinance set out projects that were not of same subject, this did not render ordinance in violation of constitutional or statutory single subject mandate.

Supreme Court would exercise its discretion to assume original jurisdiction over objector's action for declaratory and injunctive relief, challenging constitutionality of excise tax ordinance; decision could significantly affect municipal finance statewide, and matter was urgent as special election was set for just a few months from filing of objector's petition.

Even if contents of resolution of intent, which accompanied ordinance creating temporary excise tax, set out projects that were not of same subject, this did not render ordinance in violation of

constitutional or statutory single subject mandate, where subject matter contained in ordinance itself was clearly germane to excise tax.

TAX . - FLORIDA

Joiner v. Pinellas County

District Court of Appeal of Florida, Second District - September 25, 2019 - So.3d - 2019 WL 4666376 - 44 Fla. L. Weekly D2397

County brought action against appraiser for a second county seeking declaratory and injunctive relief concerning first county's immunity from paying ad valorem taxes on its ranch property situated in second county and reimbursement of previous years' tax payments.

The Circuit Court granted first county's motion for summary judgment. Appraiser appealed.

As a matter of first impression, the District Court of Appeal held that first county's ranch property was not immune from taxation by second county.

County's ranch property situated in another county was not immune from taxation by the other county; a county's immunity from taxation in its sovereignty did not eliminate its obligation to pay taxes on property in another political entity's jurisdiction.

Charter Schools Are an Opportunity for Impact Investors.

High interest rates are a barrier to buying new facilities, even though such loans have proved a safe bet.

With more than three million students in charter schools nationwide, and an estimated five million families who would send their child to a charter if a spot were available, why aren't many more of them opening? One reason is the higher cost of capital they bear compared with traditional public schools. While both types of school receive public funding for operating expenses, charter schools cannot issue general-obligation bonds to purchase or construct their properties. That forces charter schools to find facilities, and the funds to renovate or build them, on the open market.

Charter schools enter the market at a distinct disadvantage. When they do find a site and draw up plans for a new school building, the organizers often find interest rates far steeper than those enjoyed by traditional public schools—about 1.5 percentage points higher. That's because teachers unions and other advocacy groups dissuade school districts from sharing the proceeds of their bonds or guaranteeing charter-school bonds. The extra interest charter schools pay consumes dollars they could otherwise spend to hire more teachers, increase salaries and buy resources for students.

Yet compared with many real-estate investments, charter schools are an extremely safe bet. A 2011 report on charter-school loan performance from Ernst & Young's Quantitative Economics and Statistics Practice assessed 430 outstanding and paid-off loans totaling $1.2 billion. Only five loans, which amounted to 1% of the set in dollar terms, ended in foreclosure. And just 0.2% of the total loan amount was reported as being written off. Among outstanding loans, only eight (3.6%) had been delinquent for any period of more than 60 days.

This strong performance makes charter schools an ideal opportunity for impact investing. Impact investors are those who aim to "do well by doing good"—i.e., generate a measurable social benefit along with a commensurate financial return.

While impact investors are already funding auxiliary features of education like tutoring programs, few have gotten involved in core activities like helping schools buy their physical plants. Historically, supplemental funding for schools has come in the form of donations and grants. Yet supporters of charter schools could have a greater impact by making larger, lower-cost loans that would allow the schools' organizers to finance capital expenditures at lower rates of interest than are available on the open market.

Low-interest investors would help charter schools spread and flourish in the long term. The infusion of affordable capital would make it possible to extend spots to many of the students waiting to enroll in charter schools. Millions of dollars in interest could be saved and reinvested to pay teachers and spend on student learning—more spending in the classroom, rather than on it. The discrepancy between charter schools' high cost of capital and their demonstrated stability and low default rate is exactly the sort of gap impact investors should naturally seek to fill.

Investors in social causes have made valuable contributions in recent decades to fields like public health that had long been occupied exclusively by nonprofits, but too many investors seem to focus more on improving their public image instead of finding the areas with the greatest potential impact. This may have dissuaded some from funding charter schools, which have lost some of their luster among political liberals because of the supposed threat they pose to traditional public schools.

Charter schools are an untapped opportunity for impact investors. Investors in charter schools have the satisfaction of knowing that their investments would finance expenses that donors can't cover with gifts, and can rest comfortably in the knowledge that their investments are very likely to pay off. What's more, they can help meet a goal that should be beyond the divisiveness of politics: better education for America's children.

The Wall Street Journal

By Mark Medema

Oct. 27, 2019 4:44 pm ET

Mr. Medema is managing director for the Charter School Facility Center at the National Alliance for Public Charter Schools.

Moving on from LIBOR: Squire Patton Boggs

The IRS has issued proposed regulations that allow issuers to replace LIBOR rates associated with their bonds and swaps without triggering a reissuance of the bonds or a deemed termination of the swaps. The replacement rate must be a "qualified rate," which includes the Secured Overnight Financing Rate ("SOFR"). A rate isn't a "qualified rate" unless the fair market value of the bond or swap is the same before and after the replacement, taking into account any one-time payment made in connection with the switch. Although they're only proposed regulations, issuers can apply them immediately.

Background – Once again, let us dazzle you with the most boring part of a very interesting

topic.

Countless municipal bonds and countless derivatives[1] that relate to those bonds depend on the continued existence of one or more of the London Interbank Offered Rates, which are referred to generically as "LIBOR."[2] In particular, many variable rate bond documents contain rates that are based on LIBOR, and many derivatives contain a variable stream of payments or receipts that is based on LIBOR. For municipal bonds that bear interest at a rate that is based on LIBOR, if LIBOR can't be determined, then in most cases the bond documents will move the interest rate on the bonds into a "fallback" rate that could be very financially unattractive for the issuer. The same could be true for an interest rate swap with a stream of payments or receipts that is based on LIBOR.

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on October 22, 2019

Squire Patton Boggs

CDFA-Ice Miller Broadband Financing Bootcamp.

December 4, 2019 | 1:00 PM – 4:00 PM Eastern

Click here to learn more and to register.

Financial Accounting Foundation Opens Search for New Executive Director.

Read the News Release.

10/24/19

GASB Outlook E-Newsletter Fall 2019.

Read the Newsletter.

10/24/19

NFMA Advanced Seminar on Higher Education: Sector Under Stress

The Education Committee is pleased to open registration for the Advanced Seminar on Higher Education to take place on **January 23 & 24, 2020 in Los Angeles**.

To view the program, click here. To see who is speaking (more to come), click here.

To register, click here.

MSRB Holds First Quarterly Board Meeting of FY 2020.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met on October 23-24, 2019 for its first in-person meeting of Fiscal Year 2020. The Board's standing committees and special committees met to set their priorities for the year and begin work, and the full Board discussed regulatory coordination and the organization's cloud migration, among other topics.

"Much of the Board's important oversight work and strategic thinking happens at the committee level," said Board Chair Ed Sisk. "With two special committees leading the MSRB's governance review and CEO search, and the creation of our new standing committee on stakeholder engagement, I look forward to an especially productive year."

Read more about the MSRB's FY 2020 priorities.

The Board's CEO Search Special Committee interviewed executive search firms to facilitate the broad-based nationwide search for a new president and CEO. The Governance Review Special Committee discussed priority areas for its wide-ranging review of MSRB governance practices, including the size of the Board and selection of public and regulated members, which are established under MSRB Rule A-3.

Regulatory Coordination

The Board approved acting on the recommendation of the U.S. Securities and Exchange Commission (SEC)'s Fixed Income Market Structure Advisory Committee that the MSRB coordinate with the Financial Industry Regulatory Authority (FINRA) on further analysis of a practice in the corporate and municipal bond auction process referred to as "pennying."

"The MSRB seeks to coordinate with FINRA on any matters that cut across the corporate and municipal bond markets to ensure our regulatory approaches are harmonized to the extent possible," Sisk said.

The Board also directed staff to analyze the potential regulatory and market impacts of the SEC's proposed order to grant conditional exemptive relief, which would, if granted by the SEC, permit municipal advisors to engage in certain limited activities in connection with the direct placement of municipal securities without registering as a broker.

As previously announced, the MSRB plans to coordinate closely with the SEC and FINRA to consider the impact of SEC Regulation Best Interest on MSRB rules.

Market Transparency

The Board received an update on the enterprise-scale migration of MSRB market transparency systems and data to the cloud.

"The Technology Committee and the full Board will closely monitor the MSRB's journey to the cloud," Sisk said. "We are committing the largest investment of resources since the launch of our Electronic Municipal Market Access (EMMA®) website to enhance the long-term reliability, data

quality and security of our market transparency systems."

Date: October 25, 2019

Contact: Leah Szarek, Director of Communications
202-838-1500
lszarek@msrb.org

- **Ed. Note:** A catastrophic (and possible self-inflicted) computer/network debacle prevented us from sending out last week's newsletter. We apologize for the perpetual inconvenience.
- Proposed Rules Addressing LIBOR Phase-out Help Ease Reissuance Concerns.
- Background on LIBOR and SOFR.
- Local Governments Lobby for Stable NAV Bill.
- CDFA Releases Annual Volume Cap Report.
- City Bonds May Be Hit by Climate Change. Moody's Can Now See How.
- Pension Obligation Bonds May Soon Have Their Moment.
- And finally, Struggling To Put A Favorable Spin On This One is brought to us this week by *Daley v. Kashmanian*, in which Devonte Daley and some pals headed out on their motorcycles for a midnight jaunt through the streets of Hartford Connecticut. When the opinion includes the following, "plaintiff's motorcycle was neither 'street legal' nor 'roadworthy' because it did not have headlights and was equipped with off-road tires" and "plaintiff was ejected from his motorcycle and landed approximately ninety-five feet down Sumner Street, causing him significant injuries," we're thinking that you can go ahead and skip the whole, "The relevant facts, viewed in a light most favorable to the plaintiff" recitation.

IMMUNITY . - CONNECTICUT

Daley v. Kashmanian

Appellate Court of Connecticut - October 1, 2019 - A.3d - 193 Conn.App. 171 - 2019 WL 4750666

Motorcyclist brought action against detective and city, alleging detective had negligently and recklessly caused plaintiff to be ejected from his motorcycle.

Following close of evidence at jury trial, the Superior Court granted detective's motion for directed verdict as to recklessness charge, and subsequently, following jury verdict in motorcyclist's favor on negligence charge, granted detective and city's motions to set aside the jury verdict. Motorcyclist appealed.

The Appellate Court held that:

- Whether detective's conduct while attempting to surveil motorcyclist was reckless presented question for jury;
- Detective's surveillance on motorcyclist constituted discretionary conduct; and
- Statute governing rights and duties of emergency vehicles did not implicitly preclude officers conducting surveillance from being exempt from obeying certain motor vehicle statutes.

EMINENT DOMAIN - LOUISIANA

Department of Transportation and Development v. Motiva Enterprises, LLC

Court of Appeal of Louisiana, Fifth Circuit - October 2, 2019 - So.3d - 2019 WL 4855042 - 19-32 (La.App. 5 Cir. 10/2/19)

Department of Transportation and Development (DOTD) brought action against owner and lessee of land seeking to expropriate land for road construction project.

During jury trial, the District Court granted directed verdict for DOTD against lessee. Lessee appealed.

The Court of Appeal held that lessee failed to establish damages for diminished value of its leasehold interest in expropriated land.

Lessee failed to establish damages for diminished value of its leasehold interest in land expropriated by Department of Transportation and Development (DOTD) for road construction project, although it presented testimony in which project manager involved in previous sale of land estimated value of land, where project manager had no input into actual valuation of land for purposes of sale, and lessee did not present evidence of any methodology used to determine value of leasehold interest either before or after expropriation.

PUBLIC UTILITIES - MINNESOTA

Clark v. City of Saint Paul

Supreme Court of Minnesota - October 16, 2019 - N.W.2d - 2019 WL 5198831

City residents filed petition, challenging city's refusal to put on the ballot referendum on city ordinance, stating that all trash collected in city had to be pursuant to written contract with the city and stating that all previous private contracts between solid waste haulers and residents were null and void.

The District Court granted petition. City appealed to the Court of Appeals, and Supreme Court granted city's petition for accelerated review.

The Supreme Court held that:

- Referendum on city ordinance that established organized waste collection services did not conflict with requirements in state statute, and
- Referendum on city ordinance that established organized waste collection services did not impair city's contract obligations under the contract clauses of the United States or Minnesota Constitutions.

LABOR . - MINNESOTA

Firefighters Union Local 4725 v. City of Brainerd

Supreme Court of Minnesota - October 9, 2019 - N.W.2d - 2019 WL 5057546

Firefighters union and union president brought action against city alleging unfair labor practices in

violation of Public Employment Labor Relations Act (PELRA), violation of statutory requirements regarding amendment of city charters, and free speech retaliation arising from city's unilateral restructuring of its fire department, via a resolution, to eliminate paid full-time firefighter positions.

The District Court granted city's motion for summary judgment. Union and president appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. City petitioned for further review.

The Supreme Court held that:

- City's resolution reorganizing its fire department clearly implicated matters of inherent managerial policy, for purposes of the PELRA provision governing mandatory bargaining; but
- In a matter of first impression, city's violation of PELRA provision that prohibited the unfair labor practice of interfering with the existence of an employee organization was not excused because the city's interference was a matter of "inherent managerial policy";
- The plain language of the PELRA provision which prohibited the unfair labor practice of interfering with the existence of an employee organization did not require that the public employer's interference be motivated by antiunion animus; and
- City engaged in an unfair labor practice in violation of the PELRA when it interfered with the existence of an employee organization by eliminating all paid full-time firefighter positions governed by a collective bargaining agreement, while it provided for paid on-call firefighters and a new assistant fire chief.

LIENS . - MISSISSIPPI

Watkins Development, LLC v. Jackson Redevelopment Authority

Supreme Court of Mississippi - October 3, 2019 - So.3d - 2019 WL 4874824

Redevelopment authority brought declaratory judgment action against tenant and developer, seeking to expunge mechanic's liens on properties that were subject of development project.

After grant of partial summary judgment in favor of redevelopment authority and bench trial, the Chancery Court entered judgment finding lease properly terminated but denying monetary damages. Tenant appealed.

The Supreme Court held that:

- Evidence was sufficient to support bench trial finding that tenant's breach of development obligations under lease of property from redevelopment authority was material, as would allow termination of lease;
- Trial court acted within its discretion in finding that redevelopment authority's initial forbearance did not estop it from terminating lease;
- Tenant could not obtain quantum meruit remedy for value of improvements to leased property;
- Discovery that building had construction flaw which would cost $1.5 million to remedy did not excuse tenant's failure to meet construction deadlines imposed by lease;
- Redevelopment authority did not breach implied duty of good faith and fair dealing by terminating lease; and
- A mechanic's lien may not be enforced on municipal property held for purposes of the Urban

Renewal Law.

EMINENT DOMAIN - MISSISSIPPI

Tippah County v. LeRose

Supreme Court of Mississippi - October 3, 2019 - So.3d - 2019 WL 4872584

Landowners brought declaratory-judgment action against county, alleging that county's rescission of its decision to abandon public road, which ran through landowners' property, was void and seeking damages for county's taking of property without compensation.

The Circuit Court granted partial summary judgment in favor of landowners. County filed request for interlocutory review.

The Supreme Court held that:

- Landowners' constructive notice of regular public meeting of board did not provide adequate notice that board would rescind abandonment of public road at meeting, and thus landowners' right to due process was violated, and
- Circuit Court had subject-matter jurisdiction regarding inverse-condemnation claim.

Landowners' constructive notice of regular public meeting of county board of supervisors did not provide adequate notice that board would rescind abandonment of public road, which ran through landowners' property, and thus landowners' right to due process was violated, though no statute explicitly required notice of hearing to reconsider prior decision of board; landowners had vested property right at time of board's reconsideration at meeting, and landowners would have been necessary parties to a proceeding that reinstated county's easement over property.

Circuit Court had subject-matter jurisdiction in landowners' inverse-condemnation action against county, which attempted to rescind its abandonment of public road over landowners' property; Special Court of Eminent Domain did not have exclusive jurisdiction, and state constitution invested Circuit Court with original jurisdiction in all matters civil and criminal not vested by the constitution in some other court.

PUBLIC EMPLOYMENT . - MISSISSIPPI

Jones v. City of Canton

Supreme Court of Mississippi - September 26, 2019 - So.3d - 2019 WL 4686409

Public school district and trustee of district filed a bill of exceptions, challenging decision of city's board of aldermen to remove trustee.

The Circuit Court affirmed trustee's removal, and he appealed.

The Supreme Court held that:

- As matter of first impression, trustee could be removed only in accordance with provision of State Constitution, stating that all public officers, for wilful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by grand jury and, upon conviction, shall be removed from office;

- City ordinance, stating that every officer who willfully neglects to perform the duties imposed upon him, or for any satisfactory cause, shall be removed from office, violated State Constitution; and
- Trustee's procedural due process rights were violated when city board of aldermen's decision, to remove trustee, was made without notice or hearing.

ZONING & PLANNING - NEW HAMPSHIRE

Working Stiff Partners, LLC v. City of Portsmouth

Supreme Court of New Hampshire - September 27, 2019 - A.3d - 2019 WL 4725178

After city issued cease and desist order to property owners that precluded their use of property for short-term rentals, property owners appealed.

The Zoning Board of Adjustment upheld the order. Property owners appealed. The Superior Court affirmed. Property owners appealed.

The Supreme Court held that:

- Zoning ordinance did not permit property owners' short-term rental of the property as a principal use, and
- Property owners failed to establish city ordinance definition of "dwelling unit" was unconstitutionally vague as applied.

Zoning ordinance did not permit property owners' short-term rental of the property as a principal use; the ordinance expressly permitted single-family dwellings and two-family dwellings in the district as principal uses, and owners' rental of the property by providing short-term rentals to guests paying on a daily basis constituted a transient occupancy that was similar to a hotel, motel, or rooming house, which was excluded from the definition of a dwelling unit.

Property owners failed to establish city ordinance definition of "dwelling unit" was unconstitutionally vague as applied; ordinance's definition of "dwelling unit" as a building providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation that did not include such transient occupancies as hotels, motels, or boarding houses, provided owners with a reasonable opportunity to understand that their conduct in using property for short-term rentals was not a permitted use of property, and owners failed to demonstrate that ordinance was so vague that it authorized arbitrary or discriminatory enforcement.

ADVERSE POSSESSION . - PENNSYLVANIA

City of Philadelphia v. Galdo

Supreme Court of Pennsylvania - September 26, 2019 - A.3d - 2019 WL 4686781

City brought action against citizen making use of undeveloped city property, alleging continuing trespass, permanent trespass, and ejectment, and citizen filed a counterclaim to quiet title, claiming ownership by adverse possession.

Following bench trial, the Court of Common Pleas found in favor of city and ordered citizen ejected from the disputed property. Citizen appealed. The Commonwealth Court vacated and remanded. City

petitioned for allowance of appeal.

The Supreme Court held that condemned property that was held for eventual resale by a political subdivision after the original public purpose for the condemnation had lapsed did not constitute a public use of the property that afforded the political subdivision immunity from adverse possession claims.

Condemned property that was held for eventual resale by a political subdivision after the original public purpose for the condemnation had lapsed did not constitute a public use of the property that afforded the political subdivision immunity from adverse possession claims, and thus remand was warranted to address citizen's adverse possession claim against city concerning undeveloped city property that was originally condemned for transit purposes, but the transit purposes lapsed in late 1970s, in city's action for ejectment in which citizen sought to quiet title to property and claimed ownership by adverse possession.

CDFA Releases Annual Volume Cap Report.

Read the Volume Cap Report.

CDFA | Oct. 17

Climate Change Could Make Borrowing Costlier for States and Cities.

As ratings firms begin to focus on climate change, those involved in the market say now is the time for communities to make investments in climate resilience or risk being punished by the financial sector in the future.

(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 | OCTOBER 18, 2019 AT 3:01 AM

City Bonds May Be Hit by Climate Change. Moody's Can Now See How.

- **Rating company to gauge how cities tackle environmental risks**
- **Cities may see downgrades if plans fall too far from average**

For Moody's Investors Service, it's no longer enough for cities to have plans addressing their risks from climate change. The company's municipal-bond analysts, armed with data, will soon determine how those strategies compare with others — and may change their credit ratings as a result.

Moody's in July purchased a majority stake in climate research firm Four Twenty Seven Inc., which provides information the company is now using to evaluate how well local governments are girding for threats such as floods, fires and storms.

"We're starting to get a sense of who's really putting in the effort and putting together a quality plan and those that haven't. We're gaining a lot of expertise very quickly," said Eric Hoffmann, a senior vice president. "We're going to incorporate these particular risks and the degree to which the exposure has been mitigated by the hazard mitigation plan into the rating."

Moody's efforts show how the company is trying to distinguish itself among its rivals to meet the needs of municipal-bond buyers who want to assess how extreme weather events, exacerbated by

climate change, will affect their investments in local governments. S&P Global Ratings and Fitch Ratings say they account for such threats in their ratings.

Some investors have grown frustrated with the companies — which during the financial crisis a decade ago came under fire for underestimating the risk of toxic mortgage-backed securities — over high ratings for communities vulnerable to risks from rising sea levels and devastating storms. In California alone, the biggest municipal-bond issuer, wildfires have not only become more frequent but more devastating. Last year's Camp Fire, the deadliest in state history, wiped out most of the town of Paradise, killed 85 people and scorched 240 square miles.

"Anytime we see climate risk as being added on top of the credit story and not being integrated into the credit story, we tend to be a little bit more concerned about the value of the rating," said James Lyman, director of research for the municipal fixed income team at Neuberger Berman. "It's not a toggle switch."

Moody's recognizes that environmental risks eventually can lead to strains on local economies if left unaddressed, said Leonard Jones, the rating company's managing director for public finance. "We want entities to have a mitigation or resiliency plan so that they don't face that pressure and their ratings stay at a quality level," Jones said. "If they can't do anything about it, they're going to face that pressure even sooner."

Moody's approach so far appears inconsistent, and it's clear that it may take a while for its ambitions to be reflected in its thousands of bond ratings. Megan Kilgore, auditor of Columbus, Ohio, said analysts didn't ask about climate risks in the review ahead of the AAA-rated city's bond sale on Oct. 3 even though the company a few weeks earlier had published a report noting that the Midwest has about $69 billion in debt it rates exposed to high heat stress, the second-most vulnerable U.S. region after the Southeast.

Philadelphia Treasurer Christian Dunbar said that he thinks Moody's — and the other rating companies — will eventually "benchmark" cities on how they gird for similar environmental, social and governance threats and incorporate that into the ratings.

"Over the last year or so, ratings agencies are starting to get more sophisticated in their questioning about ESG and especially about climate risk," Dunbar said.

Bloomberg Markets

By Romy Varghese

October 15, 2019, 5:56 AM PDT

CUSIP Request Volume Sends Mixed Signals for Corporate and Municipal Debt Issuance.

NEW YORK, NY, October 10, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for September 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 increases in CUSIP request volume for corporate debt and decreases in request volume for municipal debt in September.

CUSIP: Corporate Debt Volumes Rise in September While Muni Volumes Slow.

“The significant monthly growth in requests for new corporate debt identifiers in September is noteworthy,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “While most of this year has been marked by relatively moderate swings in month-to-month request volume volatility, the 38.0% monthly increase in volume for domestic corporate debt identifiers is a sign that corporate issuers are indeed seizing the current interest rate environment to raise capital.”

Read Press Release.

MUNIS IN FOCUS: Joe Mysak (Radio)

Joe Mysak, Munis Editor for Bloomberg Briefs, will discuss how the municipal market could see $400 billion of total supply if the new-issue calendar remains elevated in coming weeks Hosted by Lisa Abramowicz and Paul Sweeney.

Listen to audio.

Bloomberg

October 11, 2019 — 8:58 AM PDT

Pension Obligation Bonds May Soon Have Their Moment.

Issuing bonds to wipe out unfunded liabilities is risky. For some municipalities, it might soon be worth a shot.

In some corners of the finance world, the phrase “pension obligation bonds” is practically a four-letter word. The debt, which raises money to plow into public retirement systems, is deemed risky and dangerous, nothing more than a gamble on future market moves by state and local government leaders who are too clever for their own good.

It’s true that some of the most infamous municipal bankruptcies, from Detroit to the California cities of Stockton and San Bernardino, involved pension obligation bonds, or POBs. Indeed, an oft-cited study by the Center for Retirement Research at Boston College found that “the jurisdictions that issue POBs tend to be the financially most vulnerable with little control over the timing.” Chicago, which has a junk rating from Moody’s Investors Service, floated the idea of using POBs last year.

That kind of deal would be asking for trouble. For one, Chicago pays a hefty premium to borrow, making it tougher for investment returns to exceed the bonds’ fixed interest rate and turn the financing into a victory. Also, the city would be buying into a stock market that remains close to all-time highs, just as concerns about a potential economic slowdown are reaching a fever pitch. It doesn’t add up.

But consider a scenario 12 months from now in which the U.S. economy enters a recession. That’s

hardly a bold call: A Federal Reserve Bank of New York model in August put the odds at 1 in 3.

In such an environment, equities, which have become the cornerstone of public pension plans, will likely have slumped as corporate earnings suffer and consumers close their wallets. Benchmark U.S. Treasury yields, already near all-time lows, will head even closer to zero as investors seek safety.

Would POBs make sense financially at that point? Absolutely.

Take South Carolina. As of 2017, its pensions were 54.3% funded, the sixth-worst level in the nation. And yet it maintains a pristine triple-A bond rating from Moody's, so the yield on its 30-year tax-exempt debt is a measly 2%.

Now, POBs must be taxable securities, after the Tax Reform Act of 1986 closed a loophole that exploited an almost risk-free opportunity for states and cities to sell tax-free debt and buy higher-yielding Treasuries. So for South Carolina, that yield would have to be higher. Still, even if the state could borrow at 3%, is there really much doubt that a broad basket of public stocks, not to mention hedge funds and private equity firms, will beat that mark in the coming decades? From the height of the dot-com bubble in early 2000 until now, the S&P 500 has returned on average 5.4% annually. Since March 2009, it's delivered 17.5% a year. Adding in an allocation to the Bloomberg Barclays U.S. Aggregate Bond Index over either of those periods still leaves returns comfortably above the going rate on U.S. state obligations.

If this sounds like market timing, that's because it is. And with prudent management—and under the right conditions—it's not so much a gamble as an automatic stabilizer.

These massive funds have trillions of dollars in assets and depend on sustained market gains to meet their promises to retired public employees. recession is precisely the time for those focused on the long term to buy risky assets on the cheap. Yet that's exactly when states and cities see tax revenue dry up, affording them little room to ramp up investing. Instead, as they did during the last downturn, governments are inclined to skip pension payments as they grapple with budget shortfalls.

Matt Fabian, a partner with independent research company Municipal Market Analytics, could be called a POB skeptic. He published a report this year with a section titled "Fourteen Pension Obligation Bond Problems." But even he sees some merit in them when they're managed properly. "If there's a correction in the stock market, and you can time it at the bottom, sure," he says. "But think about the political will at that point. That's when you do it, but that's also when you don't do it."

It's true that austerity is still a virtue in many statehouses, unlike at the federal level. But financial advisers should have no trouble doing the math and coming up with scenarios in which selling POBs and investing in a mix of stocks and bonds would be a windfall with a high degree of confidence. Nothing is certain, of course, but using historical performance as a guide is at least informed speculation rather than an outright gamble.

Even when a positive spread between investment returns and the securities' interest rate is all but ensured, opponents of POBs may still have some valid criticisms. For one, issuing the debt is not a substitute for making required contributions. As Fabian points out, "pension bonds are rarely done to help the pension—they're done to help the budget." POBs should be considered a way to go above and beyond typical funding at an opportune time, when the prospects for future gains are greatest.

Another concern is that the transaction substitutes pension debt for comparatively inflexible muni

bonds. The Government Finance Officers Association notes that POBs often restrict the option for borrowers to "call" the debt, "which can make it more difficult and costly to refund or restructure." The GFOA also correctly points out that the structures are sometimes tied to swaps and derivatives, and these can get messy. A plain-vanilla approach is the way to go.

In a blunt statement on its website, the GFOA says it "recommends that state and local governments do not issue POBs." Nothing indicates it plans to alter that stance anytime soon. That sort of warning could deter fiscally sound governments from even considering them when the going gets tough.

Moody's takes a somewhat more flexible position. "Our view is the issuance of POBs at the time of the transaction is really credit-neutral," says Tom Aaron, a public pension specialist at the credit-rating company. "But context matters a heck of a lot in terms of whether these things pan out."

In particular, "if the government continues making its full contributions, that's a different story than using the pension bonds as a temporary budget reprieve, because that turns it into an arbitrage play plus deficit financing," Aaron says. Of course, history has shown that's a big "if."

One thing that's different today is the stark drop in nominal bond yields vs. the end of the last recession. In June 2009, benchmark 30-year tax-free munis yielded about 5%. Now they yield a record low 2%. The GFOA calls POBs "very speculative," but they present a much lower hurdle with interest rates so suppressed.

One need only look at Illinois, which has the worst-funded state pension in the U.S. after years of skipped payments, to see how important it is to funnel money into retirement systems at the right time. Earlier this year, the state resorted to issuing POBs with a top yield of more than 6%. The S&P 500 would hit a new record high a month later. With $134 billion of unfunded pension liabilities, it's anyone's guess whether the state can find a path to solvency. Meanwhile, New Jersey's Senate president in August claimed his state was "in worse shape than Illinois" because of its massive pension shortfall.

Fortunately, most other states and cities start from a stronger position. And though there's no magic number that defines a well-funded pension plan, clearly any sustained decline in stocks and other risky assets would leave many of them in an uncomfortable hole.

Lower-for-longer interest rates present a unique opportunity for government officials to dig out faster than before. Make no mistake—POBs are not a cure-all. But layered on top of required payments, they just might help defuse the ticking pension time bomb that seems destined to explode.

Bloomberg

By Brian Chappatta

October 10, 2019, 2:00 AM PDT

Green Bond Trend Catches on in the Muni Market.

- **Governments step up sales of bonds for environmental projects**
- **As climate change politicized, states seen picking up pace**

Environmentally conscious investing may finally be gaining traction in a $3.8 trillion market that

seems made for it.

U.S. state and local governments — which finance public transit, water works and other projects with positive environmental impacts — sold $1.9 billion of so-called green bonds during the third quarter, the most for the period on record, according to data compiled by Bloomberg. Another $440 million have been issued so far this month.

The niche has some obstacles to overcome: neither buyers nor sellers are yet reaping any monetary benefits, for one, because their yields differ little or at all from debt that's not marketed as green.

But mutual funds and other money managers are fielding demand from investors who want to see their cash finance projects that benefit the environment. And local governments have become increasing comfortable with the disclosure investors want for bonds billed as green, such as posting updates on how the proceeds are flowing to designated works.

"Issuers are starting to hear the message loud and clear from the investor community that even if there are no immediate and quantifiable pricing benefits, there are other qualitative and reputational benefits to issuing a green bond," said Ksenia Koban, a municipal-credit analyst at Payden & Rygel Investment Management in Los Angeles.

Sales still remain a sliver of the overall market and have slipped from the $10 billion peak hit in 2017, when issuers sold a record amount of debt for fear that Trump's tax cut law would roll back the subsidies for a big chunk of bond deals. And some municipal governments see little reason to get a green certification if they don't achieve a lower borrowing cost in return.

Philadelphia, which sells debt several times a year, hasn't yet issued a green bond, said Treasurer Christian Dunbar. "I don't know if the demand would be so strong that it will have an effect on our pricing," he said by telephone.

But analysts and underwriters expect offerings to increase in the municipal-bond market, which as the traditional venue for raising funds for infrastructure makes it a natural fit. While the deals may not all end up being billed as green, more than half of the cities surveyed by Moody's Investors Service said they plan to sell debt to fund projects easing the risks from their changing climate such as flooding.

With environmental issues becoming politicized nationally, it's "difficult to envision a federal plan to fund sustainable projects," said Glenn McGowan, director in municipal underwriting at RBC Capital Markets. "States and local governments will likely need to proceed in financing projects they deem appropriate in the absence of federal support, and the municipal market will play a key role in that process."

Bloomberg Markets

By Romy Varghese

October 9, 2019, 10:30 AM PDT

— With assistance by Sowjana Sivaloganathan, and Maria Elena Vizcaino

Warning Signs Flash For Muni Bondbuyers Chasing Riskiest Debt.

- Firm says key measure of distress rises 30% to most since 2015
- Figures reflect results of 'incredible appetite for risk'

There's an alarm bell sounding for investors who've been plowing into the riskiest state and local government bonds.

So far this year, 108 borrowers who raised cash in the $3.8 trillion municipal market have run into troubles grave enough that they skipped debt payments or violated other financial terms of their bond contracts, like drawing down their cash reserves, according to data compiled by Municipal Market Analytics. That's a 30% jump from the same period in 2018 and the most since 2015.

The figures underscore concern in pockets of Wall Street that the influx of cash from yield-chasing investors is increasing the risk in the municipal market, where real estate developers, nursing home operators and even factory owners can raise money by issuing debt through local government agencies. The demand has pushed junk-bond yields to about 2.4 percentage points more than what top-rated borrowers pay, the smallest penalty since before the financial crisis more than a decade ago.

MMA analyst Matt Fabian said about 41% of the borrowers that ran into distress sold the debt within the last three years. That marks an increase from the historical average of about 20% to 25% encountering strain so soon.

The number of payment defaults rose at a slower pace than so-called impairments — such as drawing on credit lines to cover interest bills — with 37 this year, an increase of 19%, Fabian and analyst Lisa Washburn said in a report to clients Tuesday. But the jump in impairments may foretell a rise in defaults, since about half of the borrowers that experience impairments eventually wind up reneging on the debt payments, according to Fabian.

"That impairments are rising faster than defaults means that defaults will continue to rise into next year as troubled credit begins to transition to defaults," Fabian said in a telephone interview.

One contributing factor is the "incredible appetite for risk," he said, adding that it is more about that than any shifts in the economy.

"Investors are permitting riskier bonds to come to market," Fabian said. "That's what driving the trend of recent issues getting into trouble faster than normal."

Bloomberg Markets

By Shruti Singh

October 8, 2019, 10:52 AM PDT

Why Democrats Should Be Cautious About Public Banking.

Earlier this month, California passed a bill allowing 10 city governments in the state to establish a public bank. It's only the second state in the U.S. to take the leap — North Dakota has had a public bank for a century — but other states are dabbling in the idea.

In the aftermath of the 2008 financial collapse, when the privately-owned banks of Wall Street are as bloated and vulnerable to crisis as ever, public banking seems like an idea whose time has come: It's being proposed for everything from ending the financial exploitation of low-income Americans to providing the financial engine of a Green New Deal.

But what do public banks get us that private banks don't? If public banking is a tool, what problems is it best at solving? And is it a solution for tackling some of our biggest challenges?

Continue reading.

theweek.com

by Jeff Spross

October 16, 2019

Is Consolidating the Assets of Illinois' Public Pension Funds a Good Idea?

We don't have enough information to say for certain whether the Pritzker task force recommendations are prudent policy.

On Oct. 10, 2019, the Illinois Pension Consolidation Feasibility Task Force released its report to Gov. J.B. Pritzker. The Task Force was charged with studying the possibility of consolidating some of Illinois' hundreds of public pension funds and providing recommendations to the governor. The main focus was Illinois' public safety pension funds — there are over 600 individual funds for police officers and firefighters throughout the state.

The public safety funds range significantly in size and financial condition, and each one currently operates independently with its own board of trustees. Most, however, are underfunded, and the financial health of the funds has long been a concern. This is, in part, because municipalities' annual pension payments are linked to the finances of the pension funds — as a pension fund's finances deteriorate, the municipality's payments should increase. State law requires municipalities' contributions to be sufficient so that each public safety fund is 90% funded by 2040 (meaning 90% of the liabilities are matched with assets). Because most public safety pension funds are underfunded, municipalities' contributions are projected to increase significantly over time. The increasing pension contributions are a growing fiscal pressure for municipalities.

Unfunded liabilities for all public safety funds totaled $11 billion as of fiscal year 2017, and between 2012 and 2017 the median increase in unfunded liabilities from year-to-year was nearly $400 million. A policy change that boosts the finances of the pension funds—like consolidation—could reduce municipalities' required contributions. However, consolidation should not be thought of as something that will resolve the challenge of unfunded pension liabilities or municipalities' increasing pension contributions.

Continue reading.

CRAIN'S CHICAGO BUSINESS

by AMANDA KASS
University of Illinois at Chicago

October 16, 2019

Fitch Ratings: U.S. Toll Roads Still Largely in Cruise Control.

Link to Fitch Ratings' Report(s): Peer Review of U.S. Toll Roads (Attribute Assessments, Metrics and Ratings)

Fitch Ratings-New York-15 October 2019: Roadblocks will remain minimal for U.S. toll road performance in the coming months amid ongoing issues that continue to hamper performance for two rated toll roads, according to Fitch Ratings in its latest U.S. Toll Roads Peer Review.

Fitch has taken four positive rating actions, two negative rating actions, and revised three Outlooks to Positive since its last Peer Review. For the second time in the las two years, Fitch upgraded bonds tied to Texas' Grand Parkway System with performance far exceeding original expectations. 'The addition of new debt for new segments was expected, though Grand Parkway System's revenue is more than sufficient to cover all of its debt obligations through the term,' said Director Scott Monroe. Another bright spot was Colorado's E-470 project bonds, which Fitch also upgraded. 'In addition to its continued strong traffic and revenue growth, E-470 can service its escalating debt service profile with nearly no revenue growth and no need to issue new debt for capital requirements,' said Monroe.

Two toll roads that continue to struggle are Miami's MDX and Dulles Greenway connecting Washington DC and Virginia. House Bill 385 effectively dissolving MDX led to Fitch downgrading the rating on the project bonds. 'The bill is the culmination of an unprecedented degree of state political interference into the affairs of a local tolling authority,' said Monroe. 'MDX's financial profile could deteriorate sharply and be susceptible to further downgrades if House Bill 385 is upheld.' Traffic and revenue are both trending below expectations for Dulles Greenway, prompting Fitch to downgrade the project bonds. 'Limited visibility into future rate-setting and the prospect of future toll increases not yet authorized by regulators will continue to weigh on Dulles Greenway,' said Monroe.

Fitch has also launched its 2019 update to the interactive peer study for U.S. toll roads, the Fitch Analytical Comparative Tool, or FACT, concurrently with the release of today's peer review.

Fitch's 2018 U.S. Toll Road FACT, contains comparative financial data for a portfolio of 41 publicly rated operating U.S. toll road issuers and enables graphical plotting of key metrics by region, facility type, asset type and rating. The database includes six years of data, providing a comprehensive base for historical trend analysis specific to individual issuers or within the peer group at large.

Fitch's latest 'Peer Review of U.S. Toll Roads' and the '2019 Fitch Analytical Comparative Tool – U.S. Toll Roads' are available at 'www.fitchratings.com' or by clicking on the above links.

Contact:

Anne Tricerri
Associate Director
+1-646-582-4676
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Scott Monroe
Director
+1-415-732-5618

William Schmid
Associate Director
+1-512-813-5704

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

Additional information is available on www.fitchratings.com

EY Launches Blockchain Tool to Help Bring Accountability to Public Finances.

Professional services giant EY (Ernst & Young) is using blockchain tech to assist governments in improving transparency and accountability in the management of public funds.

The firm, one of the Big Four accounting firms, announced the news Wednesday, saying its new "blockchain-enabled" EY OpsChain Public Finance Manager will compare government spending programs with the results of the expenditure, even when the money has passed through different layers of government and public service agencies.

It's claimed to track finances in real time and "create a single source of integrated financial and nonfinancial performance information to support decision-making."

Mark MacDonald, EY's lead of Global Public Finance Management, said in the announcement that transparency, accountability and sound evidence for decision-making are vital in managing public funds. The firm's new tool is aimed to help those in charge of public finances to "assess and improve" their systems, he added.

The product has already been trialed around the world, the firm said, citing one pilot in Toronto where the city used the finance manager solution to track how reconciliations and fund transfers between departments are managed.

The system is built on EY OpsChain, a blockchain platform launched in its second iteration in April with claimed support for up to 20 million transactions per day over private networks. The firm is eyeing a range of use cases for the blockchain platform generally, including in healthcare, the food industry, supply chain and financial management.

coindesk.com

by Daniel Palmer

Oct 16, 2019

EY Launches Public Finance Management Blockchain Solution to Improve Efficiency and Transparency in Governments.

- **– Solution helps to optimize capacity in core financial management processes**
- **– Offering provides clarity into how public monies are spent and results delivered**
- **– EY professionals working with early adopters and piloting with governments worldwide**

LONDON, Oct. 16, 2019 /PRNewswire/ — EY announced the launch of EY OpsChain Public Finance Manager (PFM), a blockchain-enabled solution designed to help governments improve their processes for financial management of public funds.

EY OpsChain PFM helps governments drive transparency, provide accountable outcomes for citizens and track budgets, expenditures and results. It uses blockchain technology to match government spending programs with tangible outcomes, even as funding may pass through multiple layers of government and public service agencies.

EY OpsChain PFM blockchain provides clear, accurate and timely information for financial reporting and accountability. The system increases administrative efficiency with the capacity to track funds in real time and create a single source of integrated financial and nonfinancial performance information to support decision-making. The system is built on the EY OpsChain platform.

EY OpsChain PFM has been piloted worldwide, including for the city of Toronto. The city has tested application to the way reconciliations and interdivisional fund transfers are managed, as part of its ongoing financial management transformation efforts. The EY blockchain proof-of-concept for the city of Toronto could transform the way reconciliations and interdivisional fund transfers are managed, increasing transparency between divisions, and facilitating more efficient and effective financial and asset performance reporting.

Mark MacDonald, EY Global Public Finance Management Leader, says:

“Modern public financial management requires focusing on the things that matter most – transparency, accountability and robust evidence for decision-making – all factors that can be enhanced by blockchain technology. EY OpsChain PFM is an exciting new tool that helps public finance leaders to assess and improve their finance management systems. It has been very exciting to work with city leaders who continue to push boundaries and embrace new technologies.”

Heather Taylor, City of Toronto Chief Financial Officer, says:

“With a commitment to championing the economic, social and environmental vitality of the city of Toronto, our officials strive to implement technologies that best help us meet our residents’ evolving needs. Testing new technologies is part of our ongoing approach to financial management transformation taking place at the city.”

As governments around the world are modernizing their cities and digitally transforming their processes, blockchain technology can positively impact processes from tax collection to open data to public spending. For example, as part of the city of Vienna’s Open Government Data initiative – which includes data such as public transport routes, train schedules and surrounding communities’ voting results – EY Austria professionals previously assisted the city to use blockchain to help facilitate transparency, efficiency and security of the data.

The EY OpChain PFM release builds upon work in the public sector by EY member firms around blockchain technology.

For more information on EY and blockchain, visit ey.com/en_gl/blockchain.

Money Managers Gain Sway Over Muni Market.

More than half of the amount held by households sits in separately managed accounts or mutual funds

A larger-than-ever share of municipal bonds is being managed by professionals, shaking up a market that has traditionally been the domain of mom- and-pop investors.

The rapid expansion of muni money managers, under way for more than a decade, reached a milestone in the past year: More than half of the total amount of muni bonds held by households—a third of the $4 trillion market—now sits in separately managed accounts or mutual funds.

Investors in these separate accounts typically pay an annual percentage to a portfolio manager tasked with buying and selling bonds, rather than purchasing bonds from a brokerage account for a one-time fee and holding them.

Separate accounts held about $600 billion in municipal debt at the end of the first quarter, triple the amount in 2010, according to Vikram Rai, head of municipal strategy at Citigroup Inc. In addition, muni mutual funds, which are also overseen by a manager but are pooled funds rather than individual accounts, held $739 billion, a 52% increase, during the same period, according to the Federal Reserve.

Continue reading.

The Wall Street Journal

By Heather Gillers and Gunjan Banerji

Updated Oct. 9, 2019 9:57 am ET

Fitch Rtgs: Investment Portfolios Key for Not-for-Profit Hospital Credit

Fitch Ratings-New York-16 October 2019: A hospital's cash and investment portfolio and investment policy can have a significant bearing on creditworthiness given the importance of financial reserves to the ongoing operations of the hospital, says Fitch Ratings. Higher-rated not-fo--profit (NFP) hospitals' large investment portfolios and cash help mitigate the volatility of certain alternative investments. Lower-rated hospitals typically have weaker balance sheets and therefore are less able to weather the volatility of more risky investments, potentially compromising their ability to fund operations through the cycle.

The not-for-profit sector's strong liquidity, relative to debt repayment obligations and business risk, is a key element distinguishing it from for-profit acute healthcare entities. The accumulation of retained earnings including earnings on cash and investment holdings allows many NFP hospitals and health systems to build up substantial unrestricted liquidity. This provides a financial cushion to absorb unforeseen operating challenges that may lead to potential compression in operating margins. In Fitch's view ratings should not change due to normal cyclical variations. Therefore,

Fitch reviews the size and allocation of a NFP hospital's combined cash and investment portfolio to provide broad order of magnitude guidance of how public hospitals' liquidity positions might be affected in relation to normal economic expansions and contractions.

Larger systems often have a larger financial cushion and may have qualitative advantages, such as better operating efficiencies and economies of scale, or enhanced competitive positioning, that temper balance sheet compression if, for example, investment holding performance weakens or is volatile. While not as common, smaller organizations may have a large financial cushion in line with metrics indicative of high-investment-grade ratings that may give them more flexibility to hold more volatile assets in their investment portfolio.

Continue reading.

Fitch Rtgs: No Cali Blackout Near-Term Effect on Infrastructure, Municipals

Fitch Ratings-New York-11 October 2019: Blackouts in California as a precaution against conditions conducive to wildfires do not have an immediate effect on infrastructure or municipal credit, says Fitch Ratings. However, over the long term, energy infrastructure projects, municipalities and public power utilities may see revenue pressured due to curtailment and loss of customers and taxpayers. How common and long-lasting wildfires and associated blackouts are and how these conditions are managed in the future may affect credit over a longer period. We believe the financial flexibility of rated local governments, non-profits and utilities, along with the resumption of normal business operations, will mitigate the risk posed by lost revenue, but longer-term negative credit implications could emerge given the potential for economic slowdown.

In the past, Fitch noted that economic effects of natural disasters such as lost tourism income, crop damage and lost revenue due to school closures are likely to be temporary and followed by increases in economic activity as communities rebuild and go back online. However, wildfires are occurring with increased frequency in California due in part to environmental changes, such as drier conditions, leading to longer fire seasons, highlighting the need for state and local governments to maintain reserves for economic or capital emergencies. Businesses and residents may decide to relocate to areas less prone to severe weather and associated catastrophes, reducing the tax base and economic growth in areas viewed as more high risk. Development in fire prone areas contributed to the severity of the effects of disasters on the population, and further growth and development may be limited by practical and economic considerations.

If blackouts become more frequent, consumers may look more to alternative suppliers or self supply. Historically, individuals and businesses turned to diesel generators, but less costly and longer duration residential battery systems are an increasingly viable alternative. These developments could exacerbate the current trend of lower revenue requirements for municipal utilities. Likewise, if utilities increasingly respond to wildfire risk by exercising emergency generation curtailment, Fitch would expect to see lost revenue for independent power producers. Burying transmission lines is an obvious solution for these challenges but remains expensive.

While roads, tunnels, bridges and public transit continue to operate in northern California during the blackout, these entities may see brief volume declines if people decide to stay home during the blackout.

For more information on environmental risk considerations in Fitch's ratings, please see

Environmental Risk in U.S. State and Local Government Ratings.

Contact:

Andrew Joynt
Senior Director, Infrastructure and Project Finance
+1 212 908-0594
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Karen Ribble
Senior Director, U.S. Public Finance
+1 415 732-5611
Fitch Ratings, Inc.
One Post Street, Suite 900
San Francisco, CA 94104

Sarah Repucci
Senior Director, Fitch Wire
+1 212 908-0726

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

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Major Credit Agency Upgrades California's Credit Rating.

SACRAMENTO – Recognizing California's decisions to build the state's fiscal reserves and pay down long-term liabilities, as well as continued economic growth, a major credit agency – Moody's Investors Service – has upgraded California's outstanding general obligation bonds to Aa2 from Aa3.

The agency has also upgraded the rating on the state's outstanding lease debt, its outstanding appropriation debt and outstanding school fund apportionment lease revenue bonds.

According to the agency, the upgrade "recognizes the state government's disciplined approach to managing revenue growth indicated by its use of surplus funds to build reserves and pay down long-term liabilities."

"While Washington balloons the national debt to pay for tax cuts for the rich, California is showing that it is possible to take bold action to tackle the affordability crisis, climate change, and other challenges all while living within our means," said Gov. Newsom. "We are advancing progressive values while growing our rainy day fund, paying down pension liabilities and eliminating our state's wall of debt."

In August, Fitch Ratings also upgraded the state's credit rating, writing that California has improved its ability to weather an economic downturn.

The 2019 Budget Act signed by the governor made a series of investments in expanding the state's financial security.

The budget will end the year with total reserves of $19.2 billion, of which $16.5 billion is in the Rainy Day Fund, $1.4 billion in the Special Fund for Economic Uncertainties, $900 million in the Safety Net Reserve and nearly $400 million in the Public School System Stabilization Account.

The budget makes an extra payment of $9 billion over the next four years to pay down unfunded pension liabilities. This includes $3 billion to CalPERS and $2.9 billion to CalSTRS on behalf of the state, and $3.15 billion to CalSTRS and CalPERS on behalf of schools.

The budget invests $4.5 billion to eliminate the Wall of Debt and reverses the decade-old deferral undertaken during the last recession.

The budget prioritizes one-time investments, with 88 percent of new expenditures being temporary rather than ongoing. This addresses the affordability crisis facing Californians while minimizing ongoing commitments to avoid putting the state at fiscal disadvantage in the future.

LAKE COUNTY NEWS

ELIZABETH LARSON POSTED ON WEDNESDAY, 16 OCTOBER 2019 02:23

The City of San Bernardino's Bankruptcy.

Post the 2008 recession, throughout California, the operating costs of cities and other local governments have been growing faster than their revenues.

These higher operating costs are often attributed to the rising pension costs of employees in addition to adding services throughout their jurisdictions. Furthermore, when there is a financial downturn, similar to the one in 2008, it can impair the main revenue sources for local governments. If a local government isn't thinking long term by either building reserve funds or fostering strategic growth, its financial unpreparedness and structural issues can lead the city into insolvency, which brings us to the case of San Bernardino's bankruptcy.

In this article, we will take a look at the municipal bankruptcy of the City of San Bernardino and what led to the Chapter 9 filings.

Continue reading.

municipalbonds.com

by Jayden Sangha

Oct 16, 2019

FERC Affirms Transmission Incentives to California Utilities for Regional Transmission Organization Participation.

On September 30, 2019, FERC issued two orders denying requests for rehearing of orders that respectively granted Pacific Gas & Electric Company ("PG&E") and Southern California Edison Company ("SCE") 50-basis point return-on-equity adders for their continued participation in the

California Independent System Operator Corporation ("CAISO") ("RTO-Participation Incentive"). PG&E requested the RTO-Participation Incentive as part of its nineteenth transmission owner tariff filing; SCE requested the RTO-Participation Incentive as part of its 2018 transmission revenue requirement filing. FERC granted both requests in two separate orders issued in 2017. The California Public Utilities Commission ("CPUC") and Transmission Agency of Northern California requested rehearing of both 2017 orders; the Sacramento Municipal Utility District ("SMUD") also requested rehearing of the 2017 order granting PG&E the RTO-Participation Incentive (CAISO, CPUC and SMUD are collectively referred to as the "California Parties"). FERC's September 30, 2019 orders denying the California Parties' rehearing requests concluded that is appropriate to grant both PG&E and SCE the RTO-Participation Incentive because California law does not mandate that either utility participate in CAISO.

In denying the California Parties' rehearing requests, FERC referred to a separate proceeding that began in 2007 when, following the issuance of Order No. 679 (addressing pricing reforms to promote transmission investment), PG&E first requested the RTO-Participation Incentive as part of its near-annual transmission owner tariff filing. FERC granted PG&E's request for the RTO-Participation Incentive over objections from the CPUC that California law required PG&E's participation in CAISO. On appeal, the U.S. Court of Appeals for the Ninth Circuit remanded the proceedings and instructed FERC to develop a record on whether California law permitted PG&E to unilaterally leave the CAISO, and whether the RTO-Participation Incentive could induce its participation in CAISO. In an order on remand issued on July 18, 2019, FERC concluded that the relevant provisions of California's Public Utilities Code encouraged and facilitated PG&E's participation in CAISO, but did not require its continuing membership or obligate PG&E to seek CPUC approval before withdrawing from CAISO.

Applying the same reasoning as in the Ninth Circuit proceeding and July 18, 2019 order on remand, FERC's September 30, 2019 orders denying the California Parties' rehearing requests concluded that it is appropriate to grant PG&E and SCE the RTO-Participation Incentive because California law does not mandate the utilities' continued participation in CAISO. FERC also rejected the California Parties' arguments that FERC has no authority to second-guess the CPUC's interpretation of California law as requiring PG&E's/SCE's membership in CAISO. FERC explained that whether to grant the RTO-Participation Incentive is an issue involving the transmission and sale of energy at wholesale in interstate commerce and is therefore subject to its exclusive jurisdiction. Finally, FERC disagreed with the California Parties' arguments that granting PG&E/SCE the RTO-Participation Incentive would constitute a failure to comply with FERC's duties to ensure just and reasonable rates. FERC pointed out that regional transmission organizations benefit consumers by providing open, non-discriminatory transmission service, addressing congestion-related issues, mitigating market power, and managing the transmission planning and generator interconnection processes.

While Commissioner Glick originally dissented from the order granting SCE the RTO-Participation Incentive, he issued a short concurring statement in the September 30, 2019 order denying rehearing of challenges to SCE's request for an RTO-Participation Incentive. Commissioner Glick explained his belief that it is appropriate to grant SCE the RTO-Participation Incentive now that FERC has developed a record indicating that SCE's participation in CAISO is voluntary and not required by California law or regulation.

FERC's September 30 orders are available here (PG&E) and here (SCE).

Troutman Sanders LLP

by Katherine O'Konski and Miles Kiger

SEC Proposes Exemption From Broker Registration for Certain Municipal Advisors.

The U.S. Securities and Exchange Commission seeks comment on proposed exemption from broker registration for certain activities by municipal advisors.

The U.S. Securities and Exchange Commission ("SEC") is seeking comments on a proposed exemptive order granting a conditional exemption from broker registration requirements for certain activities of municipal advisors.

The SEC adopted municipal advisor registration rules in 2013 as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created "municipal advisors" as a new class of regulated persons. The SEC defined "municipal advisor" and "municipal advisory activities" in the Exchange Act rules, and the Municipal Securities Rulemaking Board developed a regulatory framework applicable to municipal advisors engaged in such activity.

Despite the parameters and framework provided, the industry has continued to express confusion about the limits of municipal advisor activity. In particular, questions continue to focus on whether certain activity could cause a municipal advisor to be acting as a broker and thus be subject to registration as such.

On October 2, 2019, the SEC published a request for comment on a proposed exemptive order. It would allow registered municipal advisors acting on behalf of a municipal entity or obligated person client (collectively, a "Municipal Issuer") to solicit certain institutional investors ("Qualified Providers") in connection with the direct placement of an entire issuance of municipal securities with a single Qualified Provider without being required to register as a broker. A registered municipal advisor relying on the proposed exemption would be required to:

- make written disclosures to the Qualified Provider stating that the municipal advisor represents only the interests of the Municipal Issuer and not the Qualified Provider and obtain written acknowledgment of receipt of the disclosures from the Qualified Provider; and
- obtain a written representation from the Qualified Provider indicating it is capable of independently evaluating the investment risks of the transaction.

The proposed exemption would apply solely with respect to the limited activities and the requirements noted above. According to the SEC, a municipal advisor complying with the conditions of the exemption could solicit Qualified Providers on behalf of Municipal Issuer clients and receive transaction-based compensation related to the direct placement of the municipal securities without being required to register as a broker.

The proposal contains a number of pointed questions and asks commenters to explain their reasoning for each comment provided. Comments are due 60 days following the SEC's publication of the proposed exemption in the federal register.

by Laura S. Pruitt, Michael R. Butowsky, Sergio Alvarez-Mena and Margaret R. Blake (Peggy)

USA October 9 2019

Jones Day

Proposed Rules Addressing LIBOR Phase-out Help Ease Reissuance Concerns.

Since the 2017 announcement that the London interbank offered rate ("LIBOR") may be phased out after the end of 2021, the municipal finance industry has been concerned that changes to debt obligations and related financial products necessary to address the phase out could cause an unexpected "reissuance" of the debt for federal tax purposes, which could result in negative consequences for issuers and debtholders. In response to these concerns, on October 9, 2019, the Department of the Treasury released Proposed Regulations addressing, among other things, whether changes arising out of the end of LIBOR will result in a reissuance for federal tax purposes (the "Proposed Regulations").

In general, the Proposed Regulations provide favorable guidance that should help avoid a reissuance in most instances. In particular, the Proposed Regulations provide that, if the terms of a debt instrument or non-debt contract (e.g., a swap) are changed to reference a "qualified rate" in lieu of (or as a fallback to) LIBOR and the change does not change the fair market value of the debt instrument or non-debt contract or the currency of the reference rate, then such change will not result in a reissuance for federal tax purposes. For example, if the terms of a variable rate bond that has an interest rate based on USD-LIBOR are changed to provide an interest rate based on the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (commonly referred to as "SOFR"), such change typically will not trigger a reissuance of the bond, so long as the fair market value of the bond remains the same.

The Proposed Regulations name certain existing rates that are "qualified rates," but also provide for flexibility to accommodate other rates. Further, to assist in addressing the fair market value requirement, the Proposed Regulations provide two safe harbors – one based on historic average of rates and the other on arm's length negotiations – that, if met, will result in the requirements to be deemed satisfied.

It is expected that, in some instances, changes to address the LIBOR phase out will include "associated alterations" that are reasonably necessary to implement the change. For example, a party may be required to make a one-time payment to offset the change in value of the debt-instrument that results from the replacement of LIBOR with a qualified rate. The Proposed Regulations provide that changes that fall within the definition of "associated alterations" will not result in a reissuance. However, other contemporaneous changes (e.g., an increase in the rate to address deterioration of an issuer's credit) must be analyzed separately and may trigger a reissuance.

The final version of Regulation will likely see changes as Treasury responds to comments on the Proposed Regulations, but the Proposed Regulations evidence a willingness to provide guidance setting a path forward that does not involve widespread reissuances and should help ease some of the concerns caused by the phase out of LIBOR. A taxpayer may choose to apply the Proposed Regulations to changes occurring on or after October 9, 2019, as long as the taxpayer and its related parties do so consistently.

Friday, October 18, 2019

Background on LIBOR and SOFR.

LIBOR is a global benchmark interest rate calculated daily. With $200 trillion in U.S. dollar exposures linked to it, LIBOR is the most widely used benchmark and has been called “the world’s most important number.” Financial products based on LIBOR include loans, corporate bonds, interest rate swaps, mortgages, student loans, and deposits. They also include municipal bonds and loans.

While ubiquitous, LIBOR became less suitable as a benchmark because it is meant to represent the cost of short-term unsecured borrowing by banks, and banks have substantially reduced their use of this type of borrowing. The LIBOR panel banks typically must submit rates based on their judgment rather than actual transactions, and many are understandably reluctant to continue doing so. Regulators and market participants are concerned that this “most important number” is no longer robust. The transition away from LIBOR became urgent in July 2017 when Andrew Bailey, head of the United Kingdom Financial Conduct Authority (FCA) and regulator of LIBOR, announced they would not require panel banks to submit quotes underlying LIBOR after 2021.1 In light of these statements, the future existence of LIBOR is uncertain.

In 2014, the Federal Reserve formed the Alternative Reference Rates Committee (the “ARRC”), a group including private-sector market participants, to select a rate to replace USD LIBOR and guide the transition. After much analysis of many potential alternatives, the ARRC announced in June 2017 that it had selected a new rate, the Secured Overnight Financing Rate (“SOFR”), as the recommended replacement for USD LIBOR. The Federal Reserve began publishing SOFR in April 2018. The ARRC selected SOFR for the following reasons:

- SOFR is fully based on actual transactions and does not rely on judgment.
- SOFR references multiple segments of the US Treasury repurchase agreement market, the largest rates market in the world.
- SOFR’s underlying market is resilient and robust.
- SOFR is a true “risk-free” rate suitable as a reflection of interest rates overall.
- SOFR is produced by the public sector using a transparent methodology.
- SOFR correlates well with other overnight money market rates and with the cost of borrowing for non-financial corporations.

To guide the transition, the ARRC was reconstituted in April 2018 with broad representation from official government entities, banks, asset managers, insurers, consumer groups, and industry trade associations. It is now tasked with (i) developing options for implementing SOFR across loans, bonds, and securities referencing U.S. dollar LIBOR (“cash products”) (ii) transitioning derivatives transactions to SOFR;
(iii) minimizing potential disruptions associated with either voluntary transition to SOFR or to an end of LIBOR; and (iv) communicating the rationale behind the change to SOFR and the status of implementation.

Transition to SOFR for Municipal Issuers

Taking inventories of existing products and processes that use LIBOR should be a first step for any municipal issuer. Some common uses of LIBOR among state and local government generally include:

- Issuance of floating rate notes and loans where the interest rate is reset periodically based on LIBOR such as private placements and bank loans.

- Use of derivatives linked to LIBOR
- Use of synthetic fixed-rate structures to gain exposure to a fixed rate when issuing variable rate bonds. Examples are interest rate swaps where an issuer agrees to receive a LIBOR- based floating interest rate in exchange for paying a fixed interest rate. To the extent that the two floating rates offset each other, the issuer's net interest rate exposure is limited to the fixed swap rate
- Similarly, use of synthetic variable rate structures to gain exposure to a variable rate when issuing fixed rate municipal bonds. Examples are interest rate swaps where the payments are reversed compared to the example above. To the extent that the fixed rates offset each other, the issuer's net interest rate exposure is limited to the floating swap rate.
- Use of interest rate swaps, in an effort to assume exposure to changes in tax rates, where the issuer pays the counterparty a floating rate based on the Securities Industry and Financial Markets Association (SIFMA) index, which tracks tax-exempt seven-day interest rates, and receives a percentage of LIBOR for a set period of time. These transactions provide opportunity for positive carry given differences between tax-exempt and taxable rates.
- Holding of LIBOR-based floating rate notes issued by corporations or sovereigns in the state and local government's asset portfolios.

Because many of these contracts referencing LIBOR do not (adequately) plan for the risk that LIBOR will be discontinued, such an event could have serious consequences for a wide range of market participants and investors. Strategies on how to handle LIBOR cessation in legacy contracts have not yet been worked out and municipal issuers together with their counsel and advisors should work with ARRC to seek ways to address these issues.

Developing mechanisms through which market participants can transition remaining legacy LIBOR-based products to SOFR, and launching new contracts referencing SOFR or other rates should be two core programs for municipal issuers in the coming years. In addition, addressing potential problems, like tax and accounting issues, as well as continuing education about the available resources and the transition timeline will facilitate the transition.

Legacy Contracts

The long duration of existing municipal bonds and loans implies that a considerable part of the outstanding stock will not have matured or rolled over by any likely end date for LIBOR. Securities and products with long duration need to be managed through "fallback" provisions set forth in contracts describing what happens if LIBOR is no longer produced.Open questions include who can legally change contract language to include fallback provisions (i.e. unanimous consent vs calculation agent), what the exact triggers to move to an alternative rate would be, and whether a spread should be included (or adjusted).

New Contracts

Issuers should also start thinking about and planning for new language and terms that would reference SOFR or other rates rather than LIBOR. As soon as they are comfortable with the new language they should start using it in new contracts.

Tax and Accounting Issues

There are a number of potential tax and accounting issues that will need to be addressed, including whether a move from LIBOR would cause a bond to lose its tax-exempt status. The ARRC is working on these questions.

Education and Resources

All market participants should prepare themselves for a world with SOFR, and potentially one without LIBOR. The ARRC maintains a website accessible to all where it will be releasing guidance and steps on transitioning as well as updates on market progress in this transition.

1 Recently, Andrew Bailey has also noted that the FCA could find that LIBOR was not representative, which would preclude supervised entities within the EU from trading new LIBOR contracts and would likely diminish LIBOR's liquidity and usefulness to many participants.

Government Finance Officers of America

Thursday, October 17, 2019

Local Governments Lobby for Stable NAV Bill; BlackRock $500B in Cash

As we mentioned in our October 3 Link of the Day, "Stable NAV Bill Filed in House Again," efforts are again underway to roll back the last round of money market fund reforms and to return the $1.00 NAV for all money funds. Bills have again been filed in the House and Senate, and the lobbying has begun. A new letter from the Government Finance Officers Association, National Association of Counties, U.S. Conference of Mayors, National League of Cities, International City/County Management Association, National Association of Health and Educational Facilities Finance Authorities, National Council of State Housing Agencies, American Public Power Association and Large Public Power Council, tells us, "The organizations listed above, representing state and local governments, authorities, and other public entities, wish to express their support for S. 733 and H.R. 4492, the bipartisan Consumer Financial Choice and Capital Markets Protection Act, which was recently introduced in the House by Representatives Gwen Moore Moore (D-WI) and Steve Stivers (R-OH), and in the Senate by Senators Pat Toomey (R-PA), Bob Menendez (D-NJ) and Gary Peters (D-MI)."

It states, "Our organizations have long opposed the Securities and Exchange Commission (SEC) modifications to SEC Rule 2a-7 of the Investment Company Act of 1940, which have created an unnecessary disruption to the public funding markets by changing the net-asset-value (NAV) accounting methodology for institutional prime and municipal money market mutual funds (MMMF) from stable to floating. Our members rely on the hallmark stable NAV feature in a variety of ways. First, many governments have specific state or local statutes and policies that require them to invest in financial products with a stable NAV. This is done to ensure that public funds are appropriately safeguarded to best serve the entity."

The letter continues, "Second, MMMFs with a stable NAV are the most commonly used investment by state and local governments. Forcing governments to find alternative investments to prime and municipal MMMFs creates additional risk for public funds by driving them to lower yielding government funds or potentially less suitable products. Such options may not meet liquidity standards required by their governments to meet cash management policies and statutes. H.R. 4492 and S. 733 would restore the ability of state and local governments to use prime and municipal stable NAV funds for their essential and critical investment needs."

It also says, "In addition to the appropriate and historical use of MMMFs as state and local government investments, it is important to note that MMMFs are the largest purchasers of short-term municipal securities. Due to the SEC's floating NAV rule, municipal money market funds have significantly curbed their appetite for these securities, thus decreasing demand and increasing costs

to state and local governments that issue this type to fund state and local government operations and finance transportation projects, utilities, affordable housing, public schools and hospitals, and pollution mitigation, among other purposes."

The GFOA, et. al. comment, "In fact, as a result of implementation of the floating NAV rule in October 2016, municipal MMMFs assets fell by nearly 50 percent, thereby shrinking the funding pool available to municipal borrowers. Municipalities fortunate enough to continue selling their debt to tax-exempt funds saw their borrowing costs increase by nearly double the Federal Reserve's rate increases since implementation of the rule. Those short-term costs have increased even more for state and local governments that can no longer sell their debt to MMMFs and must borrow from other investors or replace the debt with bank loans."

Finally, they adds, "State and local governments and other public entities have utilized prime and municipal MMMFs safely and effectively for more than 40 years to both manage liquidity and provide a reliable source of working capital to fund public services and finance continued infrastructure investment and economic development throughout all economic conditions. We ask that you support S. 733 and H.R. 4492 so that state and local governments can continue to have unrestricted access to these safe and highly liquid capital markets tools."

We obtained the letter from the GFOA, and learned about it from the Bond Buyer, who published the piece, "Finance officers renew push for stable net asset value." They wrote, "Finance officers say a change in net asset value requirements put in place by the Securities and Exchange Commission years ago has 'significantly' curbed money market mutual funds' appetite for short-term municipal securities, negatively impacting issuers. In a letter sent to the House Financial Services Committee and the Senate Banking Committee this week, the Government Finance Officers Association renewed its call for money market funds to go back to a fixed net asset value after the SEC flipped the switch to floating NAVs in institutional MMMFs."

In other news, a number of financial firms are releasing their latest Q3 earnings and hosting conference calls. On one of the few to discuss "cash", BlackRock CFO Gary Shedlin says, "In the recent market environment, clients' preference has favored lower risk assets and approximately 85% of our organic growth over the last year has been in fixed income and cash, which have relatively lower fees compared to other asset classes…. BlackRock's cash management platform saw $32 billion of net inflows, a post-financial crisis record and crossed the $500 billion AUM threshold as we continue to leverage scale for clients and deliver innovative digital distribution and risk management solutions through Cachematrix and Aladdin. Cash is a strategic asset class and BlackRock's diverse cash management offering, including prime, ESG, government and munis, position us well to serve our clients' cash needs and continue to grow our market share."

CEO Larry Fink comments, "For the first time since the financial market, the Fed announced that they would add liquidity into the system after a brief spike in short-term repo rates signaled liquidity constraints, or maybe supply issues…. I've spoken in the past about using technology to drive more of BlackRock's revenues. Technology is a priority and a strategic differentiator for BlackRock. In addition to generating direct technology revenues, we're increasingly using technology to enhance our results in our asset management business. For example, we're transforming our cash management business by integrating technology into our business model. We are delivering Cachematrix technology to help clients streamline their operations and quickly and efficiently make more informed decisions."

He continues, "Five years ago, cash management was a $281 billion business. Through technology, organic growth and acquisition, we crossed $500 billion in AUM in July. This represents over a 200 basis point global market share increase from five years ago and is an important milestone as scale

is a key value proposition for clients in the asset class. Increasingly, more and more BlackRock holistic client relations are starting through a cash management assignment."

Finally, Fink adds, "We are also seeing clients increasingly adapting shorter duration fixed-income ETFs as a substitute for cash in their portfolios…. Having commission-free for low duration makes ETFs a great alternative to bank deposits, a really good solution [in place of] money market funds. And so, a commission free in the fixed-income realm, cash and fixed-income, is a real opener for so many more participants."

cranedata.com

Oct 2019

High-Yield Munis Outperform as Credit Spreads Narrow.

Christopher Brigati, managing director and head of municipals at Advisors Asset Management, discusses the impact of tightening credit spreads on municipal bond investing. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets | Muni MomentTV Shows

October 16th, 2019, 9:57 AM PDT

Muni Market Moves to Join the 21st Century, But It's in No Rush.

- **Bond-trading platforms starting to accept technology advances**
- **Similar changes transformed dealing in corporate-bond market**

The $3.8 trillion municipal-bond market moves with all the speed of a tortoise.

It's a champion at resisting change. Price quotes weren't easily available until the shockingly recent January 2005, and it wasn't until three years ago that investors were afforded best-execution standards that ensured they weren't getting ripped off — guardrails that U.S. equity markets have had in place for decades.

Now, however, it appears muni world is finally stepping out of the wayback machine and into the 21st century, even if it's in no evident rush to do so. Technological advances, such as electronic trading and analytics, are beginning to transform the relatively Luddite market in much the same way they've altered the $6.8 trillion corporate-bond market.

Continue reading.

Bloomberg Markets

By Matthew Leising

October 14, 2019, 4:00 AM PDT

Muni Sales Set to Surge Most Since 2017, Extending Supply Boom.

U.S. state and local governments are poised to sell bonds at the fastest pace in almost two years as they take advantage of lower interest rates and strong investor demand.

Municipal bond issuers are expected to sell $21.4 billion in debt over the next month. This is the highest visible supply since December 2017, when governments rushed deals to market to get ahead of federal tax law changes effective at the start of 2018.

Typically, the 30-day supply metric represents about half of what actually is issued, as deals can be priced with less than a month's notice. Visible supply has averaged about $10.6 billion in 2019, according to data compiled by Bloomberg.

The upcoming supply will add to the $289 billion in long-term bonds state and local governments have already sold this year, an 11% increase over the same period in 2018. This week is slated to be the busiest since December 2017, driven by refinancings.

Bloomberg Markets

By Danielle Moran

October 16, 2019, 6:25 AM PDT

The First Venture Capital Opportunity Zone Fund.

It's been nearly six months since the IRS issued its second tranche of regulatory guidance on Qualified Opportunity Funds. How are business Opportunity Zone funds proceeding? Brian Phillips is managing partner of The Pearl Fund, the first Opportunity Zone fund to focus exclusively on business, using a venture capital model. Click the play button below to listen to my conversation with Brian. Episode Highlights Advantages…

Read more.

Opportunity Db

October 9, 2019

TAX - CALIFORNIA

Tesoro Logistic Operations, LLC v. City of Rialto

Court of Appeal, Fourth District, Division 2, California - October 2, 2019 - Cal.Rptr.3d - 2019 WL 4853124 - 2019 Daily Journal D.A.R. 9493

Liquid fuel wholesalers, after administrative appeals and refund claims regarding tax paid were

denied, brought actions against city, seeking judgment that tax on wholesale liquid fuel storage facilities, calculated based on storage capacity by volume, was unconstitutional real property tax and unlawfully amended voter-adopted ordinance.

Wholesalers moved for judgments on the pleadings, summary judgment, and summary adjudication, and city cross-moved for judgments on the pleadings. The Superior Court denied wholesalers' motions and entered judgment on pleadings in favor of city on ground that tax was valid business license tax. Wholesalers appealed. Appeals were consolidated.

The Court of AppeaL held that:

- City guidelines unlawfully amended voter-adopted ordinance;
- Voter-adopted ordinance imposed tax on real property; and
- Voter-adopted ordinance was unconstitutional.

City guidelines purporting to implement voter-adopted ordinance imposing tax on operators and owners of wholesale liquid fuel storage facilities unlawfully amended voter-adopted ordinance, where guidelines changed scope and effect of ordinance by limiting application of tax to only those persons operating storage facilities where liquid fuel was actually stored during a calendar year, rather than any persons engaged in the business of owning, operating, leasing, supplying, or providing storage facilities regardless of whether fuel was actually stored, as required under ordinance, changed effect of ordinance from taxing storage capacity, as intended by voters, to taxing business operations, and ordinance did not provide that city could amend or repeal ordinance.

Tax on storage capacity of liquid fuel storage tanks was tax on real property, not excise tax; storage tanks were fixtures or improvements to real property, such that they themselves constituted real property, tax was based on volume of tanks regardless of whether tanks were used in business or how much fuel was stored in them, and mere act of owning fuel storage facility, rather than any incident of ownership such as use of tanks to store fuel or privilege of storing fuel in tanks, triggered liability for tax.

Language in voter-adopted ordinance describing tax imposed on owners and operators of liquid fuel storage facilities based on storage capacity as "business license tax" was incompatible with meaning and effect of ordinance as a whole, and, thus, did not reflect voters' intent that tax be a business license tax instead of a property tax, where ordinance as a whole taxed volume of storage tanks, which were fixtures or improvements to real property, regardless of whether tanks were used in any business, and mere ownership of tanks triggered tax liability.

Voter-adopted ordinance imposing tax on owners and operators of liquid fuel storage tanks violated constitutional provision restricting real property taxes, where tax was assessed based on storage capacity of tanks, which were fixtures or improvements to real property, regardless of their use, mere ownership triggered tax liability, and tax did not come within constitutional exceptions to general prohibition on property taxes.

TAX . - ILLINOIS

Trilisky v. City of Chicago

Appellate Court of Illinois, First District, Fourth Division - September 26, 2019 - N.E.3d - 2019 IL App (1st) 182189 - 2019 WL 4696926

Taxpayer, individually and on behalf of others similarly situated, brought action against city,

claiming city had been improperly collecting transfer tax on sales to and from Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac).

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

The Appellate Court held that:

- Taxpayer's notice of appeal was not sufficient to confer appellate jurisdiction over second taxpayer's case;
- Taxpayer was not required to exhaust administrative remedies prior to filing complaint;
- Fannie Mae and Freddie Mac were not governmental bodies for purpose of municipal code exempting transfers involving "real property acquired by or from any governmental body" from city's real property transfer tax;
- Federal Housing Finance Agency's placement of Fannie Mae and Freddie Mac into conservatorship did not turn entities into governmental bodies; and
- Provision of public functions by Fannie Mae and Freddie Mac did not turn entities into governmental bodies.

USDA Invests in Water and Wastewater Infrastructure Improvements in 31 States.

Investments will Benefit Nearly 300,000 Rural Residents

WASHINGTON, Oct. 16, 2019 – U.S. Department of Agriculture (USDA) Deputy Under Secretary for Rural Development Donald "DJ" LaVoy today announced that USDA is investing $201 million to improve rural water infrastructure in 31 states (PDF, 250 KB).

"Modern, reliable and accessible infrastructure is critical to economic development and quality of life," LaVoy said. "Under the leadership of President Trump and Agriculture Secretary Perdue, USDA is committed to partnering with rural communities to help them improve their infrastructure, because when rural America thrives, all of America thrives."

USDA is providing the funding through the Water and Waste Disposal Loan and Grant program. Eligible applicants include rural cities, towns and water districts. The funds can be used for drinking water, stormwater drainage and waste disposal systems in rural communities with 10,000 or fewer residents.

USDA is announcing investments today in Alabama, Arkansas, Arizona, California, Colorado, Florida, Iowa, Illinois, Indiana, Kentucky, Maine, Michigan, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, South Carolina, Texas, Utah, Virginia, Vermont, Washington, Wisconsin and Wyoming.

Below are examples of projects announced today.

Bessemer City, N.C., is receiving a $4.9 million loan and a $3.2 million grant to improve its water treatment plant and related facilities. The city will add 1,290 linear feet of water line and 2,375 linear feet of gravity sewer line. It also will install 12 manholes along an unstable stream bed to replace the deteriorated sewer line. The improvements will increase the reliability of the water treatment process and improve water quality.
The Village of Maine, Wis., is receiving a $515,000 loan and a $965,000 grant to upgrade the

wastewater collection system. Deteriorating manholes will be repaired or replaced, and the Everest Avenue lift station will be relocated. Sewers on the east side of the village will be replaced with new PVC piping, and the manholes will be replaced with ones made out of precast concrete. These improvements will significantly decrease infiltration and inflow into the collection system.
The town of Barre in Orleans County, N.Y., has been approved for a $500,000 loan and a $601,000 grant to extend public water service to 31 residential customers who have wells that lack safe, potable water. Installing water mains will provide reliable water service to the residents as well as adequate fire protection.

USDA awarded nearly $1.8 billion for Water and Environmental Program loans and grants during fiscal year 2019. View the interactive RD Apply tool or contact one of USDA Rural Development's state or field offices for application or eligibility information.

In April 2017, President Donald J. Trump established the Interagency Task Force on Agriculture and Rural Prosperity to identify legislative, regulatory and policy changes that could promote agriculture and prosperity in rural communities. In January 2018, Secretary Perdue presented the Task Force's findings to President Trump. These findings included 31 recommendations to align the federal government with state, local and tribal governments to take advantage of opportunities that exist in rural America. Increasing investments in rural infrastructure is a key recommendation of the task force.

To view the report in its entirety, please view the Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity (PDF, 5.4 MB). In addition, to view the categories of the recommendations, please view the Rural Prosperity infographic (PDF, 190 KB).

USDA Rural Development provides loans and grants to help expand economic opportunities and create jobs in rural areas. This assistance supports infrastructure improvements; business development; housing; community facilities such as schools, public safety and health care; and high-speed internet access in rural areas. For more information, visit www.rd.usda.gov.

Release & Contact Info
Press Release
Release No. 0155.19
Jay Fletcher (202) 690-0498
Weldon Freeman (202) 690-1384

MSRB Seeks Input and Volunteers for Advisory Groups.

Read the MSRB Notice.

A Tailored Opportunity Zone Incentive Could Bring Greater Benefits to Distressed Communities and Less Cost to the Federal Government.

Abstract

Brett Theodos, senior fellow, testified before a subcommittee of the US House Committee on Small Business about Opportunity Zones and how the OZ incentives could be tailored to provide greater

benefits to distressed communities at less cost to the federal government. His testimony noted the promising aspects of Opportunity Zones and detailed the limitations and challenges to the program as it currently exists. He also provided options for both the Congress and Administration to act to help redefine Opportunity Zone incentives to bring clearer investments to communities.

Continue reading.

The Urban Institute

Brett Theodos

October 17, 2019

How Governors Are Shaping the Opportunity Zone Landscape.

Over the past two years, Opportunity Zones (OZs) have become the most discussed piece of federal economic development policy. Now, as the policy rolls out in earnest, the focus once again shifts to the nation's governors. Given the open-ended nature and limited federal accountability written into the law, state-level policymaking has significant power to shape how Opportunity Zones play out in practice.

Governors must decide whether and how Opportunity Zones fit into their priorities. Given competing demands for state funds, it is critical that governors consider the benefits of creating and modifying programs and policies against their costs to ensure they are worthwhile.

We don't recommend states jump on the OZ bandwagon without carefully considering what they want the incentive to accomplish and how their supports will encourage that.

To this end, we've proposed a five-step process governors can use to maximize the potential benefits of Opportunity Zones for their state's communities and minimize unintended harms.

1. select state-level guiding principles for making decisions about OZs
2. create support and accountability systems for OZ projects and investments
3. assist aspiring Opportunity Fund managers
4. engage with Opportunity Fund investors
5. recruit other mission-driven financial actors

But what have governors actually done so far?

A handful of states have taken concerted action to support local community-planning efforts and project matchmaking. Additionally, there are several noteworthy state-level, OZ-paired incentives either recently enacted or currently under consideration.

Continue reading.

The Urban Institute

by Brett Theodos & Brady Meixell

October 7, 2019

OZ Lessons from Opportunity Alabama, with Alex Flachsbart.

How can Opportunity Zones ignite a place-based economic development revolution in one of the nation's poorest states? Alex Flachsbart is president and CEO of Opportunity Alabama, the nation's first nonprofit organization to create a marketplace for Opportunity Zone investment in a particular state. Click the play button below to listen to my conversation with Alex. Episode Highlights Alabama's capital gap and how Opportunity Zones can…

Read More »

Opportunity Db

October 16, 2019

Full Spectrum Fund Investing: A Case Study With Municipal Bonds.

Summary

- Fund and income investors have ready access to a number of different fund structures for their sector allocation such as mutual funds, ETFs, and CEFs.
- We review the key issues surrounding these three fund types using municipal bonds as a case study.
- We find that, historically, municipal CEFs have benefited from a number of tailwinds which have now mostly dissipated. This suggests that investors should have a closer look at open-end funds.
- Within high-yield municipal mutual funds, we like NHMAX and ORNAX which have a good combination of high yield, strong total returns, and attractive risk profile.

Fund investors have a number of investment vehicles at their disposal: mutual funds, ETFs, CEFs, ETNs, interval funds and others with each fund structure providing a different risk/reward trade-off. With market conditions ever-changing, it makes sense for investors to keep an eye on the entire investable fund universe in case one area of the market offers a better deal than another.

In this article, we review the municipal bond sector across the landscape of three fund structures that we actively follow at Systematic Income: mutual funds, closed-end funds and ETFs. Our main takeway is that the tailwinds supporting CEF outperformance after the end of the last recession have mostly dissipated, and investors should take a harder look at mutual funds and ETFs which can deliver similar performance with much better risk control.

Continue reading.

Seeking Alpha

ADS Analytics

Oct. 18, 2019

AM Best to Host Webinar on Municipal Bonds: The Evolution of an Important Asset Class for Insurers

AM Best will host a complimentary webinar, sponsored by Invesco, on **Nov. 13, 2019, at 2 p.m. (EST)**. Asset managers will examine the state of the current municipal bond market, the impact of tax reform, as well as where insurers are discovering opportunities and avoiding pitfalls in this large, but shifting, sector.

Register now.

Panelists include:

- Stephanie Larosiliere, senior client portfolio manager, Invesco Municipal Strategies;
- Chris Marx, head of institutional insurance, Invesco; and
- Peter Miller, insurance research strategist, Invesco Global Solutions.

Attendees can submit questions during registration or by emailing webinars@ambest.com. The event will be streamed in video and audio formats, and playback will be available to registered viewers shortly after the event.

AM Best is a global credit rating agency and information provider with an exclusive focus on the insurance industry. Visit http://www.ambest.com for more information.

Business Wire | October 21, 2019

Cuomo's Hazy Thruway Toll Plan Shadows $2.7 Billion Bond Sale.

- **Toll hikes needed by 2022 to pay for new Tappan Zee Bridge**
- **Agency plans $2.7 billion bond sale today and Thursday**

New York Governor Andrew Cuomo's still-unclear policy on future toll increases for the new Tappan Zee Bridge and the 570-mile New York State Thruway is casting uncertainty over the agency's outlook as it returns to the municipal-bond market.

The Thruway Authority, which hasn't raised tolls since 2010, has been able to ward off such hikes through 2020 through a $2 billion infusion of state aid. But the agency faces steeply escalating debt payments for the $4 billion bridge over the Hudson River and $2.2 billion in planned capital projects. The Thruway is selling $950 million of taxable bonds Wednesday and another $1.7 billion of tax-exempt securities Thursday to refinance higher-cost debt and repay a federal loan for the span, now known as the Governor Mario M. Cuomo Bridge.

"We don't know what the plan is," on toll increases, said Myra Shankin, a Moody's Investors Service analyst. "And because we don't know what the plan is we can't make projections on what kind of revenue they're going to throw off."

Continue reading.

Bloomberg Politics

By Martin Z Braun

October 16, 2019, 8:07 AM PDT

The Problem With Bringing Muni Bonds to the Masses.

The failure of startup Neighborly underscores the pitfalls of crowdsourcing state and city debt.

The $3.8 trillion municipal-bond market, which traces its roots back more than two centuries, easily swatted away a startup that sought to "disrupt" the way states and cities issue debt.

Bloomberg News's Amanda Albright chronicled the brief rise and fall of Neighborly Corp., highlighting any number of reasons it failed in its pursuit to bring munis to the masses. For the most part, they were common pitfalls of Bay Area upstarts. Profligate spending? Neighborly embarked on a company trip to Hawaii after its first debt sale. Erratic behavior? It frequently shifted focus away from underwriting, annoying employees who were pulled off projects for new ones and sowing doubts among municipal finance officers. It even faced a lawsuit that accused it of a "racially and sexually hostile environment." 1

In other words, it's tricky to tell whether the company simply did itself in or if the business proposition just won't work. Effectively, defenders of the traditional muni market want to know: Should they be on guard for another Neighborly in the future?

My hunch is that it's certainly possible that other upstarts will try to break into munis, but I doubt they would be much more successful than Neighborly, especially if they tried the same approach.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

October 21, 2019, 2:00 AM PDT

Albright on Fall of Muni Startup (Radio)

Amanda Albright, Bloomberg Municipal Bond Reporter, will discuss her column on the fall of a muni startup that wanted to upend Wall Street. Hosted by Lisa Abramowicz and Paul Sweeney.

Play Episode

Bloomberg

October 17, 2019 — 8:06 AM PDT

The Fall of the Muni Startup That Wanted to Upend Wall Street.

- **Neighborly sought to bring crowdsourcing to bond underwriting**
- **Company told employees this month that it couldn't pay them**

In early 2017, a San Francisco startup backed by billionaire Laurene Powell Jobs and actor Ashton Kutcher scored the first victory in its campaign to shake up a $400 billion-a-year business dominated by Wall Street's biggest banks.

The firm, Neighborly Corp., underwrote a $2 million debt sale for Cambridge, Massachusetts — the home of Harvard University and the Massachusetts Institute of Technology — by selling the securities in $1,000 lots to residents who wanted to invest in their own community. The company didn't earn a penny in fees. But the successful experiment in the prestigious Boston suburb lent valuable publicity to Neighborly's quixotic quest to make a technological end-run around big mutual funds, insurers and banks by peddling municipal bonds directly to the people.

So employees went to Maui to celebrate.

Continue reading.

Bloomberg Technology

By Amanda Albright

October 16, 2019, 6:57 AM PDT

Ken Fisher Client Pulls $30 Million in Backlash.

- **Fisher Investment clients have divested more than $1.3 billion**
- **Boston, Philadelphia and Michigan among pensions to divest**

The Iowa Public Employees' Retirement System is yanking the $386 million it has invested with Ken Fisher after the billionaire made vulgar comments at an industry conference.

The move brings the total amount divested from Fisher Investments to more than $1.3 billion. Air Products & Chemical Inc. said earlier Friday that it was pulling $30 million from Fisher.

"It is our opinion that Mr. Fisher's comments have damaged the credibility of the firm and its leadership," the Iowa pension said in a statement. "As a result, the risk to IPERS is that the firm could lose investment talent, and/or it may be unable to recruit high caliber talent in the future."

Continue reading.

Bloomberg Markets

By Janet Lorin

October 18, 2019, 10:23 AM PDT Updated on October 18, 2019, 2:34 PM PDT

Puerto Rico's Messy Bankruptcy May Get Even Messier.

The commonwealth has a crucial case before the U.S. Supreme Court, people are protesting in front of the governor's mansion, and a restructuring plan could wipe out some of its general obligation bonds.

Even for a longtime observer of the U.S. municipal-bond market, it has been tough to keep up with the play-by-play of Puerto Rico's unprecedented bankruptcy.

After all, it has already been more than four years since the commonwealth's governor first declared its debt unpayable and said investors should prepare to sacrifice. Congress passed a law called Promesa in 2016 that allowed Puerto Rico to seek bankruptcy, and in May 2017 it did just that. A federal board overseeing the island's finances has been gradually working with various stakeholders to reach an agreement. On Sept. 27, the board took what appeared to be a crucial step by releasing a full-fledged restructuring plan that laid out how much bondholders and retirees stood to lose.

In an ordinary bankruptcy, it would now be a straightforward question of whether pensioners and creditors agree to the terms and what tweaks might be needed to get to the finish line.

Continue reading.

Bloomberg Markets

By Brian Chappatta

October 14, 2019, 4:30 AM PDT

Puerto Rico Bankruptcy Clash Hits Pivotal Point at Supreme Court.

- **Justices to hear arguments on whether board properly appointed**
- **Bondholders seeking to undo board's work to get a better deal**

The U.S. Supreme Court is poised to consider a challenge to the oversight board responsible for pulling Puerto Rico out of its record bankruptcy, hearing a case that could mean a new phase of uncertainty for an island still recovering from a devastating 2017 hurricane.

The high court will hear arguments Tuesday from bondholders who say the seven members of the Financial Oversight and Management Board were appointed in violation of the Constitution because they weren't confirmed by the U.S. Senate. The bondholders, led by Aurelius Investment LLC, are seeking to unravel much of the board's work and eventually get more for their stakes than the oversight panel is offering.

The argument takes place less than three weeks after the board filed its plan with a federal bankruptcy court for restructuring $35 billion in debt and other liabilities. The proposal would cut that sum, which includes $17.8 billion in commonwealth-guaranteed debt, by 65% to $12 billion. It would also address a pension system that owes current and future retirees $50 billion.

Continue reading.

Bloomberg Politics

By Greg Stohr and Michelle Kaske

October 15, 2019, 1:00 AM PDT

- S&P Guidance | Criteria | Governments | U.S. Public Finance: Assessing U.S. Public Finance Pension And Other Postemployment Obligations For GO Debt, Local Government GO Ratings, And State Ratings.
- S&P Credit FAQ: How S&P Global Ratings Will Implement Pension And OPEB Guidance In U.S. Public Finance State And Local Government Credit Analysis
- Can Standardized Financial Data Help Government Save Money?
- New Private Delivery/Express Mail Address for Exempt Organizations Submissions (Forms 1023, 1024, 1024A, 1028, 8940 and Group Exemption Requests)
- Taxable Muni-Bond Sales Surge as Window Opens for Refinancings.
  FASB and GASB to Cohost In Focus: Not-For-Profit and Governmental Accounting Webcast for Academics
- Advanced Tax Increment Finance Course.
- And finally, We Shall Not Abide This Insolence is brought to us this week by *Stone v. Wright*, in which a mother brought a claim against the deputy chief of police for false arrest, false imprisonment, and malicious prosecution. Ms. Stone was particularly incensed that she was accused of touching her child "in a rude, insolent or angry manner resulting in bodily injury." Gotta say that we're leaning in her direction here, as it has been our experience that the actions described above could best be characterized as "parenting."

INSURANCE - CONNECTICUT

Connecticut Interlocal Risk Management Agency v. Jackson

Supreme Court of Connecticut - September 17, 2019 - A.3d - 333 Conn. 206 - 2019 WL 4399329

Subrogee of insured town filed action against defendants, alleging their negligent disposal of cigarettes inside abandoned, privately owned mill in town ignited fire that destroyed mill and a public aboveground sewage line in basement of mill.

The trial court granted defendants' motions for summary judgment. Subrogee appealed, and appeal was transferred to Supreme Court.

As a matter of first impression the Supreme Court held that:

- Under the alternative liability doctrine, when the conduct of two or more actors is tortious, and it is proved that harm has been caused to the plaintiff by only one of them, but there is uncertainty as to which one has caused it, the burden is upon each such actor to prove that he has not caused the harm;
- Plaintiff was entitled to benefit of alternative liability doctrine; and
- Supreme Court would retroactively apply newly adopted alternative liability doctrine to defendants' conduct.

IMMUNITY - GEORGIA

Klingensmith v. Long County

Court of Appeals of Georgia - September 23, 2019 - S.E.2d - 2019 WL 4593429

Residents who lived in or near subdivision brought a negligence and nuisance action against county due to repeated flooding of the subdivision.

The trial court granted county's motion for summary judgment on various grounds, including sovereign immunity. Residents appealed.

The Court of Appeals held that:

- Sovereign immunity barred negligence claims asserted against county;
- Claim that drainage pipes beneath subdivision were inadequate was permanent nuisance claim for statute of limitations purposes;
- County was not subject to liability for continuing nuisance created by failure to maintain drainage system;
- Claim that roads within subdivision were deficiently installed was permanent nuisance claim for statute of limitations purposes; and
- County was not subject to liability for continuing nuisance created by improper maintenance of subdivision roads.

Sovereign immunity did not bar nuisance claims asserted against county by residents who lived in or near subdivision that repeatedly flooded, to the extent that their nuisance, trespass, and negligence claims together amounted to an inverse condemnation claim.

Complaint served on county by residents who lived in or near subdivision that repeatedly flooded was sufficient to meet statutory presentment requirements, and thus any of residents' claims that accrued within one year of the service of the complaint on the county were not barred and permitted to proceed; complaint clearly identified each of the residents as claimants and set out the particulars of each of the claims against county.

A county is not liable for a nuisance merely because it approved a construction project which creates the nuisance; to the contrary, in order to become responsible, a county must actively take control over the property in question or accept a dedication of that property.

A nuisance, permanent and continuing in its character, the destruction or damage being at once complete upon the completion of the act by which the nuisance is created, gives but one right of action, which accrues immediately upon the creation of the nuisance, and against which the statute of limitations begins, from that time, to run.

Claim asserted against county by residents, who lived in or near subdivision that repeatedly flooded, that drainage pipes installed prior to subdivision development were inadequate, was a claim of permanent nuisance, rather than continuing nuisance, such that one-year limitations period began to run at the time residents began observing standing water problem on their properties.

County did not exercise control or accept duty to maintain drainage system within subdivision that repeatedly flooded, as would subject it to liability for continuing nuisance, even though county approved subdivision, and continued to issue construction permits in the subdivision, and even if county started to use its authority to address flooding issues by conducting an investigation into the flooding, and allegedly agreeing to build a retention pond on property outside of subdivision, where

county used its regulatory authority to order developers to take action to address inadequate drainage and did not conduct work to address the issue itself.

Claims asserted against county by residents, who lived in or near subdivision that repeatedly flooded, that roads within subdivision were deficiently installed, and that wrong material was used to pave the roads, were claims that a permanent nuisance was imposed, rather than a continuing nuisance, such that one-year limitations period applied, and claim accrued at the time when residents began observing standing water problem on their properties.

County did not exercise control over roads in subdivision that repeatedly flooded, as would establish a claim for deficient maintenance, and subject it to liability for continuing nuisance, even if county attempted to get developer to repair roads in the subdivision, where county itself did not accept any of the roads, and had not performed any maintenance on the roads.

There was no evidence that county exercised control over or accepted duty to maintain roads in subdivision that repeatedly flooded, and thus residents, who lived in or near subdivision, could not prevail on their continuing nuisance claim based on conditions of the subdivision's roads.

EMINENT DOMAIN - GEORGIA

Morgan County v. Gay

Court of Appeals of Georgia - September 23, 2019 - S.E.2d - 2019 WL 4584686

County brought petition to condemn portion of landowner's property as buffer between remainder of landowner's property and county-owned landfill.

Special master denied landowner's motion to dismiss and awarded landowner compensation and consequential damages. On parties' exceptions and appeals of special master's award, the Superior Court affirmed denial of motion to dismiss and found evidentiary issues were moot.

Landowner brought separate action for inverse condemnation, seeking preliminary injunctions to compel abatement of nuisance from landfill and enjoin condemnation of buffer property. The Superior Court denied landowner's motions for preliminary injunctions, denied county's motion to dismiss inverse condemnation proceedings, and found county's motion for a stay was moot. County and landowner filed interlocutory appeals in both actions. Appeals were consolidated.

The Court of Appeals held that:

- County acted within its discretion in seeking to condemn buffer zone to prevent methane migration;
- County's alleged failure to disclose extent of methane migration to landowner during negotiations did not constitute bad faith;
- County's violation of statutory pre-negotiations appraisal requirement did not warrant dismissal of condemnation petition;
- Landowner waived his statutory right to accompany appraiser;
- Res judicata and collateral estoppel did not preclude inverse condemnation case;
- Landowner was not entitled to interlocutory injunction staying condemnation proceedings; and
- Landowner's motion for preliminary injunction requiring abatement of methane contamination was not moot.

County acted within its discretion in seeking to condemn buffer zone between county-owned,

methane-producing landfill and remainder of landowner's property in order to prevent methane migration onto private land, where hydro-geologist opined acquiring additional buffer zone would eliminate any reasonable probability of such migration.

County's alleged failure to disclose to landowner, during negotiations for purchase of portion of landowner's property, the full extent of methane migration from adjacent, county-owned landfill onto portion of his property did not constitute bad faith permitting a court to interfere with county's discretionary decision to condemn portion of landowner's property as methane buffer zone, where landowner was aware county was monitoring for methane on his property and sought his land as "buffer expansion," county did not lower its offer price for buffer property due to methane or otherwise financially benefit from any failure to disclose methane on landowner's property.

County's violation of statutory requirement that it provide landowner with an appraisal report prior to initiating negotiations in contemplation of formal condemnation proceedings did not warrant dismissal of condemnation petition, where, after negotiations between county and landowner ceased, county obtained appraisal, then re-initiated negotiations with landowner by offering to purchase property at appraised amount.

Landowner waived, by implied conduct, his statutory right to accompany appraiser in inspecting his property prior to condemnation proceeding initiated by county, where landowner accompanied appraiser to first attempt at inspection, found property was too overgrown for inspection on that day, cleared property for appraiser, and left gate unlocked for appraiser to enter on the day appraiser said he would return, and landowner's conduct would have prejudiced county if it had resulted in dismissal of condemnation petition.

Landowner who brought inverse condemnation case against county after county brought condemnation case concerning same property against landowner was not entitled to interlocutory injunction staying condemnation proceedings; county's acquisition of property in condemnation proceedings would not preclude landowner from pursuing relief on his nuisance-based inverse condemnation claim that county-owned, adjoining landfill caused pre-condemnation damage to property, and inverse condemnation was distinct cause of action from condemnation.

EMINENT DOMAIN - INDIANA

Guzzo v. Town of St. John

Supreme Court of Indiana - September 13, 2019 - N.E.3d - 2019 WL 4389044

In eminent domain action, the Superior Court granted town's motion for summary judgment, and property owners appealed.

The Court of Appeals affirmed, and property owners appealed and filed a notice of change in the law and verified motion for remand.

The Supreme Court held that, by their plain terms, amendments to the Indiana Code governing procedures for transferring ownership of real property condemned through eminent domain from one private person to another applied retroactively in eminent domain case in which fair market value had not yet been determined.

IMMUNITY - INDIANA

Stone v. Wright

Court of Appeals of Indiana - September 30, 2019 - N.E.3d - 2019 WL 4741618

Arrestee brought action against deputy chief of police and city for false arrest, false imprisonment, and malicious prosecution.

Deputy chief of police and city filed motion to dismiss for failure to state a claim. The Circuit Court granted deputy's and city's motion to dismiss. Arrestee filed motion to correct error and for leave to file amended complaint. The Circuit Court denied arrestee's motions, and she appealed.

The Court of Appeals held that:

- Two-year statute of limitations under statute for injuries to person or character accrued at time that arrest warrant was issued;
- Arrestee's notice of tort claim under Indiana Tort Claims Act (ITCA) was untimely;
- Deputy chief was immune from personal liability for malicious prosecution under statute governing immunity of governmental entities or employees; and
- Trial court did not abuse its discretion by denying arrestee's motion for leave to file third amended complaint.

PUBLIC PENSIONS - KENTUCKY

Kentucky Employees Retirement System v. Seven Counties Services, Inc.

Supreme Court of Kentucky - August 29, 2019 - S.W.3d - 2019 WL 4073379

Kentucky Employees Retirement System (KERS) filed complaint seeking determination that debtor, as nonprofit employer that provided mental health services, was "governmental unit" that was statutorily barred from seeking Chapter 11 relief, to enjoin debtor from seeking to withdraw from KERS, and to require debtor to continue to contribute to KERS.

The United States Bankruptcy Court for the Western District of Kentucky dismissed complaint and granted debtor's motion to reject its alleged contract with KERS. KERS appealed. The United States District Court for the Western District of Kentucky affirmed in part and reversed in part. Appeal was taken. The Court of Appeals affirmed in part and certified question to Kentucky Supreme Court.

The Supreme Court held that debtor's participation as department in and its contributions to the KERS were based on statutory, rather than contractual, obligation.

Nonprofit mental health services provider's participation as department in and its contributions to the Kentucky Employees Retirement System (KERS) were based on statutory, rather than contractual, obligation, as used to determine whether provider could reject its relationship with KERS in Chapter 11 bankruptcy proceeding; statute by which provider joined KERS contained no contract language, parties' contemporaneous documentation did not show intent to contract, and payments by employer to KERS were essentially assessments.

PUBLIC PENSIONS - KENTUCKY

Aubrey v. Kentucky Retirement Systems

Court of Appeals of Kentucky - August 30, 2019 - S.W.3d - 2019 WL 4123093

Public employees initiated declaratory action against state retirement plan administrator, challenging validity and constitutionality of statute imposing one month waiting period for hazardous duty employees between retiring from a participating employer and new full or part-time employment with another participating employer, and imposing penalty for violating the waiting period.

Cross-motions for summary judgment were filed. The Circuit Court granted administrator's motion. Employees appealed.

The Court of Appeals held that enactment of statute imposing one month waiting period for hazardous duty employees between retiring from a participating employer and new full or part-time employment with another participating employer, and imposing penalty for violating the waiting period, did not breach any term of "inviolable contract" under statute governing pension benefits for public employees.

Court of Appeals holds that enactment of statute imposing one month waiting period for hazardous duty employees between retiring from a participating employer and new full or part-time employment with another participating employer, and imposing penalty for violating the waiting period, did not breach any term of "inviolable contract" under statute governing pension benefits for public employees.

Public employees were not guaranteed vested right to future statutory reemployment opportunities as they existed under prior legislative enactments and General Assembly was at liberty to revise and repeal legislative policy.

REFERENDA - OHIO

State ex rel. Hasselbach v. Sandusky County Board of Elections

Supreme Court of Ohio - September 18, 2019 - N.E.3d - 2019 WL 4464762 - 2019 -Ohio-3751

City electors filed petition for writ of mandamus to compel county board of elections to place referendum petition concerning city zoning ordinance that rezoned parcel from "single-family residential" to "multi-family residential" on general election ballot, following board's exclusion of petition after finding that ordinance was properly passed as emergency measure and was therefore not subject to referendum.

Parcel owner, which was private developer, was permitted to intervene.

The Supreme Court held that:

- Jurisdictional-priority rule did not bar electors' claim for mandamus relief;
- Electors did not have adequate remedy at law;
- Laches did not bar electors' claim;
- Electors complied with statute requiring filing of certified copy of ordinance with city auditor;
- Any noncompliance with financial-disclosure statute did not invalidate electors' petition; and
- Ordinance was not properly enacted as emergency measure.

Jurisdictional-priority rule did not bar claim by two city electors seeking writ of mandamus to compel county board of elections to place referendum petition concerning city zoning ordinance that rezoned parcel on general election ballot, though one elector had first filed complaint in court of common pleas seeking declaratory judgment and injunctive relief against city on ground that zoning ordinance was void; two actions involved different causes of action and different parties, and the actions did not present same "whole issue," as they sought different relief, and involved different theories, different causes of action, and a different defendant/respondent.

City electors did not have adequate remedy at law by way of one elector's previously filed action in court of common pleas seeking declaratory judgment and injunctive relief against city on ground that city zoning ordinance that rezoned parcel was void, and thus electors were not precluded from seeking mandamus relief to compel county board of elections to place referendum petition concerning zoning ordinance on general election ballot; remedy elector pursued in common pleas court different from writ electors sought from Supreme Court, and while practical goal of both cases might be to stop parcel owner's project from moving forward, object in mandamus action was to have ordinance presented to city electors for approval for disapproval, and common-pleas action was not adequate to provide that remedy.

Laches did not bar claim by city electors seeking mandamus relief to compel county board of elections to place referendum petition concerning city ordinance rezoning parcel on general election ballot, though electors delayed 11 days in bringing action following board's decision excluding electors' referendum petition, and parcel owner asserted that delay caused it material prejudice by extending uncertainty regarding litigation over ordinance; even if uncertainty of litigation could constitute prejudice, if electors had filed mandamus action several days earlier, owner likely would have been in same position, and electors' delay in filing mandamus action did not cause uncertainty surrounding zoning ordinance.

Certification by city's safety service director that attached reproduction of ordinance was "true, correct and complete" copy of ordinance satisfied requirement that city electors file certified copy of challenged zoning ordinance with city auditor prior to circulating referendum petition, though owner of parcel affected by ordinance asserted that certification was inadequate; contrary to owner's arguments, electors were not required to make certification themselves, given that ordinance was drafted and passed by city council, electors, not director, filed certified copy of ordinance, director was not required to parrot statutory language that it was "true and exact reproduction" of ordinance, and director was not required to compare ordinance against referendum proposal for purposes of proper attestation.

Any noncompliance by circulators of referendum petition regarding city zoning ordinance with statute requiring filing of financial-disclosure statements under certain circumstances would not invalidate referendum petition, since consequence of noncompliance was set out in separate statute providing that failure to file required financial-disclosure statement resulted in fine, and no statute specified that violation of financial-disclosure statute invalidated underlying petition.

Statements in city ordinance rezoning parcel owned by private developer from single-family residential to multi-family residential, that passing ordinance as emergency measure was warranted based on public peace, health, safety, and welfare, and that the emergency was the immediate undertaking of the project to avoid an increase in project cost, failed to sufficiently set forth the reasons for necessity of passing ordinance as emergency measure, and thus ordinance was subject to referendum; conclusory phrase about public peace, health, safety, and welfare could be applied to any ordinance, there was no apparent connection between municipal interests and project costs of private developer, and ordinance did not attempt to connect developer's project costs with city's public peace, health, or safety.

PUBLIC CONTRACTS - OHIO

City of Cleveland v. State

Supreme Court of Ohio - September 24, 2019 - N.E.3d - 2019 WL 4618510 - 2019 -Ohio-3820

City brought action against State for declaratory judgment and injunctive relief, challenging constitutionality of statute prohibiting municipalities from requiring contractors to employ local residents on public-improvement projects, as prescribed by city ordinance.

The Court of Common Pleas granted city's motion for permanent injunction. State appealed. The Court of Appeals affirmed. The Supreme Court accepted appeals for review.

The Supreme Court held that legislature was authorized to enact statute, and thus city ordinance was unenforceable.

Legislature was authorized to enact statute prohibiting local-government contracts from imposing hiring preferences that disfavored nonresident employees working in construction trades, under state constitutional provision granting legislature power to enact laws providing for comfort, health, safety, and general welfare of employees, and thus conflicting city ordinance requiring contractors on city's public-improvement projects to set aside minimum amount of work for city residents was unenforceable; statute provided for assistance, support, well-being, and prosperity of construction workers across state, and statute provided for comfort and general welfare of all citizens working in construction trades by providing equal opportunity to compete for work on public-improvement projects.

PUBLIC UTILITIES - SOUTH CAROLINA

Commissioners of Public Works of the City of Laurens v. City of Fountain Inn

Supreme Court of South Carolina - September 18, 2019 - S.E.2d - 2019 WL 4463434

City's commission of public works brought action against neighboring city, seeking declaratory judgment that it had established designated service area in unincorporated area between cities, and injunction prohibiting neighboring city from providing natural gas service to customers in industrial park in that designated service area.

Following bench trial, the Circuit Court determined that neighboring city could not provide natural gas service in designated service area established by city. Neighboring city appealed. The Court of Appeals affirmed. Neighboring city's petition for writ of certiorari was granted.

The Supreme Court held that:

- County, as governing body of unincorporated area, never certified city as authorized, exclusive natural gas provider in designated service area, and
- City's exclusive provision of natural gas service to unincorporated area for more than 20 years did not create designated service area.

Statute providing that municipalities may furnish their services to areas outside their corporate limits by contract, except within the designated service area of another, "as certified by the governing body thereof," requires that the governing body of the designated service certify the area

is one in which the particular service is being provided or is budgeted or funds have been applied for by the purported exclusive provider, and it does not permit a municipality or municipal service provider to unilaterally anoint a designated service area outside the city's boundaries.

City's exclusive provision of natural gas service to unincorporated area between cities for more than 20 years did not create designated service area in which neighboring city was unauthorized to furnish natural gas service by contract, even if contours of purported designated service area were established by reference to map that was informally agreed to by city and neighboring city, where governing body of unincorporated area did not certify it as designated service area.

Green Bond Market Just Getting Started.

ESG bond funds provide a new channel of investing for socially conscious clients.

The $50 trillion global bond market might be more than three times the size of the global equity market, but when it comes to adopting environmental, social and governance strategies, the fixed-income market is just getting started.

A lack of uniform definitions and reporting standards makes it difficult to calculate precisely the size of the market, but analysts' estimates peg the green bond market at roughly $136 billion. And it's growing rapidly.

"We were watching the green bond space for many years and the market was just too small to launch a green bond ETF, then three years ago we noticed the issuance of green bonds started doubling every year," said William Sokol, director of ETF product management at VanEck, which launched the VanEck Vectors Green Bond ETF (GRBN) in October 2017.

Continue reading.

Investment News

By Jeff Benjamin

Oct 5, 2019 @ 6:00 am

Climate Change Could Make Borrowing Costlier for States and Cities.

WASHINGTON — 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.”

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.”

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."

Stateline.org

By Alex Brown | Oct 1, 2019

FASB and GASB to Cohost In Focus: Not-For-Profit and Governmental Accounting Webcast for Academics

Norwalk, CT, October 1, 2019 — The Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) today announced their joint webcast providing an update for college and university accounting educators on major recent FASB and GASB standards. *IN FOCUS: Not-for-Profit and Governmental Accounting Webcast for Academics* takes place **Friday, November 1**, from 1:00 to 2:40 p.m. Eastern Daylight Time.

Participants in the live broadcast (which is offered free of charge to those who preregister) will be eligible for up to 2.0 hours of Continuing Professional Education (CPE) credits. (CPE credit is not available for group viewing of the live broadcast.)

The webcast will feature FASB Assistant Director—Nonpublic Entities Jeff Mechanick and GASB Senior Research Manager and Governmental Accounting Standards Advisory Council (GASAC) Coordinator Dean Michael Mead, covering the following topics:

1. Update on the GASB Statement on Conduit Debt and three major proposals planned for 2020 including Financial Reporting Model Reexamination, Revenue and Expense Recognition, and Disclosure Framework
2. Update on recent FASB amendments to Not-for-Profit Financial Statements, the accounting for Grants and Contracts of Not-for-Profit Entities, and the accounting for Goodwill and Certain Intangible Assets of Not-for-Profit Entities
3. Noteworthy recently issued standards and ongoing projects of the FASB and the GASB
4. Overview of FASB and GASB resources for academics and programs to connect academic research to standards setting
5. Question-and-answer session.

Participants will have the opportunity to submit questions to the panelists during the live event.

An archive of the webcast will be available on both the FASB and GASB websites after the live event. (CPE credit will not be available to those who view only the archived webcast.)

For more information about the webcast, visit www.fasb.org or www.gasb.org.

About the Financial Accounting Standards Board

Established in 1973, the FASB is the independent, private-sector organization, based in Norwalk, Connecticut, that establishes financial accounting and reporting standards for public and private companies and not-for-profit organizations that follow Generally Accepted Accounting Principles (GAAP). The FASB is recognized by the Securities and Exchange Commission as the designated accounting standard setter for public companies. FASB standards are recognized as authoritative by many other organizations, including state Boards of Accountancy and the American Institute of CPAs (AICPA). The FASB develops and issues financial accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to investors and others who use financial reports. The Financial Accounting Foundation (FAF) supports and oversees the FASB. For more information, visit www.fasb.org.

About the Governmental Accounting Standards Board

Established in 1984, the GASB is the independent, private-sector organization, based in Norwalk, Connecticut, that establishes financial accounting and reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP). These standards are recognized as authoritative by state and local governments; state Boards of Accountancy; and the American Institute of CPAs (AICPA). The GASB develops and issues financial accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to taxpayers, public officials, investors, and others who use financial reports. The Financial Accounting Foundation (FAF) supports and oversees the GASB. For more information, visit www.gasb.org.

IRS TE/GE FY 2019 Program Letter.

Read the Program Letter.

New Private Delivery/Express Mail Address for Exempt Organizations Submissions (Forms 1023, 1024, 1024A, 1028, 8940 and Group Exemption Requests)

Use the following address for private delivery or express mail for the forms shown above:

Internal Revenue Service
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7940 Kentucky Drive
Florence, KY 41042

The P.O. Box address for regular mail remains the same:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

If you recently submitted an item to another address, it will be forwarded. You do not have to resubmit.

Help for Victims of Hurricane Dorian
IRS is providing tax relief to those affected by Hurricane Dorian. Visit the Hurricane Dorian page for the latest updates, videos and resources for clients who are victims of Hurricane Dorian.

The IRS offers online training for charitable organizations that assist with disaster relief. Disaster Relief – Parts I and II discuss how charities may provide disaster relief, tax law, deductibility of contributions and tax treatment of relief recipients. Organizational leadership and volunteers should attend the Tax-Exempt Organization Workshop for important information on the benefits, limitations and expectations of tax-exempt organizations.

Fitch Ratings Launches ESG Heat Map for Public Finance/Infrastructure.

Link to Fitch Ratings' Report(s): Public Finance/Infrastructure ESG Relevance Map

Fitch Ratings-Hong Kong-02 October 2019: Fitch Ratings has launched an ESG 'heat map' for Public Finance/Infrastructure to provide further insight into the relevance of ESG factors to credit ratings. The map is designed to help users understand how relevant individual ESG topics are to credit ratings for different sub-sectors across Global Public Finance, Infrastructure and Project Finance issuers.

The heat map shows that ESG risks generally have a low level of direct impact on public finance and infrastructure credit ratings, as found in Fitch's report Introducing ESG Relevance Scores for Public Finance/Infrastructure. Governance is the most influential ESG risk factor across the overall ratings portfolio, accounting for the majority of scores at a level of '4' or '5'.

Rarely does a particular ESG issue affect more than 10% of issuers in a sub-sector. A notable exception is Group Structure for US Life Plan Communities, where the operations and financial status of non-obligated entities have been relevant to the rating for several issuers, in combination

with other factors.

For ease of use, the map comes in two forms, an infographic below and an Excel table downloadable from the link above. The Excel table allows users to toggle between different relevance thresholds, which can aid understanding of whether an ESG topic is relevant specifically to an individual issuer or if it applies more generally as a trend affecting many issuers in a given sub-sector.

Contacts:

Mervyn Tang
Senior Director, Sustainable Finance
+852 2263 9633
Fitch (Hong Kong) Limited
19/F Man Yee Building
68 Des Voeux Road Central, Hong Kong

Gabriel Rudansky
Associate Analyst, Sustainable Finance
+1 646 582 3464
33 Whitehall Street
New York, NY 10004

Media Relations: Leslie Tan, Singapore, Tel: +65 6796 7234, Email: leslie.tan@thefitchgroup.com

Additional information is available on www.fitchratings.com

[Can Standardized Financial Data Help Government Save Money?]

A pair of states and the feds are moving to require local governments to submit financial data in a machine-readable format. Here's how it could help cities.

What would happen if the thousands of local governments in the U.S. took their financial information — largely available in PDF format — and put it all in a standardized, machine-readable format?

It would make it a lot easier for citizens, businesses and governments to look at the spending habits and fiscal health of the public sector, for one. According to one line of thinking, it might even reduce the amount that government pays for big bond-funded projects like park and road construction.

Before long, the state of Florida will find out for sure. And the state of California, as well as the federal government, might follow suit.

Florida's governor signed a bill last year that puts the state on a path to requiring its local governments to submit their financial information to the state in eXtensible Business Reporting Language, or XBRL, by September 2022. A similar bill sits on the desk of California's governor, and U.S. legislators are considering two bills that could push along standardization at the federal level.

"An annual corporate financial statement is a good analogy to a local government financial statement, so it's a technology that has a precedent in U.S. regulation," he said.

As government modernizes its technology and seeks to do more with its data, efforts have emerged

in several areas to standardize data. For example, Mobility Data Specification, SharedStreets and General Transit Feed Specification have helped governments better use transportation data.

There are quite a few reasons to standardize.

“It allows you to streamline submission and reporting processes, allow for closer to near-real-time information exchange, which could accelerate traditionally slow processes,” said Jim St. Clair, chief technology officer for Dinocrates, a company that Florida has chosen to help develop the XBRL standards for its new financial reporting system. “It gives not only the government, but businesses and consumers, greater information to support transactions and processes, as well as analytics, on values and efficiencies and current accounts and lay the foundation for perhaps new processes like an electronic tax reporting system that currently doesn’t exist.”

It might also make it easier for states to identify troubled local governments and intervene before their financials spiral out of control.

But when it comes to government financial data, there’s another very specific reason Joffe wants to see everybody agree on one machine-readable standard: municipal bonds.

Those bonds, which act as a major funding source for the building of parks, roads, schools, water infrastructure and many other things across the country, are a huge investment market: Governments in the U.S. issued about $3.8 trillion in bonds in 2018. When considering buying a bond, investors will turn — as they would with any other kind of bond — to the credit rating of the government issuing it.

But there’s a problem with that. According to Joffe, who has conducted research on the matter, government bonds are often a safer investment than their credit ratings suggest.

“If you have a municipal bond and it’s rated AAA, it’s actually much safer than a corporate bond … with the same rating,” he said.

In investing, reward reflects risk. So the riskier a bond is, the more money the bond issuer pays for the capital they’re receiving.

So in effect, Joffe is saying that government pays more than it should for bond-funded projects. That being the case, making the financial information of governments available for investors — rather than just the credit rating — might just help the public sector lower the cost of serving citizens.

“If that theory is correct, that means that [with better data], more people would be more comfortable with lower-rated bonds,” Joffe said.

GOVERNING.COM

BY BEN MILLER, GOVERNMENT TECHNOLOGY | OCTOBER 5, 2019 AT 3:01 AM

S&P Guidance | Criteria | Governments | U.S. Public Finance: Assessing U.S. Public Finance Pension And Other Postemployment Obligations For GO Debt, Local Government GO Ratings, And State Ratings.

This document provides additional information and guidance related to our criteria, “GO Debt,”

published Oct. 12, 2006; “Local Government GO Ratings Methodology And Assumptions,” published Sept. 12, 2013; and “U.S. State Ratings Methodology,” published Oct. 17, 2016. It is intended to be read in conjunction with those criteria. For a further explanation of guidance documents, please see the description at the end of this article.

Guidance documents provide guidance on various matters, including articulating how we may apply specific aspects of criteria; describing variables or considerations related to criteria that may change over time. This guidance focuses how S&P Global Ratings assesses pension and other postemployment benefit (OPEB) funding assumptions and methods, and their impact on U.S. governments’ projected costs and liabilities. Provided are example guidelines that we commonly consider when analyzing the potential for cost acceleration and budget stress. We may adjust guideline numbers as we consider appropriate, such as if market conditions change.

When we refer to “guidelines”, we mean that we will consider the degree to which an obligor’s assumptions or methods vary in relation to the guidelines. Given no two pension plans are exactly alike, there is no single answer for what “good” assumptions look like. Therefore, we use the figures in the table to analyze these assumptions and methods within the context of an obligor’s overall credit profile, including its ability to afford rising costs and proactive management measures to address them.

Specifically, we use these pension and OPEB guidelines when applying the following criteria sections:

- “GO Debt,” Financial Indicators, paragraphs 14 and 16; and Debt Factors And Long-Term Liabilities, paragraphs 36-38;
- “U.S. Local Governments General Obligation Ratings: Methodology and Assumptions,” Framework for Determining A U.S. Local Government Rating, paragraph 35; Institutional Framework Score, paragraph 37; Management Score, paragraph 50; Budgetary Performance Score, paragraph 68; Debt and Contingent Liabilities Score, paragraph 82; and
- “U.S. State Ratings Methodology,” Financial Management, paragraphs 34, 57, 59; Debt and Liability Profile, paragraphs 69-71 and 73.

Continue reading.

S&P Credit FAQ: How S&P Global Ratings Will Implement Pension And OPEB Guidance In U.S. Public Finance State And Local Government Credit Analysis

Elsewhere, we have also provided an overview on our approach to U.S. state and local government pensions within the context of our three government criteria: See “Credit FAQ: Quick Start Guide To S&P Global Ratings’ Approach To U.S. State And Local Government Pensions,” published May 13, 2019.

Frequently Asked Questions

What is criteria guidance?

Guidance documents are not criteria, as they do not establish a methodological framework for determining credit ratings. Guidance documents provide guidance on various matters, including articulating how we may apply specific aspects of criteria, describing variables or considerations related to criteria that may change over time, providing additional information on nonfundamental

factors that our analysts may consider in the application of criteria, and/or providing additional guidance on the exercise of analytical judgment under our criteria.

When will the guidance become effective?

The guidance is immediately effective upon publication. We will apply the guidance to all new issues and surveillance reviews.

What is covered by the guidance?

This document provides additional information and guidance related to our analysis of pensions and other postemployment benefit (OPEB) liabilities in our criteria, "GO Debt," published Oct. 12, 2006; "Local Government GO Ratings Methodology And Assumptions," published Sept. 12, 2013; and "U.S. State Ratings Methodology," published Oct. 17, 2016. It is intended to be read in conjunction with those criteria.

Will ratings change as a result of the published guidance?

We expect no rating changes due to the publication of guidance, as the purpose of this guidance is to provide clarity on important pension and OPEB factors, including actuarial inputs, which we consider in applying our existing criteria. Our analysts consider the guidelines for assumptions and methods within the context of an obligor's overall credit profile, including its ability to afford rising costs and proactive management measures to address them. Our pension and OPEB analysis includes how these risks factor into an obligor's unique overall credit profile and what strengths or weaknesses arise as a result. Because guidance articulates and provides transparency about application of existing criteria, it does not necessitate a review of existing ratings covered by these criteria.

How will the guidance affect enterprises that participate in government-sponsored plans?

The guidance applies only to entities within the scope of cited government criteria. However, the guidelines on pension and OPEB funding assumptions and methods, and their impact on governments' projected costs and liabilities, may inform our analysis of enterprises participating in government-sponsored plans. For example, the guidelines may inform our expectations about projected funded ratios over time.

Will the guidance change over time?

Yes, it might. Specifically, the market periodically changes, and the discount rate and long-term medical trend guidelines may be adjusted to align with updated capital market assumptions and medical trend models.

Will the rating reports change?

Rating rationales will continue to provide S&P Global Ratings' opinion on key credit factors identified in the three government criteria associated with this guidance. To the extent that a particular actuarial assumption or method rises to the level of a driving factor of our forward-looking view of the entity, we will highlight it in our rating analysis.

Are there certain guidelines that are most important to credit analysis?

Pension and OPEB analytics are one factor of our credit score, and within that context, the discount rate and overall funding discipline are important considerations.

The discount rate is important because it is used in the measurement of the reported funding level. It also correlates with the assumed rate of return, which drives calculations for actuarially determined contributions (ADCs). We also view the government's progress toward paying down its liabilities as an equally important, if not more important, driver for a given entity. Our evaluation of funding discipline and progress includes whether or not a government fully funds its ADC and minimum funding progress (MFP) metric, which assesses progress in paying down liabilities in a given year.

Is S&P Global Ratings adjusting reported pension/OPEB liabilities or ratios based on the discount rate guideline described in the guidance?

No. We incorporate liabilities for ratings as reported under Governmental Accounting Standards Board standards. The discount rate guideline serves to inform our view of potential for escalating contributions and susceptibility to market volatility. In addition, there are many instances where the guideline may not be appropriate for a given plan because of atypical plan characteristics.

The guidelines refer to a "typical plan"; what is an atypical plan?

Examples of atypical plans may include:

- Plans that have automatically adjusting cost of living adjustments or other risk-sharing controls in place to limit contribution escalation,
- Plans with demographics that do not align with the national average,
- Plans that are closed to new entrants, or
- Other factors that lead to different contribution volatility tolerances.

How does S&P Global Ratings evaluate governments that participate in a statewide plan and do not directly govern plan actuarial methods or assumptions?

Our pension assessment incorporates our view of the risk that contributions will escalate, regardless of whether a particular issuer has direct management over actuarial methods or assumptions. If the cost-sharing plan is measuring liabilities using aggressive assumptions or paying unfunded liabilities using aggressive amortization methodologies, then there may be escalating risk that participating employers will be required to increase contributions in the future. We will incorporate our view of each individual entity's ability to plan and manage for potentially rising costs, as well as the pension environment in the state where the entity is located.

Does the guidance address the possibility of a market shock?

Yes. Our discount rate guideline incorporates a reasonable expected limit to contribution volatility when factoring in liquidity and market risks.

Why does S&P Global Ratings use 30 as a factor in the MFP calculation?

The 30 is a factor that leads to a reasonable amount of principal unfunded liability to be paid down in a given year; it does not equate to amortization years. If a plan is meeting the MFP metric, we would expect that the contribution is equivalent to one with an amortization of less than 20 years.

How did S&P Global Ratings arrive at 20 years for the amortization period guideline?

The risk of negative amortization is mitigated when the length of amortization is 20 years or less. Furthermore, a typical U.S. pension plan is likely to have a working population that is expected to average nearly 20 years of employment before retirement, so an amortization of less than 20 years

reduces the likelihood of intergenerational inequity, meaning that the funding of an employee's benefits would occur during that employee's tenure.

Related Criteria

- U.S. State Ratings Methodology, Oct. 17, 2016
- Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013
- GO Debt, Oct. 12, 2006

Related Research

- Credit FAQ: Quick Start Guide To S&P Global Ratings' Approach To U.S. State And Local Government Pensions, May 13, 2019
- The Increasing Cost Of Governmental Pensions: Discount Rate And Contribution Practices, Sept. 27, 2018
- Looking Forward: The Application Of The Discount Rate In Funding U.S. Government Pensions, Sept. 13, 2018
- Report Explains The Difference Between Criteria And Guidance, Dec. 15, 2017
- Local Government Pension and Other Postemployment Benefits Analysis: A Closer Look, Nov. 8, 2017

This report does not constitute a rating action.

Primary Credit Analysts: Carol H Spain, Todd D Kanaster
Secondary Contacts: Jane H Ridley, Geoffrey E Buswick, Robert D Dobbins
Sector U.S. Public Finance – U.S. Local Governments – U.S. States

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100-Year Muni Bonds Might Just Be the Safest Yield Play.

Income-oriented investors already know that municipal bonds are pricey right now. But taking a longer view—say, a century—could bring benefits.

Municipal bonds are expensive compared to historical averages, and have been all year. The problem is that most other income-generating markets are expensive, too. More than $14 trillion of global debt currently has negative yield, according to Bloomberg Barclays Indices, and investors' remaining options to earn income bring their own problems.

When global interest rates are this low, investors usually need to take on more risk to earn a steady income on their cash, whether that risk is of corporate default or interest-rate-driven price swings.

Investing in stocks or high-yield debt markets requires a high tolerance for default risk, especially with a global manufacturing slowdown and bond-market recession warnings. Investors worried about recession tend to stick with higher-quality bonds, sacrificing some of the junk-bond market's 6% payout to get more protection against a downturn.

Continue reading.

Barron's

By Alexandra Scaggs

Oct. 4, 2019 3:44 pm ET

Protection from Ransomware Attacks Isn't as Simple as Insurance.

In the wake of high-profile ransomware attacks, local governments are looking to cyberinsurance to mitigate risk. But not all policies are equal and merit close scrutiny, experts say.

Local governments facing an onslaught of ransomware attacks are increasingly turning to insurance to protect them if hackers successfully take control of a city's computer system.

But experts warn that local governments may not be getting the level of protection they need through basic policies. And when insurance companies opt to pay ransoms, rather than cover the (sometimes exorbitant) cost to recover data, they make local governments a bigger target for hackers.

Larger cities may purchase their own individual plans, like Houston did in 2018 when it paid close to $500,000 for a $30 million plan that would cover emergency response to cyber security breaches and losses associated with a cyberattack. In contrast, many smaller municipalities receive coverage through pooled plans, such as those offered by associations..

Continue reading.

Route Fifty

By Andrea Noble,

Oct 4, 2019

PROTECT Act Seeks to Bolster Domestic Electric Grid Cybersecurity: McGuireWoods

On Sept. 26, 2019, the Protecting Resources on the Electric Grid with Cybersecurity Technology (PROTECT) Act was introduced in the Senate. An amendment to the Federal Power Act, the PROTECT Act aims to more effectively safeguard and defend the U.S. electric grid from global cyber intruders.

Sponsored by Sen. Lisa Murkowski (R-Alaska), chair of the Committee on Energy and Natural Resources, and introduced by Sens. Joe Manchin (D-W.V.), James Risch (R-Idaho), Maria Cantwell (D-Wash.) and Angus King (I-Maine), the bill is a response to increasing cyberattacks by foreign adversaries and entities on the U.S. electric grid. Some Washington observers believe that, with such bipartisan support, the PROTECT Act is one of the few legislative initiatives that could pass Congress. It may therefore result in a number of important benefits to the U.S. electricity industry.

Key provisions of the PROTECT Act involve tangible, actionable steps to expand the national grid cybersecurity effort. Of particular importance, the PROTECT Act directs the Federal Energy Regulatory Commission (FERC) to conduct a study, followed by rulemaking to provide rate

incentives for advanced cybersecurity technology that will enable and incentivize utilities to invest in new technologies to improve cybersecurity defense. Also, the new rule must allow utilities to make "single issue rate filings," which should enable them to obtain the incentives without risk of opening up litigation on all other aspects of their FERC-approved rates. In addition, the PROTECT Act sets forth a Department of Energy grant program for utilities not regulated by FERC, such as electric cooperatives and municipal utilities, to incentivize in those sectors advanced tactics in cybersecurity technology.

The bill is a common-sense measure. It helps further safeguard utilities across the country by supporting the industry in continuously investing in cutting-edge cybersecurity technologies. In addition, it likely would further cultivate the expanding partnership between private industry and the federal government. Although many of the investment expenses and economic incentives likely will be passed on to end users, the bill preserves the protections of the Federal Power Act's requirement that such rates be "just and reasonable." So, it is a win-win opportunity for both utilities and the customers they serve, who ultimately benefit from the enhanced security the bill might produce.

McGuireWoods LLP

by Todd Mullins

October 4, 2019

New Report: U.S. Metro Areas Continue to Drive Nation's Economic Growth, Post Fifth Consecutive Year of Increase

For 18th year, U.S. Conference of Mayors releases annual report, forecasts growth of cities and metro regions

Washington, D.C. – Today, the U.S. Conference of Mayors (USCM) released its 18th annual report and forecast on U.S. Metro Economies, showing that cities and metro regions continue to be the engines of U.S. economic growth. In 2018, these areas were home to 85.9% of the nation's population and 91.1% of real gross domestic product (GDP). The influence and contribution of metro economies to U.S. economic growth increased for the fifth consecutive year.

Compared to 2017, metro regions' share of total employment increased to 88.1%, adding 2.1 million jobs or 94% of all U.S. job gains. The U.S. Metro/City share of U.S. total personal income, 89.3%, and wage income, 91.8%, also continued to increase. The full report, conducted by IHS Markit, can be found here, along with its key findings here.

"This report paints the picture that our cities and metro regions are the clear drivers of the U.S. economy, personal income, and wage growth. Our metro economies enable America to lead the global economy, and we must continue to empower them with policies that foster innovation and inclusivity. Together, we can make smart investments in job training and housing that will keep firing the engines of our cities' growth," said USCM President Bryan K. Barnett, Mayor of Rochester Hills (MI).

"Our cities need to continuously innovate in order to thrive. In Columbus, we have implemented policies to drive sustainable economic development," said Andrew J. Ginther, Mayor of Columbus (OH) and Chair of the Council on Metro Economies and the New American City. "Since 2010, we

have led Ohio in job gains, seeing 16% growth. This shows that Washington could stand to learn a thing or two from America's cities."

"For 18 years we have continued to show that it is the cities and the metro economic engines of the United States that are driving the national economy," said Tom Cochran, USCM CEO and Executive Director. "With all due respect to the states, the financial strength of our cities and metro economies will continue to outpace states and many nations. While Washington is divided, stalemated on providing many economic tools and policies needed, mayors today are joined at the hip with the business community, all working together. Wherever America's economy is going, and wherever it is today, it is because of the bipartisan, robust financial energy of mayors and metro city leadership across our nation."

Key findings of the report include:

U.S. Metro Performance in 2018

- Metropolitan areas dominated US economic growth in 2018 and continue to drive the US economy. They were home to 85.9% of the nation's population, 91.1% of real gross domestic product (GDP).
- US Metro share of total employment increased to 88.1% as metros added 2.1 million jobs, accounting for 94% of all US job gains.
- The metro shares of US total personal income, 89.3%, and wage income, 91.8%, also increased again in 2018.
- Many US metros have larger economies than states. New York's gross metropolitan product (GMP), the largest among metros at $1.85 trillion, exceeds the Gross State Product (GSP) of Texas, and Los Angeles's exceeds that of Florida, the fourth-ranked state in GSP.
- The GMP of 38 US metros each surpassed $100 billion in 2018, and we project that Virginia Beach-Norfolk-Newport News will as well in 2019.
- Comparing metro economies to the nations of the world provides further evidence of the importance of US metros as drivers of the global economy. New York's GMP would rank 10th among the nations of the world, ahead of Canada and Russia. Twelve of the world's 50 highest-producing economies are US metropolitan areas.

Employment and GDP Forecast

- As US unemployment falls to 3.5% in 2019, 75 metros (19.7%) will have rates less than 3%, and 252 (66.1%) will have unemployment rates under 4%. Real GMP growth will exceed 3% in 112 metros (29.4%) in 2019, but in only 18 metros in 2020 (4.7%).
- Real GDP growth is projected to slow from 2.9% in 2018 to 2.3% in 2019, 2.1% in 2020, and 1.9% in 2021.
- The downshift in GDP growth is expected to contribute to a continued slowing trend in employment gains.
- We forecast total US employment growth of 1.5% in 2019, down from 1.7% in 2018. In 2020, job gains will slow further, to 1.2%.

The United States Conference of Mayors

Now Is a Really Good Time to Get Into Munis, Neuberger's Iselin Says.

James Iselin, Neuberger Berman Group managing director, discusses the outlook for the municipal bond market with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

October 2nd, 2019, 8:05 AM PDT

Even Cash Flooding Muni Market Can't Stop Worst Loss Since 2018.

- **September was worst month for returns in almost two years**
- **Marks a stepback from rally that roared this year as rates cut**

Not even a continuously flowing spigot of investor cash was strong enough to prevent the $3.8 trillion municipal-bond market from snapping this year's rally.

State and local government debt is headed toward a 0.82% loss in September, the first down month of the year and the biggest decline since January 2018, according to Bloomberg Barclays indexes. The drop came as Treasuries sold off and as new debt sales weighed on performance, with supply of bonds 46% higher than it was the same month a year earlier as governments raced to capture lower interest rates, according to data compiled by Bloomberg.

Barclays Plc strategists led by Mikhail Foux said they're "cautious near-term," given that expectations for a rate cut in October may be too optimistic and the market could stay volatile.

The tax-free securities are still headed for a 6.7% return this year, the best year for the asset class since 2014. Investors have plowed billions into municipal-bond mutual funds as investors seek to reduce their tax burden.

The pullback has left state and local government debt cheaper, relative to Treasuries, than it was earlier this year. Ten-year tax-exempt debt is yielding about 88% of Treasuries, up from as little as 71% in May. That was the lowest that gauge of relative value had hit since at least 2001, indicating that valuations were historically high.

Typically, municipal bonds cheapen compared with Treasuries in September and October before getting a boost from investors positioning themselves for the next year, they said in a Sept. 27 note.

"The story will likely repeat itself in 2019," the strategists said.

Bloomberg Markets

By Amanda Albright

September 30, 2019, 10:30 AM PDT

— With assistance by Maria Elena Vizcaino

Understanding Private Activity Bonds.

In the fixed-income world, a private activity bond (PAB) is tax-exempt security issued by or

on behalf of a local or state government. For bond investors, PABs can provide higher yields than other bonds due to their unique tax treatment.

A PAB is issued by local governments for the purpose of extending special financing benefits for qualified projects. In general, PABs finance projects for a private user, which means the local government doesn't usually pledge its credit. In this way, they are used to attracting private investments for projects that have public or common utility.

For municipal security to be considered a PAB, it must meet two conditions set out in Section 141 of the Internal Revenue Code.

The first condition is that more than 10% of the proceeds must be used for a private business project and that at least 10% of the payments of the principal or interest comes from property used for private business use.
Secondly, a PAB requires "the amount of proceeds of the issue used to make loans to non-governmental borrowers exceeds the lesser of 5 percent of the proceeds or $5 million, which is the "private loan financing test," according to MSRB.

Continue reading.

municipalbonds.com

Sam Bourgi

Oct 02, 2019

Groundwater Contaminant Regulation in California: State Water Board Lowers Notification Levels and Announces First Step Towards Developing an MCL for Certain Compounds.

In June of 2018, the California State Water Resources Control Board (State Water Board) Division of Drinking Water (DDW) provided recommendations for PFOA and PFOS notification levels. On July 13, 2018, the State Water Board released guidelines based on DDW's recommendations for testing and reporting on two PFAS compounds—PFOA and PFOS. The interim notification level for PFOA was 14 parts per trillion (ppt) and 13 ppt for PFOS. Notification levels are non-regulatory health-based advisory levels established by the DDW for chemicals in drinking water that lack an enforceable regulatory standard called a maximum contaminant levels (MCLs). In addition to setting interim notification levels for PFOA and PFOS, the State Water Board also included an interim response level of 70 ppt combined for PFOS and PFOA whereby if the combined level is exceeded, the State recommended the water system remove the source from service. These guidelines did not require public water systems to test for PFOA and PFOS, but did require water systems voluntarily opting to test to report if the notification levels were exceeded.

On July 31, 2019, AB 756 passed as the California Legislature's first PFAS-related action. AB 756 adds Section 116378 to the California Health and Safety Code and authorizes the State Water Board to order a public water system to monitor for PFAS in accordance with conditions set by the State Water Board. Practical detection limitations currently reduce the scope of the law to 14-18 compounds. The effect of the legislation is that the State Water Board can now require public water systems to test for PFAS.

Continue Reading

By Jonathan King on October 4, 2019

Squire Patton Boggs

Opinion: California pension debt climbs despite strong economy

With nation overdue for next recession, aggressive and comprehensive reforms are needed

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'Stunning Rebuke to Predatory Wall Street Megabanks' as California Gov. Signs Law Allowing Creation of Public Banks.

“The people of California just went up against the most powerful corporate lobby in the country—and won.”

California Gov. Gavin Newsom on Wednesday signed into law historic legislation that would allow the state’s cities and counties to establish public banks as an alternative to private financial institutions, a move advocates hailed as a “stunning rebuke to the predatory Wall Street megabanks that crashed the global economy in 2007-08.”

Trinity Tran, co-founder of Public Bank LA, said Newsom’s decision to sign the Public Banking Act (A.B. 857) despite fervent opposition from the state’s business lobby “is a testament to the power of grassroots organizing.”

“The people of California just went up against the most powerful corporate lobby in the country—and won,” Tran said in a statement. “Now is our moment in history to lead the nation by re-envisioning finance and recapturing our money to benefit our local communities by building a new system that works for the greater good.”

The Public Banking Act—which was backed by a diverse coalition of labor unions, climate justice groups, and civil rights organizations—makes California the second state in the U.S. after North Dakota to allow the creation of public banks.

As the Los Angeles Times reported:

> Public banks are intended to use public funds to let local jurisdictions provide capital at interest rates below those charged by commercial banks. The loans could be used for businesses, affordable housing, infrastructure, and municipal projects, among other things.
>
> Proponents say public banks can pursue those projects and support local communities’ needs while being free of the pressure to obtain higher profits and shareholder returns faced by commercial banks. Support for public banks also has grown since the financial crisis a decade ago and since Wells Fargo & Co. was embroiled in a slew of customer-abuse scandals in recent years.

The new law sets into motion a pilot program allowing 10 public bank charters in the state over seven years. “These banks can invest in local projects like affordable housing, small businesses, resilient infrastructure, and clean energy, giving communities a voice in their own economic futures,” said the California Public Banking Alliance.

Sushil Jacob, senior economic justice attorney with the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, said the law represents the “first step toward repairing communities that were immensely harmed by the 2008 recession, especially communities of color.”

“Today, California’s communities of color remain disproportionately harmed by Wall Street’s predatory practices,” said Jacob. “Public banks can make all of our communities whole with equitable lending and non-extractive investing.”

In a column for *Common Dreams* earlier this year, Ellen Brown, founder of the Public Banking Institute, applauded states like California and Washington for pursuing legislation to create state-level public banking systems and said their passage could prove a game-changer for the nation’s economy.

“The implications are huge,” Brown wrote at the time. “A century after the very successful Bank of North Dakota proved the model, the time has finally come to apply it across the country.”

Common Dreams

by Jake Johnson, staff writer

October 03, 2019

California Rebukes Predatory Wall Street Megabanks With New Public Bank Law.

California Gov. Gavin Newsom on Wednesday signed into law historic legislation that would allow the state’s cities and counties to establish public banks as an alternative to private financial institutions, a move advocates hailed as a “stunning rebuke to the predatory Wall Street megabanks that crashed the global economy in 2007-08.”

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truthout.org

by Jake Johnson

October 3, 2019

Despite Complications and Costs, SF to Push Ahead on Public Bank in Wake of New State Bill.

Advocates for a public bank in San Francisco are rejoicing over Gov. Gavin Newsom signing legislation that will allow them to create a local institution to finance priorities like low-income housing, public infrastructure and small businesses.

Introduced by Assemblyman David Chiu, D-San Francisco, AB857 allows local governments to apply for a banking license for the first time. Newsom signed the legislation, which caps the initial number of public banks at 10, on Wednesday.

Public banks are financial institutions set up and operated by a local government. Support for them across the country swelled in the wake of the 2008 financial collapse, which multinational investment banks played a central role in creating. States and cities across the country are considering public banks, but North Dakota is the only state currently operating one.

Supporters have pushed San Francisco officials for years to consider municipal banks as an alternative to traditional commercial institutions, whose interests prioritize creating value for their shareholders over benefiting the communities where they do business. But setting up a public bank will be a complicated, time-consuming and expensive process — it could take the city 10 to 30 years to break even. But supporters are undeterred by the hurdles.

“We want to get as much of our city’s taxpayer dollars out of Wall Street so we can recapture that money to invest in our city,” said Jackie Fielder, co-founder of the San Francisco Public Bank Coalition. The coalition, she said, is “ecstatic” at the news that Newsom signed the bill.

“It’s about keeping our taxpayer dollars here in our city, in our region. That’s not happening right now because Wall Street is investing our money around the world into entities that we have no clue about how they fit into our priorities and addressing the crises here,” she said.

Chiu echoed that sentiment.

“Our public money should serve a public purpose and our local communities — not lining the pockets of Wall Street investors,” Chiu said. Municipal banks, he said, also allow local governments to avoid doing business with institutions that invest public money “in industries not in line with the values of most Californians,” like gun manufacturers, private prisons and the oil and gas industry.

Public banks could also be a boon to the legal cannabis industry. Marijuana’s status as an illegal drug under federal law has made most traditional banks reticent to do business with cannabis growers or retailers.

The idea has also enjoyed broad support among San Francisco officials. Former Supervisors John Avalos and Malia Cohen and current Supervisor Sandra Lee Fewer have backed the idea. But enthusiasm has waxed and waned, in part because of the staggering complexity and the potential costs.

San Francisco keeps about $100 million available to conduct business on any given day. Most of the city’s commercial banking is done with Bank of America and U.S. Bank.

Under the safeguards laid out in Chiu’s legislation, setting up a public bank will still take years, and any local government looking to do so will have to pass through a gamut of regulatory hurdles to

prove to state regulators they can operate the bank — and protect the public's money.

Still, backers of the idea say it's well worth it. Public banks, they argue, could allow the city to provide financing for important projects and priorities that might be less attractive to commercial banks. Public banks would still have to turn a profit to stay solvent, but not nearly at the rate required by commercial institutions.

San Francisco Treasurer José Cisneros released a report in March to help suss out the complications and costs of setting up a public bank. The report was the culmination of nearly two years of work by a task force made up of financial experts, government officials and community organizations.

There are several models the report identified, each with varying degrees of complexity and both long- and short-term costs. Focusing just on lending for things like affordable housing and other community priorities would cost the city about $184 million over a decade — when the city could expect to break even. Divesting from Wall Street entirely would cost about $1.6 billion and take 31 years to break even.

Before San Francisco can apply to state regulators for a banking license, the Board of Supervisors must commission a feasibility study. Fewer said in a statement that her office is "actively exploring the next steps needed to realize our vision for municipal public banking."

Not everyone is on board with the idea. The state legislation was opposed by the California Bankers Association, which argued Chiu's bill would siphon money away from community banks and "potentially" put taxpayer dollars at risk.

"We remain opposed to the concept of public banks, and hope that community leaders and elected officials will take note of the risks associated with establishing a municipal bank, before opting to explore this unnecessary and unwanted public option," the organization said in a statement.

San Francisco Chronicle

by Dominic Fracassa

Oct. 3, 2019

California Local Governments Gain a Pathway to Establish Public Banks.

Cities and counties would be able to create up to 10 public banks where governments could deposit money under a bill the state's governor signed into law this week.

Legislation that California Gov. Gavin Newsom signed into law this week clears the way for cities and counties to form and own public banks, an idea that has drawn interest in recent years both in and out of the state, while also spurring opposition from the banking industry.

The law authorizes local governments in California to deposit their money in public banks and to invest in them as well. Supporters say localities are currently forced to deposit their money in large out-of-state banks that prioritize profits rather than local priorities.

Public banks, they contend, would be better positioned to offer financing with attractive interest rates for things like public infrastructure projects, affordable housing and small businesses.

Continue reading.

Route Fifty

by Bill Lucia

Oct. 3, 2019

Popular in Wisconsin: Cheese, the Packers and…Risky Bonds.

State agency facilitated some municipal-market deals now going sour

Wisconsin has long been famous for its lakes and cheese. Now it is becoming known for risky debt.

Wisconsin is home to the Public Finance Authority, an agency that has issued billions of dollars in tax-exempt debt across the U.S. for projects ranging from senior-living communities to student housing. Many projects claim no direct economic ties to Wisconsin.

Some of that debt is now starting to sour, one sign of how investors' hunger for yield has ushered increasing levels of risk into a corner of the municipal market.

The agency's bonds have been the subject of 10 of the 105 reports of impairment in the municipal market so far this year, according to research firm Municipal Market Analytics, by far the highest of any issuer.

Continue reading.

The Wall Street Journal

By Heather Gillers

Oct. 1, 2019 5:30 am ET

Taxable Muni-Bond Sales Surge as Window Opens for Refinancings.

- **Muni issuers sold $11 billion of refunding bonds in September**
- **'The numbers just work right now' to sell taxable muni bonds**

A window of opportunity has led state and local governments to flood the muni-bond market with refinancings.

State and local governments issued $11 billion of refunding bonds in September, nearly matching the $12.9 billion sold in August when rates fell to record lows. More than a third of the sales during the past two months were taxable debt, showing that rates have fallen so much that states and cities can still capture lower borrowing costs even though President Donald Trump's tax cut law bars sales of tax-exempt debt for a key type of refinancing.

It's unusual for state and local governments to issue taxable bonds to replace tax-exempt debt, which cost them less, but "the numbers just work right now," said Ben Barber, head of municipals at

Goldman Sachs Asset Management. “What’s happened is that the rates have come down so much, that issuers are able to sell taxable munis at much lower rates than they were a year ago,” he said.

Taxable Muni-Bond Sales Surge as Window Opens for Refinancings
By Danielle Moran
October 1, 2019, 10:23 AM PDT
Muni issuers sold $11 billion of refunding bonds in September
‘The numbers just work right now’ to sell taxable muni bonds

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Continue reading.

Bloomberg Markets

By Danielle Moran

October 1, 2019, 10:23 AM PDT

Editorial: Chicago and Illinois Don’t Have Enough Taxpayers to Pay for All This.

Chicago teachers want better pay and working conditions. Mayor Lori Lightfoot has made a generous contract offer, yet the Chicago Teachers Union is threatening to strike. That’s but one sequence of current events in this city’s, this state’s, long-running series of public finance crises. What’s the fuller picture? Well, go back decades to when politicians in Chicago and Springfield began skimping on payments to government retirement systems.

Illinois suffers many of these fiscal catastrophes — in its school districts, cities, townships, counties and of course state government. Yet there’s only one set of taxpayers to address the layers of distress — the people who live here now.

That’s why whatever contract agreement Lightfoot secures with the CTU cannot create even more draconian costs, even more debt: Each Chicago taxpayer who helps fund schools and teacher pensions, mainly through property taxes, has only one household pool of resources. And those taxpayers also are on the hook for all the other irresponsible decisions of multiple local and state governments.

In essence, it's city workers vs. schoolchildren

Take Chicago's sorry situation. As Lightfoot negotiates with teachers, she's struggling to find revenue to close an $838 million gap in the city's municipal budget. Part of the problem: In 2020, City Hall must contribute an extra $280 million for police and fire pensions to make up for years of underfunding. Add in two other weak funds — for municipal employees and laborers — and the numbers become dizzying: At the end of 2018, City Hall's pension funds had only 23% of what they should have.

And that 2020 surcharge just buys the cheap seats. By 2023, Lightfoot must find an additional $989 million a year for pensions, according to the Tribune's Hal Dardick and Juan Perez Jr. Thank you, former mayors and aldermen, for promising more pension benefits than Chicagoans could afford.

Again, this is just to address the city's pension shortfall, which has risen from $23 billion to $30 billion. That's after former Mayor Rahm Emanuel raised city taxes and fees to try tame the beast: The pressure on today's and tomorrow's taxpayers only grows. Remember that the state occasionally skipped contributions to its five pension funds for government workers, creating a $134 billion unfunded liability. That debt alone is more than triple Springfield's annual operating budget.

Which brings us back to Lightfoot's current negotiations: Teachers, school support staff and Park District workers are threatening to strike on Oct. 17 (after their Columbus Day holiday). Three labor groups want costly contracts, but Chicago has only one group of taxpayers to foot the bill. The mayor's essential quandary is a collision of competing demands: Every tax dollar Lightfoot collects for city workers' retirement benefits is a dollar she can't collect for the education of schoolchildren.

A terrible week for the 'Pritzker Tax'

Illinois voters are a year away from deciding whether to amend their constitution and embrace a graduated income tax. Gov. J.B. Pritzker says his tax package would affect only the top 3% of income tax filers. Maybe so at the get-go, but taxpayers are wising up to two realities. First: Freed of the current flat-tax requirement, lawmakers soon would impose higher tax rates on the middle class, too: That's where the money is. Second, even as the Pritzker Tax looms, governments at all levels are squeezing taxpayers with property and other tax increases.

Repeating for emphasis: There's only one set of taxpayers. Springfield's apologists and tax-burden deniers don't want to talk about that. They want to bamboozle Illinois voters with narrow factlets — California still would have a higher top income tax rate! — and pretend their data points prove that, en masse, this state's governments aren't taxaholics. But look around.

On Monday a federal judge rejected a "Hail Mary" lawsuit by four high-tax blue states frantic to kill the $10,000 cap on federal income tax deductions for state and local taxes, aka SALT. Those deductions had people in low-tax states subsidizing affluent households in high-tax states such as Illinois. Capping the SALT deduction didn't affect most Americans, for whom the 2017 federal tax law delivered lower tax rates and nearly doubled the standard deduction. The nonpartisan Tax Foundation calculated that removing the cap would "almost exclusively provide tax relief to the top 20% of income earners, the largest tax cut going to the top 1% of earners."

We've enjoyed watching Pritzker, New York's Andrew Cuomo and like-minded governors plead that the country's richest families deserve, um, *bigger tax deductions*. As a wry CNBC headline put it: "Blue-state Democrats have a new cause: Helping millionaires."

The mortal threat to the Pritzker Tax referendum: Capping this deduction makes affluent Illinoisans

pay more of the full cost of state and local spending. Lawmakers are less able to tell taxpayers, *Yes, we're gouging everyone, but hey, just deduct Illinois' high taxes on your federal return.*

And on Tuesday the business publisher Kiplinger issued its list of "The 10 Least Tax-Friendly States in the U.S." Guess who's No. 1. "The state ranks #50 in the latest ranking of states' fiscal health by the Mercatus Center at George Mason University, and residents are paying the price with higher taxes."

You keep guessing which state while we note that if enough Illinois voters understand the enormity of the state and local spending they support, and learn which state is most hostile to taxpayers, then the Pritzker Tax should face the defeat it deserves.

The Illinois Exodus is driving out taxpayers

We began this editorial referencing contract talks between the teachers union and Chicago Public Schools. But the unheard voice at the table is our real focus: taxpayers.

It isn't just that Illinois residents are overtaxed. The situation is worse than that. Worse, even, than so many Chicago and Illinois units of government that chronically promise too much, spend too much, borrow too much and owe too much. All in the name of that limited pool of taxpayers.

And for five years straight, as Illinois' population shrinks, many taxpayers have departed while prospective taxpayers considered this state but settled elsewhere. Expats often pack up the U-Haul for Indiana or Wisconsin because taxes are lower and the outlook for employers is more stable. Or they go to destinations such as Texas because that's where job growth is livelier.

What happens as the population declines and taxpayers flee? Property values fall, and the tax burden grows for those who remain. Chicago has a lot going for it as a global center of business, but the future economy looks fragile. The city will fight upstream to attract and retain employers (and employees) if City Hall raises the cost of living here to cover that extra $838 million for next year's budget. Because that money has to come from somewhere. Taxpayers know it, and so do employers who do, or don't, hire workers here. Yes, the Illinois Exodus is real.

The path forward: Growth ... and a pension amendment

Have we alarmed you? The situation is serious but not terminal. Chicago is dynamic. The Illinois economy is vibrant and diversified. The problem is rooted in government dysfunction. For too many years, leaders at the state and city level provided pay and retirement packages to government workers that were unaffordable. Hence all the debt, which must be paid.

The way forward is for government to spend within its means by attacking big structural costs, while at the same time generating more tax revenue by creating more taxpayers. Meaning Illinois must spur faster economic growth to generate more jobs.

Companies are willing, even eager, to locate in Chicago. But they don't want to hitch their futures to a metropolis, a state, where they'll get clobbered by tax increases that don't solve the problems. Uber CEO Dara Khosrowshahi, who's adding 2,000 workers in Chicago, told us this city is a terrific talent hub with a good quality of life and lower costs than coastal cities. Does he fear the unstable and onerous tax burdens? His general stance was instructive: "As long as everyone is lifting their fair share, and the proposals are fair and broad and data-based, I think we will be a reasonable participant."

We're not sure Illinois' leaders recognize what Khosrowshahi and other employers are saying. They

want a stable, business-friendly environment. They want Chicago and Illinois to get costs under control and lay out a realistic plan to pay what they owe.

The best way to rescue Illinois governments from themselves is to curb public pension benefits earned in the future. That also requires amending the Illinois Constitution. Giving voters a voice on that amendment — not just on the Pritzker Tax — will help state and local governments survive. So will affordable labor contracts. Mayor Lightfoot's negotiations with Chicago teachers are part of the mix.

Because there's only one set of taxpayers in Illinois.

THE CHICAGO TRIBUNE

By THE EDITORIAL BOARD

OCT 04, 2019 | 5:30 PM

Chicago Teachers Set Strike Date as Investors Eye Costs.

- **Union sets Oct. 17 as strike date as negotiations continue**
- **Bondholders are 'paying close attention': AllianceBernstein**

Chicago teachers have decided to strike in about two weeks, leaving investors in the city's junk-rated school district closely watching the costs of the Chicago Board of Education's efforts to avoid a walkout.

The Chicago Teachers Union said Wednesday it had set a strike date of Oct. 17. The announcement comes after about 800 union delegates representing every school in the district met behind closed doors.

"Strike will be a last resort," Jesse Sharkey, president of the union, said during a Wednesday evening press conference, adding that the group is trying to reach a negotiated settlement. "The city can afford our demands."

About 94% of Chicago Teachers Union members voted last week to authorize a strike to demand higher pay, more support staff like nurses and social workers and better working conditions. Union and district representatives are still negotiating, with school officials enhancing their offer, according to the district.

"We are looking for a settlement that's in the district budget, and the district is able to sustainably fund the contract," said John Ceffalio, a credit analyst for AllianceBernstein Holding LP, which holds $45 billion in municipal assets including Chicago and the city's school bonds. "If it is more expensive, how are they going to fund it?"

The teachers union has rejected the district's offer for a 16% pay increase over five years and has said its plan for adding support staff falls short. The standoff comes at the same time that city park district workers and other school staff like security guards are also planning to strike at the same time, leaving Mayor Lori Lightfoot facing multiple walkouts this month. The parks have come to agreement with 24 of its 25 union but no deal has been made with SEIU Local 73, which represents two-thirds or 2,400 workers, the district said Wednesday.

“We are going to stick together,” Sharkey said.

Contingency Plans

School buildings will be open on normal schedules to give students “a safe place to go should a work stoppage occur,” on Oct. 17, according to the Chicago Public School’s contingency plan.

“While we are doing everything in our power to reach a fair deal that prevents a strike, we are fully prepared for a work stoppage should one occur,” according to a joint statement from Lightfoot and CPS Chief Executive Officer Janice K. Jackson.

School bondholders and credit rating companies are monitoring the teachers’ plans, and watching how much the nation’s third-largest school district gives in to avoid or end a strike.

Both sides reaching an agreement before a walkout is within expectations, according to AllianceBernstein’s Ceffalio. Chicago teachers last had a one-day walkout in April 2016, and in 2012, the union staged the city’s first public school strike in 25 years.

“We are paying close attention as bondholders,” Ceffalio said.

Since the district introduced its $7.7 billion budget in early August, its subsequent offers to the union would raise labor costs by tens of millions of dollars in fiscal 2020 and over the next five years, according to a person at the district close to the negotiations. The board still expects to stay in its budget parameters, according to the person who asked not to be named as the discussions are ongoing. Given additional state funding, the district “can more than afford to do better by our students,” according to Chris Geovanis, a union spokeswoman.

Chicago Teachers Union rejected 16% pay increase over 5 years
“We are looking for structural balance,” Blake Yocom, an analyst for S&P Global Ratings, said in a phone interview. “CPS has built in certain assumptions. Anything beyond that that reverses their positive trend or recent improvement in financial position would hold back any future upgrades.”

It wasn’t that long ago that the school district was in danger of running out of money. For example, in 2016, the district was facing a $1 billion deficit and needed to borrow money to stay solvent, the school system’s management said at the time. Its finances have improved since the state of Illinois increased its funding to Chicago’s schools last year. S&P in August raised its rating on the Chicago Board of Education to BB- from B+ with a positive outlook. Fitch also boosted its rating by one level to BB, two levels into junk.

“They just returned to a positive fund balance,” Yocom said. “Any erosion of that could lead to a revision of the outlook back to stable. If this settlement is successful and achieves a structural balance, they were looking at a likelihood of an upgrade.”

Credit Negative

A strike itself wouldn’t necessarily halt the district’s upward trajectory, but much higher labor costs could be credit negative, Yocom said, adding that he’s watching for any impact on the credit outlook, rather than a rating change.

Lightfoot has said she’ll personally come to the table to negotiate to avoid a strike. The labor unrest comes as the first-term mayor is preparing to give her first budget address on Oct. 23. She’s looking for cash to close an $838 million hole in the city’s budget, the largest in recent history, according to her office.

While Chicago's spending plans are separate from the budget of the school system, the two entities are intertwined. They share the same shrinking tax base, and both are struggling with rising pensions costs. The mayor appoints the school board members as well as the city's chief financial officer. Chicago CFO Jennie Huang Bennett is the former CFO of the school district.

The labor conflict has been "baked" into ratings but that could change if a prolonged strike occurs or if the final deal far exceeds the board's budget expectations, said Eric Friedland, director of municipal research at Lord Abbett & Co., which which holds $26 billion in muni assets including city of Chicago and Chicago Board of Education bonds.

"The union has to understand that the district has limited resources," Friedland said. "There is a lot of brinkmanship to play out."

Bloomberg Markets

By Shruti Singh

October 2, 2019, 12:01 PM PDT Updated on October 2, 2019, 5:20 PM PDT

— With assistance by Maria Elena Vizcaino

S&P Medians And Credit Factors: Illinois School Districts

Overview

S&P Global Ratings maintains ratings on 417 school districts in Illinois. Currently, 64% of Illinois school districts are in the 'A' category, 34% are in the 'AA' category or above, and 2% have debt rated in the 'BBB' category or lower. During the period of Jan. 1, 2018 to July 29, 2019, more entities' GO ratings/ICRs were upgraded (27) than downgraded (8).

We anticipate continued overall stability in the Illinois school district portfolio for the coming year. Most Illinois districts continue to see stable and growing tax bases and steady to growing enrollment in most of the state. We note that some districts in Illinois, however, are challenged by stagnant tax bases and declining enrollment. Due to the implementation of the new evidence based funding formula (EBF) that went into effect for school districts in fiscal 2018, declining enrollment is not as big of a factor in district finances as it traditionally has been. Thanks to the "hold harmless" provision, school districts with declining enrollment will not receive less funding than they initially received in fiscal 2018 (this is called the "base funding minimum") for perpetuity. However, these school districts will not receive new dollars released into the school district funding pool. Overall, we believe state sources of revenue should remain stable in the near term, even if the district is in a declining enrollment environment. Long term, we believe the state's financial situation could affect future school funding via the evidence-based formula, whether it is timeliness or ability to fully fund the formula.

Continue reading.

There's a New Muni-Debt Crisis Brewing in Another U.S. Territory.

- **Moody's cuts Virgin Islands power agency bonds deep into junk**
- **Governor at odds with U.S. Representative over scale of crisis**

An economically struggling U.S. territory. A government-run electricity provider facing potential insolvency. A debate among public officials about whether debts are too burdensome to pay.

That's the situation in the U.S. Virgin Islands, where the power agency is contending with a financial squeeze that echoes what happened in Puerto Rico in the run up to that government's record-setting bankruptcy.

The uncertainty led Moody's Investors Service on Sept. 23 to downgrade the most senior Virgin Islands Water and Power Authority bonds to eight steps below investment grade, indicating a high likelihood of default. Subordinate debt due in 2031 last traded at an average of 92 cents on the dollar, above the 65% to 80% recovery that Moody's rating suggests investors are likely to receive.

Continue reading.

Bloomberg Markets

By Amanda Albright

October 1, 2019, 5:00 AM PDT

White House Opportunity and Revitalization Council Introduces OpportunityZones.gov.

New website will serve as comprehensive tool for the Opportunity Zones initiative

Secretary Ben Carson, on behalf of the White House Opportunity and Revitalization Council, announced a new website that will serve as a hub of information for the array of audiences that work with the Opportunity Zones initiative. Visit the Opportunity Zones website.

Opportunity Zone residents, State and local leaders, investors, and entrepreneurs can all utilize the website to get the latest information about the initiative and the actions of President Trump's White House Opportunity and Revitalization Council. Secretary Ben Carson serves as chairman of the Council, which is led by Executive Director Scott Turner.

The Opportunity Zones website includes an interactive map of the 8,764 Opportunity Zones nationwide; links to the Opportunity Zone-focused website of each State and Territory; comprehensive Federal tools and resources that support Opportunity Zone residents and complement Qualified Opportunity Fund investments; and the completed action items of each White House Opportunity and Revitalization Council member agency.

"Working together, we are unleashing a wave of investment, innovation, and revitalization into economically distressed areas, many of which have suffered from a lack of opportunity for decades," Secretary Ben Carson said.

"We are proud to launch OpportunityZones.gov and look forward to continuing to spread the positive

message of opportunity and revitalization in the underserved communities of America," said Scott Turner, Executive Director of the Council.

Since President Trump signed an Executive Order creating it, the White House Opportunity and Revitalization Council has taken nearly 170 actions to align existing Federal resources, policies, and programs to Opportunity Zones. To date, the Council has traveled to more than 40 urban, rural, and Tribal areas designated as Opportunity Zones throughout the country to listen to stakeholders about how the initiative can enhance the economic opportunity in their communities.

Multihousing Pro

October 1, 201

Statement from EPA Administrator Andrew Wheeler on the Water Infrastructure Funding Transfer Act.

WASHINGTON (Oct. 7, 2019) — Today, as we continue to celebrate Children's Health Month, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler released the following statement on the Water Infrastructure Funding Transfer Act, which was signed into law by President Trump on Friday, adding flexibility to the State Revolving Funds (SRF) program to help finance projects that reduce lead in drinking water.

"President Trump has made reducing lead exposure a top priority across his administration, and his signature of this new law is yet another example of the ways we are providing communities with additional tools to protect their drinking water," said EPA Administrator Andrew Wheeler. "This new law gives our state and local partners an important flexible financing option to fund projects that will reduce lead in drinking water and protect public health, especially the health of our nation's children."

Background

The Water Infrastructure Funding Transfer Act allows transfers from the Clean Water State Revolving Fund (CWSRF) to the Drinking Water State Revolving Fund (DWSRF) during a one-year period ending on October 4, 2020, in an amount up to 5% of the state's cumulative CWSRF federal grant dollars. The transferred funds may be used to provide financial support in the form of forgiveness of principal, negative interest loans or grants (or any combination). This authority is in addition to the existing transfer authority under the Safe Drinking Water Act.

In December of 2018, the Administration unveiled its Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts. This plan includes robust actions across the federal government, including EPA's development of innovative approaches to help finance projects that reduce exposure to lead or other contaminants in drinking water. For example, in 2018 and 2019, EPA's Water Infrastructure Finance and Innovation Act (WIFIA) program prioritized projects that address lead and other contaminants in drinking water systems. In 2018, the program invited 12 projects that will reduce exposure to lead and other contaminants to apply for WIFIA financing. Additionally, EPA is issuing grants under the Water Infrastructure Improvements for the Nation Act to fund lead reduction projects and to support the voluntary testing of drinking water in schools and childcare centers. EPA has also supported the use of the DWSRF to help finance lead mitigation projects.

Contact Information:
EPA Press Office (press@epa.gov)

Will the Supreme Court Strike Down Inclusionary Zoning?

A Marin County lawsuit has conservatives and housing advocates preparing to face off over the constitutionality of a powerful affordable housing tool.

Marin County is committed to building affordable housing. Indeed, the most exclusive county in California doesn't have much choice.

Back in May, authorities in Marin entered into a new voluntary compliance agreement with the U.S. Department of Housing and Urban Development to build new low-income housing outside areas where black or brown residents make up the majority. This is now the county's second big push since 2010 to satisfy the government's demand that it work on desegregating its affordable housing.

Fair housing is a challenge for Marin, an enclave of million-dollar bungalows across the Golden Gate Bridge from San Francisco. According to a nonprofit project called Race Counts, it has the highest racial disparities of any county in California. That's in part because Marin County doesn't want to build any housing. Homeowners here are at the forefront of NIMBY efforts to stop plans for new construction, whether they're local, regional, or statewide.

Continue reading.

CITY LAB

by KRISTON CAPPS

OCT 3, 2019

A New Framework for Infrastructure Reform.

If the nation were to start from scratch on our infrastructure priorities, what would that look like?

That was the question Brookings Metro fellow Adie Tomer posed to the House Committee on the Budget on Wednesday, September 25 during a hearing on the country's infrastructure needs and opportunities.

Tomer's testimony examined the gulf between the issues that U.S. infrastructure has historically focused on and the modern-day objectives that should now be the priority.

"Consider what motivated the federal policy frameworks we follow today," said Tomer. "Their authors crafted policies that responded to the challenges of their time—issues like connecting cities across state lines, delivering telephone and cable service, and stopping sewage dumping." The nation's continued focus on these "legacy frameworks" prevents us from tackling the challenges of today and inviting a much-needed re-evaluation of our infrastructure objectives.

Tomer cites four big national issues that a newfound infrastructure policy could help

correct—climate change, wealth inequality, industrial competitiveness, and regional economic divergence. And that correction, Tomer notes, will not be accomplished through the default and oversimplified method of our infrastructure policy to date—spending more. Instead, it will come from smart policy and a critical re-examination of the role infrastructure reform can play in wider national issues.

Take climate change, for instance: in his written testimony, Tomer writes that prioritizing density in our land use will mitigate the impacts of development and transportation emissions on our environment. He proposes, among other policies, a National Land Value Tax and Impact Fee to incentivize resilient growth and affordable, environmentally sound housing and transportation options.

Even seemingly unrelated economic issues can be addressed through a more holistic approach to infrastructure policy. Many U.S. households spend huge portions of their income on housing, transportation, and other infrastructure-adjacent expenses such as broadband access. We could confront the nation's precarious income and wealth inequality by way of decreasing these expenses, through programs Tomer proposes such as a new benefits system for infrastructure needs and dynamic transportation pricing. The widening economic divergence between different regions of the country, recently examined in a blog post by Brookings's Mark Muro and Jacob Whiton, could also be treated via a re-evaluation of our infrastructure priorities.

"Congress and your partners in the general public have a truly special opportunity," Tomer told the committee. But the apparent political consensus on accomplishing big infrastructure reform shouldn't be squandered on the same obsolete objectives, he concluded: "This all starts with a fresh perspective."

To read his full testimony, click here.

The Brookings Institute

by Adie Tomer

September 30, 2019

Pipeline Developers Beware: Third Circuit Disallows Eminent Domain Over State Lands Under Natural Gas Act - Duane Morris

In a unanimous, precedential opinion issued on September 10, 2019, the United States Court of Appeals for the Third Circuit held that the Natural Gas Act (NGA), 15 U.S.C. § 717, *et seq.*, does not abrogate state sovereign immunity and does not give private pipeline companies the power in federal court proceedings to condemn property owned by states. *See* In re PennEast Pipeline Co., *F.3d , Nos. 19-1191 through 19-1232, 2019 WL 4265190 (3d Cir. Sept. 10, 2019)*. This decision—the first on this topic by any federal appellate court—may have far-reaching implications for pipeline development and other infrastructure projects in Pennsylvania, New Jersey, Delaware and beyond.

The Third Circuit's decision redefines the relationships among private parties, states and the federal government in this region with respect to pipeline development. The opinion also gives states, and potentially private parties, a new tool with which to obstruct future pipeline projects. Although the precedential value of the decision could be short-lived if, for example, the Third Circuit agrees to rehear the case en banc or the Supreme Court of the United States grants a petition for certiorari

and reverses, the opinion will likely have an immediate impact on parties' strategies in developing and opposing energy infrastructure development in the Northeast. Pipeline companies should therefore consider the potential ramifications of the Third Circuit's decision for ongoing and future pipeline projects in this area.

Background

The case arose after PennEast Pipeline Company, LLC obtained Certificates of Public Convenience and Necessity from the Federal Energy Regulatory Commission (FERC) to build a natural gas pipeline from Luzerne County, Pennsylvania, to Mercer County, New Jersey. Under the NGA, once a private pipeline company obtains such certificates and meets other requirements, the company can acquire "necessary right[s]-of-way" for such pipelines through "the exercise of the right of eminent domain." 15 U.S.C. § 717f(h). PennEast sought to use this provision to condemn 131 properties along the proposed pipeline route. Although most of the properties through which PennEast planned to build were owned by private or other nonstate parties, the state of New Jersey claimed an interest in 42 of the properties. Specifically, New Jersey asserted possessory interests in two of those properties and nonpossessory interests, in the nature of conservation and farmland preservation easements, in another 40 properties.

PennEast filed complaints in the U.S. District Court for the District of New Jersey seeking orders of condemnation and other relief. The state objected to PennEast's actions with respect to the 42 properties in which the state claimed an interest, arguing that the state's sovereign immunity barred such suits from proceeding in federal court. The district court disagreed, holding that the NGA vested power in private pipeline companies like PennEast to use the federal government's power of eminent domain to condemn state lands.

The Court Distinguishes Between the Power of Eminent Domain and the Power to Obviate State Immunity

On appeal, the Third Circuit reversed the district court in a forceful opinion. The court first explained that the district court and PennEast failed to differentiate between the powers at issue in the case: "the federal government's eminent domain power and its exemption from Eleventh Amendment immunity." Opinion at 15. The issue presented by New Jersey's objection to federal jurisdiction was, the court explained, whether there was any authority allowing a private company to hale a state into federal court. This issue was wholly separate, in the court's view, from whether the NGA delegated eminent domain power to PennEast.

Once focused on the question of a state's sovereign immunity, the court explained that it is unlikely that the federal government can delegate its power to abrogate a state's sovereign immunity. Nevertheless, relying on the canon of constitutional avoidance, the court determined it did not need to decide that issue. The court instead held that, even assuming such power could be delegated, the NGA lacked unequivocal language demonstrating that such delegation was intended by Congress. Accordingly, the court held, private parties cannot condemn land in which the state has an interest—whether that interest is possessory or nonpossessory—through proceedings initiated in federal court.

Notably, the court failed to address why a state's nonpossessory interests in land, including the conservation and farmland preservation easements here, implicate sovereign immunity to the same extent as land held by a state in fee simple. Instead, the court treated all of the state's interests equally, without explanation or analysis, and directed the district court to dismiss all 42 condemnation complaints challenged on appeal.

The Third Circuit's Decision Leaves Unresolved Whether Pipeline Siting Must Avoid State Lands Altogether

Although the court claimed that it was "not insensitive" to the concern that states now have "unconstrained veto power over interstate pipelines," and to the disruption to the natural gas industry that the court's decision may cause, see Opinion at 33, the court did little to guide pipeline companies in the future. For example, the court noted that the federal government may be able to bring condemnation claims on behalf of pipeline companies in federal court against states, as such actions would not run afoul of the Eleventh Amendment. The court, however, did not grapple with the language in the NGA giving eminent domain power to holders of certificates of public convenience, not to FERC. The court instead offhandedly noted that the federal government may need to employ some other procedural mechanism separate from the NGA to condemn state lands for pipeline development. The court, however, did not provide any guidance as to what that procedural mechanism might be.

The court also did not address whether pipeline companies can condemn state lands in state court. The NGA provides for this possibility, under 15 U.S.C. § 717f(h) (holders of Certificates of Public Convenience and Necessity may acquire needed properties by eminent domain in federal district court "or in the State courts"); however, states generally cannot be sued in their own courts without waiving sovereign immunity. Thus, pipeline companies may run into similar obstacles in state courts as this decision creates in federal courts. If courts consider the state government to be immune from condemnation suits in state court, the result may be that pipelines can never be constructed under state lands without the state's consent.

Although the court held that private companies can no longer condemn land in which a state has an interest in federal court proceedings, such companies may still retain the ability to initiate federal court proceedings to condemn land controlled by political subdivisions of a state, such as counties or municipalities. Political subdivisions do not enjoy Eleventh Amendment immunity, and courts have generally been reluctant to extend state immunities to political subdivisions. Nevertheless, political subdivisions may attempt to use the court's analysis in this case in future challenges to the condemnation power of private pipeline companies.

Considerations for the Future

Going forward, pipeline companies may want to consider avoiding the use of eminent domain to acquire state-owned lands when siting pipelines, thereby circumventing the question of state sovereign immunity altogether. In many cases, this would result in more condemnations of private and municipal property, which may have negative political ramifications for states that refuse to consent to pipeline development on state lands. Pipeline companies may similarly face political repercussions from increased use of eminent domain on privately and municipally owned properties.

Pipeline companies should also be cautious when siting in states where there is substantial public or political sentiment against pipeline development. Private citizens and environmental groups may respond to this opinion by offering conservation easements to states, on favorable terms, for the sole purpose of thwarting pipelines. Although New Jersey, in the In re PennEast case, asserted that it had spent more than $1 billion obtaining conservation and preservation easements such as those implicated by the PennEast project, property owners may be much more willing to convey such interests in the future as a result of the Third Circuit's decision if they believe that such an action could hinder pipeline development. Pipeline companies would be advised to consult legal counsel and to formulate arguments to combat such attempts in order to prevent the Third Circuit's interpretation of the NGA from nullifying the otherwise broad eminent domain power granted to pipeline companies by Congress.

The Third Circuit is the first federal appellate court to consider whether private parties can sue a state in federal court as part of a condemnation proceeding. However, other circuits will likely face similar issues soon. In fact, another pipeline company, Columbia Gas Transmission, LLC, has just appealed a Maryland district court order holding that Eleventh Amendment immunity prevents federal court jurisdiction over condemnation proceedings against state property. This appeal will be heard by the Fourth Circuit, which may choose to follow the Third Circuit's lead or may reverse the district court, resulting in a split among the circuits. The Supreme Court may wait to grant a petition for certiorari on this question until such a split occurs (by the Fourth Circuit or any other circuit court), or may accept review of the Third Circuit's decision in the near future. Pipeline companies therefore should carefully monitor developments in the Third and Fourth Circuit cases, as well as future litigation addressing the many questions the Third Circuit's decision left open.

by Robert L. Byer, George J. Kroculick, David Amerikaner and Leah Mintz

September 25, 2019

Duane Morris LLP

Building Demand in US Water Quality Trading Markets.

IN BRIEF

- WATER QUALITY TRADING MARKETS ALLOW THE OPERATORS OF POINT SOURCES OF WATER POLLUTION — such as sewage treatment plants or factories — to offset that pollution by purchasing credits representing reductions elsewhere.
- BUT DESPITE THE PRESENCE OF FUNCTIONING PROGRAMS ACROSS THE COUNTRY, the overall volume of trading remains low.
- TO EXPAND TRADING, STAKEHOLDERS NEED TO ADDRESS THE LACK OF NUMERIC DISCHARGE LIMITS, transaction costs, risk aversion, and the absence of empirical data on programs.

Environmental credit trading programs have gained traction for pollutants like carbon emissions, at least in concept. Is water quality trading the next frontier? The mechanism offers the possibility of more flexible and cost-effective water quality control, but in contrast to some environmental credits, markets have struggled to gain momentum.

Water quality trading markets allow the operators of point sources of water pollution — such as sewage treatment plants or factories — to offset that pollution by purchasing credits representing reductions elsewhere. Just as the purchase of a carbon offset gives its buyer credit for reducing their carbon footprint, a water quality trading market allows participants to buy and sell the credit for reduction of water pollution into a given water body.

Trading is a tool that may be well-suited to address the evolving nature of water pollution in the United States.

"The Clean Water Act was written at a time when the major pollution in our waterways was coming from pipes," said Kristiana Teige Witherill, clean water project manager at the Willamette Partnership, a nonprofit focused on market-based conservation in the American West. "Today, depending on what watershed you're looking at, 80 to 90% of pollution is coming from non-point sources, not coming from the end of a pipe."

After establishing parameters for water quality trading in 2003, the Environmental Protection Agency (EPA) reiterated its support for the tool in a statement in February. A 2017 Government Accountability Office (GAO) report tallied 19 water quality trading programs operating in 2014 in a diverse set of 11 U.S. states, from California to Idaho to Florida.

But despite the presence of functioning programs across the country, the GAO noted that the overall volume of trading remains low. “According to stakeholders, two key factors have affected participation in nutrient credit trading — the presence of discharge limits for nutrients and the challenges of measuring the results of nonpoint sources’ nutrient reduction activities,” the report stated.

Now, proponents of water quality trading are working to bring more participants into the fold. What can be done to scale up use of trading?

How Water Quality Trading Works

Under the U.S. Clean Water Act, states are responsible for regulating the quality of water discharged into water bodies. Water quality trading markets provide an alternate way for any point source regulated by the National Pollutant Discharge Elimination System to meet requirements set by states through the act.

Water quality trading credits most often deal with nitrogen and phosphorus pollution, but they can be generated for other purposes as well. To protect temperature-sensitive salmon species, for example, Oregon has a functioning trading market for water temperature, according to Witherill. Less commonly, markets can also facilitate trades for credits that represent reduced stormwater quantity.

Credits are frequently generated through reduced pollution from agricultural land, but can also come from point-source sites that have exceeded pollution-reduction requirements. States are responsible for approving and verifying credits.

Water quality trading has the potential to provide massive increases in the cost-effectiveness of pollution reduction. According to the World Resources Institute, reducing nitrogen pollution through water treatment plant upgrades costs an average of about $15 per pound of nitrogen, but under $5 per pound through planting cover crops on farms.

Generating Demand

The GAO’s 2017 report stated that in the year they surveyed, 2014, the majority of trading occurred in Connecticut, Pennsylvania and Virginia. In those states, most point sources didn’t purchase credits, resulting in a substantial share of generated credits going unused. State officials told the GAO, however, that trading programs still provided other benefits, like flexibility in complying with water quality regulations.

“I would say that there are a number of programs across the country that are working well, like here in Oregon where we have a number of facilities and municipalities that are successfully using water quality trading,” Witherill said. “But I think we haven’t yet reached a tipping point where water trading becomes a mainstream solution for meeting water quality regulations.”

Often, the issue centers around the question of bringing buyers to the table.

In October 2018, the National Network on Water Quality Trading — facilitated by the Willamette Partnership — published its report “Breaking Down Barriers: Priority Actions for Advancing Water

Quality Trading." The group aimed "to diagnose why, in contrast to other environmental markets, interest in water quality trading and demand for water quality credits has been slow."

Along with discharge limits, the "Breaking Down Barriers" report points to transaction costs, risk aversion, and the absence of empirical data on programs as deterrents to trading. When it comes to discharge limits, the regulatory structure of a given state plays a big role. Under the Clean Water Act some states, but not others, have set specific quantitative limits on pollution.

"In places like Wisconsin that have numeric criteria for nutrients, they have a really strong driver for cities and municipalities to be looking at options like water quality trading," Witherill said. "It's kind of a precondition for it to have some kind of regulatory driver."

Wisconsin has a statewide trading program for the variety of pollutants regulated by the state Department of Natural Resources, but the difficulty of conducting trades has limited its use, according to Wisconsin Public Radio. Critics of the program's current design have blamed low participation on inflexible rules and trouble connecting buyers and sellers.

In the absence of a "regulatory driver" like quantitative pollution limits, water quality trading programs have limited options for attracting buyers.

The Ohio River Basin Trading Program, run by the Electric Power Research Institute (EPRI), manages a trading market in Ohio, Indiana and Kentucky. The program aims to address nutrient pollution into the Ohio River — and ultimately, the Gulf of Mexico — by generating credits from conservation practices on agricultural land. According to Program Manager Jessica Fox, the Ohio River Basin Trading Project has over 100,000 of the $12 to $14 credits — each representing a pound of verified reduced nitrogen or phosphorus discharge — "on the shelf" waiting to be sold.

EPRI has sold credits to power companies, a university and individuals, Fox said, but not at the volume necessary to make the program self-sustaining. "When every transaction requires me to take a business trip," she said, "that's not going to work. It has to be more liquid than that."

There are other preconditions needed for water quality trading in addition to quantitative criteria, the "Breaking Down Barriers" report argues. First, unless the technology required for polluters to meet limits is expensive or nonexistent, managers of point sources are unlikely to turn to trading. Regulatory agencies must also support purchasers interested in pursuing credits. "We've also seen that the utilities who pursue water quality trading often have a champion supporting the program within their own organization," the report stated.

Building Markets and Confidence

Through stakeholder interviews and other research, the "Breaking Down Barriers" authors identified seven steps that stand to increase use of trading. They advocate for simplifying trading programs; making sure state regulators have the capacity and resources they need; clarifying the policies of EPA and states; reducing buyer risk, real and perceived; addressing the legal risk that stems from a lack of case law on trading; developing more direction for stormwater trading; and building relationships.

For its part, the Ohio River Basin Trading Program is looking to stimulate more demand of its own accord. In May, EPRI announced a partnership with First Climate, a firm that specializes in selling environmental credits, to sell credits on international markets and make them available to a wider range of domestic buyers. Before, the trading program wasn't able to accommodate transactions of less than $25,000, according to Fox. Through First Climate, however, the program is taking a more

retail approach to trading.

“You can go on now, and you can buy one credit with a credit card or Paypal account,” Fox said. The program has a calculator online that individuals can use to determine their personal nitrogen footprint, and provides buyers a photo of the farmer who generated their credit. It even sells t-shirts.

“It’s kind of like ‘adopt a sea lion,’” she said. “It’s getting it to be a more publicly accessible thing.”

First Climate and EPRI are also pitching large corporate buyers on water quality credits as a way to meet voluntary sustainability commitments.

But as trading programs continue to try to break into the mainstream, Willamette’s Witherill cautioned that they are just one tool in the toolbox for “expanding the number of options utilities have to invest in their watersheds,” she said. “Maybe that doesn’t necessarily look exactly like water quality trading, maybe that looks like a source water protection program or some kind of groundwater irrigation management.”

On the policy front, Fox also wonders if EPA could do more to support markets. The agency’s February memo was “a huge signal that the administration is strongly behind water quality trading,” she said, but it doesn’t actually change implementation on the ground.

One possibility worth exploring, Fox said, would be whether EPA could allow states to use their own share of funds from joint federal-state programs — such as Clean Water State Revolving Funds, for example — to buy credits.

“Any way to incent the buyer side is a great solution,” she said.

Conservation Finance Network

by Chris Lewis

September 25, 2019

D.C. Gears Up to Guide Opportunity Zone Investments.

Opportunity Zones aren’t for everyone.

For starters, the new federal tax break is only available to 7.3 percent of taxpayers. In 2016, that percentage represented 11 million individual and corporate tax returns with positive capital gains income totaling $634 billion. Those billions would be eligible for a tax break under the Opportunity Zone provision of the Tax Cuts and Jobs Act of 2017.

If you’re one of the estimated 35 million United States residents of designated Opportunity Zone census tracts — 60 percent are people of color — the projects and businesses financed through the new Opportunity Zone tax break may create jobs or new amenities or new housing for you, or they may drive up rents or property taxes or otherwise push you out of your neighborhood. As others are reporting, the tax break is already subsidizing projects that probably didn’t need it and won’t do much to help poor communities, though it’s early days yet and cities still have a chance to sway the incoming dollars into projects that will be more beneficial for more people.

A lot will depend on what your city does (or fails to do) in response to the tax break. Some have

already done quite a lot, including Washington, D.C. While all other local U.S. governments had to make suggestions to a governor's office, D.C. Mayor Muriel Bowser submitted D.C.'s Opportunity Zone census tract designations to the U.S. Department of the Treasury in mid-2018.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO

OCTOBER 1, 2019

Catalyzing Opportunity Zone Investments in New England (2019)

October 22, 2019 | Boston, MA

Join CDFA for the Catalyzing Opportunity Zone Investments conference in New England on October 22, 2019 for a special one-day event hosted at the Federal Reserve Bank of Boston. This event will feature a number of economic development finance experts from Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont discussing Opportunity Zones and the development finance tools, authorities, resources and approaches, and how these can affect the New England economies going forward.

Register today to reserve your spot at the Catalyzing Opportunity Zone Investments in New England conference.

Click here to learn more and to register.

CDFA EDA RLF Training Course - Tampa

November 5-6, 2019 | Tampa, FL

The CDFA EDA Revolving Loan Fund Training Course is a two-day training course tailored to address the specific needs of EDA RLF Grantees. The course is based on CDFA's highly acclaimed Intro Revolving Loan Fund Course and offers an in-depth look at RLF program development, implementation and management.

Participants will learn the essential elements needed to operate a successful EDA RLF program with a focus on program design, marketing, management, loan underwriting and processing strategies, disclosure and monitoring, evaluations and program risk strategies.

In addition, the course will focus on highlighting the perspective of many different EDA RLF grantees who have experienced success with an emphasis on replicability and peer to peer learning. Each day will include presentations from RLF experts and EDA RLF grantee peers to encourage discussion and ongoing collaboration.

The CDFA EDA Revolving Loan Fund Training Course is being held as part of the CDFA EDA RLF Best Practices Program.

Click here to learn more and to register.

Advanced Tax Increment Finance Course.

November 6, 2019 | Tampa, FL

CDFA's Advanced Tax Increment Finance Course builds upon CDFA's Intro TIF Course by focusing more concretely on structuring the deal and developing short- and long-term policies. You will also learn about performance monitoring, feasibility analysis and using TIF in conjunction with other development finance tools.

This course qualifies for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Start down the road to personal and professional advancement today.

Click here to learn more and to register.

How America's Poorest ZIP Code is Attracting Opportunity Zone Capital.

Erie, Pennsylvania is home to the nation's poorest ZIP code, and the nation's first organization dedicated to promoting a municipality's Opportunity Zones. Erie Downtown Development Corporation is led by CEO John Persinger and VP for finance and development Matt Wachter. Click the play button below to listen to my conversation with John and Matt. Episode Highlights How Erie's Opportunity Zone Investment Prospectus has helped enable

Read More »

Opportunity Db

October 2, 2019

AICPA'S Ethics Interpretation: State & Local Government Client Affiliates Webinar

10/17/2019 2:00 PM EDT | 10/17/2019 3:15 PM EDT

OVERVIEW

NASACT is pleased to announce the latest in its series of training events addressing timely issues in government accounting, auditing and financial management.

Stay current on new independence guidance. Let us help you navigate the revised State and Local Government Client Affiliates interpretation recently adopted by the AICPA Professional Ethics Executive Committee. Join the PEEC task force chair, Nancy Miller, and AICPA technical staff as they give practical insight on the interpretation and demonstrate tools currently being developed to assist you.

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Pat Hackney
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Phone: (859) 276-1147

Novogradac 2019 Opportunity Zones Fall Conference - Chicago

The Fairmont Chicago Millennium Park

October 24, 2019 – 8:00am to October 25, 2019 – 12:00pm

Novogradac's Opportunity Zones Conference is one of the largest attended events in the community development arena, where fund sponsors, developers, investors, accountants, lawyers and others gather to discuss and learn how to effectively invest in qualified opportunity funds.

Don't miss this chance to meet with more than 500 leaders from across community development industries to discuss critical trends, challenges and solutions related to expanding the implementation of opportunity zones in order to transform some of the nation's most disadvantaged communities.

Click here to learn more and to register.

TAX - OHIO

Village of Georgetown v. Brown County Board of Elections

Supreme Court of Ohio - September 26, 2019 - N.E.3d - 2019 WL 4686730 - 2019 -Ohio-3915

Village sought writ of prohibition to prevent county board of elections from placing a tax-lev--reduction measure on an upcoming general-election ballot.

The Supreme Court held that:

- Board properly determined that printed signatures submitted in support of measure were genuine, and
- Tax levy was proper subject of reduction via ballot measure.

County board of elections did not abuse its discretion in reversing its prior decision to invalidate 12 printed signatures submitted in support of petition proposing a ballot measure to reduce tax levy

that paid for equipment and personnel relating to firefighting and emergency medical services; there was no longer a requirement that signatures be in cursive, discrepancies between cursive signatures on voter-registration forms and printed petition signatures could be resolved by evidence that the printed signatures were authentic, and a signed declaration attesting that the signatures were authentic was the only evidence in the record on the issue.

Tax levy of 9.5 mills that paid for equipment and personnel relating to firefighting and emergency medical services was proper subject of reduction in a proposed ballot measure seeking to reduce the levy to 2.5 mills; ballot measure did not seek to reduce the tax rate to zero, as was otherwise impermissible under statute governing decreases of levies by voters of a subdivision, and, while the levy had not been increased, as required for a levy to be decreased under the statute, a separate statute permitted voters to decrease any levy approved for firefighting and emergency medical services, even if the levy had not previously been increased.

Assured Guaranty Responds to Puerto Rico Oversight Board's Plan of Adjustment.

Assured Guaranty Ltd. (together with its subsidiaries, Assured Guaranty), released the following statement regarding the Financial Oversight & Management Board's (the "Oversight Board") Plan of Adjustment ("Plan"):

Assured Guaranty does not support the Oversight Board's proposed Plan, which is premised on a number of terms that Assured Guaranty believes violate Puerto Rico law, its constitution and PROMESA. The Plan also ignores the rule of law on which our society and financial systems rely, and constitutional liens and priorities. The Plan was developed in the absence of consensual discussions with the island's long-term and largest creditors and is based at its core on a Plan Support Agreement whose signatories represent only a small fraction of the outstanding debt it purports to restructure.

The Oversight Board has repeatedly produced fiscal plans without appropriate input from the island's long-term creditors, based on unrealistic and inaccurate financial assumptions and projections. These actions in Assured Guaranty's view have cost the island hundreds of millions of dollars in litigation fees and time wasted. Assured Guaranty believes by disregarding basic tenets of PROMESA, Puerto Rico law and the U.S. and Puerto Rico constitutions, the Oversight Board has violated the explicit terms of the Commonwealth's general obligation bonds and special revenue bonds and undermined the underpinnings of the U.S. municipal bond market, potentially raising the cost of infrastructure development nationwide.

An end to the Puerto Rico debt crisis is in sight, one that can reopen Puerto Rico's access to the capital market and encourage investment, but Assured Guaranty believes that solution needs to be driven by consensual resolutions and accurate financial data, and not by attempting a cramdown on investors who have supported the island for decades. Continuing with the Oversight Board's current approach, in Assured Guaranty's view, will not restore capital market access for Puerto Rico or ensure a solid and stable economic future for the island and its residents.

Cautionary Statement Regarding Forward-Looking Statements

Any forward-looking statements made in this press release reflect Assured Guaranty's current views with respect to future events and are made pursuant to the safe harbor provisions of the Private

Securities Litigation Reform Act of 1995. Such statements involve risks and uncertainties that may cause actual results to differ materially from those set forth in these statements. These risks and uncertainties include, but are not limited to, those resulting from adverse developments in Puerto Rico, an inability or failure of creditors to negotiate and implement a consensual restructuring, litigation that has already been initiated or may be initiated in the future, governmental or legislative action or inaction by Puerto Rico or the United States, other risks and uncertainties that have not been identified at this time, management's response to these factors, and other risk factors identified in Assured Guaranty's filings with the Securities and Exchange Commission. Readers are cautioned not to place undue reliance on these forward-looking statements, which are made as of October 2, 2019. Assured Guaranty undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Assured Guaranty Ltd. is a publicly traded Bermuda-based holding company. Its operating subsidiaries provide credit enhancement products to the U.S. and international public finance, infrastructure and structured finance markets. More information on Assured Guaranty Ltd. and its subsidiaries can be found at AssuredGuaranty.com

Business Wire

October 2, 2019

FINRA Fines UBS Financial Services Inc. $2 Million for Continued Failures Relating to Short Positions in Municipal Securities.

Firm Inaccurately Represented the Tax Status of Thousands of Interest Payments to Customers; Restitution Ordered

WASHINGTON—FINRA today announced it has censured and fined UBS Financial Services Inc. (UBS) $2 million for the firm's repeated failures in timely addressing municipal short positions and in inaccurately representing the tax status of thousands of interest payments to customers. FINRA also required UBS to pay restitution to customers who may have incurred any increased state tax liabilities, to pay the IRS to relieve customers of any additional federal income tax owed, and to certify within 90 days that the firm has taken appropriate corrective measures. FINRA previously sanctioned UBS for its failures in this area in 2015 (AWC No. 2014041645601, August 12, 2015).

Investors often purchase municipal securities because of the tax-exempt interest earned on those investments. However, when a FINRA member firm is short municipal securities purchased by customers, the firm – not the issuing municipality – is the source of the interest payments. That interest, commonly known as "substitute interest," is subject to applicable taxes.

FINRA found that from August 2015, when FINRA previously sanctioned UBS for similar violations, through the end of 2017, UBS continued to fail to timely identify and properly address certain short positions in municipal securities. As a result, UBS inaccurately represented on customer account statements and Forms 1099 that interest payments for 2,853 positions in municipal securities were tax-exempt when, in fact, they were taxable, and inaccurately represented on approximately 950 additional customer account statements and Forms 1099 that interest payments were taxable, when they were tax-exempt. FINRA found that these failures were the result of the firm's continued failure to establish reasonably designed supervisory systems and written supervisory procedures to timely

identify short positions in municipal securities and its failure to provide reasonable guidance to its registered representatives instructing them how to address the short positions.

Jessica Hopper, Senior Vice President and Acting Head of FINRA's Department of Enforcement, said, "FINRA member firms must be attentive to municipal short positions that impact customer accounts, and it is critical that member firms convey accurate information to customers regarding their account holdings. In addition, member firms are expected to take prompt corrective action after being sanctioned and avoid repeat violations."

In settling this matter, UBS neither admitted nor denied the charges, but consented to the entry of FINRA's findings. FINRA allocated $1.75 million of the $2 million fine to the MSRB violations.

News Release | October 02, 2019

Michelle Ong (202) 728-8464
Mike Rote (202) 728-6912

UBS Fined for Repeated Client-Reporting Inaccuracies on Munis.

The Financial Industry Regulatory Authority on Wednesday fined UBS Financial Services $2 million for inaccurately representing to customers the tax status of municipal bond interest payments, and ordered it to pay any additional taxes they may owe because of the errors.

Regulators four years ago censured and fined UBS $750,000 for similar supervisory violations.

In an acceptance, waiver and consent letter the broker-dealer signed, Finra said it considered UBS's "recidivism" in determining the fine.

The issue centered on "substitute interest" that UBS paid muni bond investors when it was short the actual muni bonds it sold. Such interest is taxable, unlike interest paid directly by muni issuers, but UBS on account statements and 1099 forms represented it as tax-exempt, the consent letter said.

It attributed the problem to UBS's repeated failures to have supervisory systems and written procedures to identify and manage reporting of the short positions, and to reasonably guide brokers in addressing them.

"[I]t is critical that member firms convey accurate information to customers regarding their account holdings," Jessica Hopper, Finra's acting head of enforcement said in a prepared statement. "In addition, member firms are expected to take prompt corrective action after being sanctioned and avoid repeat violations."

UBS agreed to the sanctions without admitting or denying Finra's findings.

"We are pleased to have resolved the matter," a UBS spokesman said.

The firm mischaracterized as non-taxable about $567,812 of interest on 4,689 muni positions in at least 3,800 customer accounts from January 2014 through the end of 2017, according to the consent letter. (The errors occurred, in part, because UBS recharacterized the short substitute interest in corrective statements as taxable only if a position were still open on the record date for the semi-annual bond coupon payment.)

In addition to the $2 million fine, UBS agreed to directly pay the IRS any additional tax customers may owe for tax years 2014-2017, relieving the customers of "the burden of filing amended federal tax returns and paying additional federal income tax," the consent letter said.

UBS also agreed to compensate customers for any increased state tax liabilities incurred because of characterizing actual tax-exempt interest in some customer statements as substitute interest, the consent letter said.

Finra said that it is allocating $1.75 million of the $2.0 million fine to the Municipal Securities Rulemaking Board.

AdvisorHub

by AdvisorHub Staff

October 2, 2019

- GASB Proposes Guidance On Replacement Of Interbank Offered Rates With New Reference Rates.
- Cities Are Buying Bond Insurance That May Be Giving Them Nothing.
- BDA Continues Aggressive Advocacy on Non-Dealer MA Request of SEC.
- Uniform Commercial Code Financing Statement is Integral in Bond Defaults.
- Taxable Advance Refunding Bonds and the World's Most Boring Ice Cream Cone: Squire Patton Boggs
- And finally, Dang, That's Cold is brought to us this week by *Perry v. Starr Indemnity & Liability Company*, in which the court upheld a jury's award for "loss of enjoyment of life." The jury's valuation of Benjamin Perry's loss of enjoyment of life? $0.00. Sounds about right. Not sure Mr. Perry would agree. In addition, we ran into *Griswold v. National Federation of Independent Business* this week. Nice to see that they're moving forward after that whole contraception thing.

CEQA - CALIFORNIA

Union of Medical Marijuana Patients, Inc. v. City of San Diego

Supreme Court of California - August 19, 2019 - 7 Cal.5th 1171 - 446 P.3d 317 - 250 Cal.Rptr.3d 818

Objector petitioned for writ of mandate challenging city's determination that its medical marijuana ordinance was not a project requiring California Environmental Quality Act (CEQA) approval.

The Superior Court denied petition. Objector appealed. The Court of Appeal affirmed. Objector petitioned for review.

After grant of review, the Supreme Court held that:

- Provision of CEQA referencing discretionary "projects," including "the enactment and amendment of zoning ordinances," does not mean that amendment of a zoning ordinance is in every case a "project," as could trigger California Environmental Quality Act (CEQA) review; disapproving *Rominger v. County of Colusa*, 229 Cal.App.4th 690, 177 Cal.Rptr.3d 677, but
- In instant case, adoption of ordinance was a project under CEQA.

Adoption of zoning ordinance which authorized establishment of medical marijuana dispensaries and regulated their location and operation was a "project" that could require California Environmental Quality Act (CEQA) review; prior to ordinance, no medical marijuana dispensaries were legally permitted to operate in city, establishment of new businesses was capable of causing indirect physical changes in environment, and establishment of new stores could cause citywide change in patterns of vehicle traffic.

IMMUNITY - CONNECTICUT

Sena v. American Medical Response of Connecticut, Inc.

Supreme Court of Connecticut - September 3, 2019 - A.3d - 333 Conn. 30 - 2019 WL 4123498

Administratrix of patient's estate brought negligence action against city arising out of emergency services' response to patient's call complaining of severe breathing difficulty, alleging city negligently failed to follow local emergency service plan and permitted statutory highway defect to exist.

The trial court denied city's motion for summary judgment, and city appealed.

After transfer of appeal, the Supreme Court held that:

- Statute providing immunity to political subdivisions for death or injury to persons that result from, inter alia, attempted compliance with statutory provisions governing disaster prevention and mitigation extends state's sovereign immunity, including both immunity from suit and liability, to political subdivisions;
- Command and control of storm response and snow removal by city's emergency operations center, as well as decisions made during that process, constituted an "activity" of attempted compliance with emergency mitigation and prevention statutes, for which city had immunity for resulting death or injury to persons;
- Such immunity applied regardless of whether activities occurred in preparation for, during, or following a civil preparedness emergency; and
- Any dispute concerning date that mayor revoked declaration of state of emergency or date of partial lifting of fire response protocol restriction was not an issue of material fact that would preclude summary judgment in favor of city.

PUBLIC UTILITIES - INDIANA

Tyus v. Indianapolis Power & Light Company

Court of Appeals of Indiana - September 16, 2019 - N.E.3d - 2019 WL 4399872

Motorists brought suit against power company arising out of automobile accident automobile accident that occurred in intersection where traffic signal and lights were non-operational after storm.

Power company moved for judgment on the pleadings or to dismiss for failure to state a claim. The Superior Court granted motion, and motorists filed interlocutory appeal.

The Court of Appeals held that:

- Trial court had jurisdiction to hear motorists' personal injury claims;
- Appellate court had jurisdiction to hear motorists' challenge to Indiana Utility Regulatory Commission (IURC) tariff order containing release clause granting to power company immunity from liability for negligence;
- IURC did not have primary jurisdiction over motorists' suit;
- Power company owed duty of reasonable care to motorists; and
- Tariff and rate order's release clause was void.

Power company owed duty of reasonable care to motorists, in personal injury suit arising from automobile accident that occurred in intersection where traffic signal and lights were non-operational after storm; statute contemplated Indiana Utility Regulatory Commission's (IURC) intent to impose duty on public utilities in event of interruption of service to act to protect health and safety of public, power company undertook for consideration city's duty to operate traffic signals that were erected for benefit of motoring public, and motorists were part of motoring public.

Tariff and rate order which contained release clause granting to power company immunity from liability for personal injury or property damage caused to non-customers by power company's own negligence and in connection with power company's interruption of power service was beyond authority delegated to Indiana Utility Regulatory Commission (IURC) by legislature, and thus clause was void; legislature only conferred on IURC power to formulate rules necessary or appropriate to carry out provisions of statute, there was no evidence or specific language indicating legislature gave or intended to give IURC power to shield power company from liability, power company had monopoly on providing power to city, and release clause constrained city in its ability to incentivize power company to act with reasonable care.

MUNICIPAL CORPORATIONS - INDIANA

Happy Valley LLC v. Madison County Board of Commissioners

Court of Appeals of Indiana - September 18, 2019 - N.E.3d - 2019 WL 4463324

County sought declaratory judgment that lease of private property for use of property as minimum security jail was effectively cancelled.

Property manager counterclaimed for unpaid rent and requested judicial review under Indiana Public Purchasing Act. The Superior Court issued declaratory judgment in favor of county. Property manager appealed.

The Court of Appeals held that:

- Lease between county board of commissioners and private property owners was invalid in absence of appropriation of funds on hand under Indiana Public Purchasing Act;
- Manager of private property was not required to file tort claim notice since action arose in contract; and
- Record supported finding that economic reality motivated ending of funding for lease.

Record supported trial court's findings that county council voted to remove funding for future lease payments on contract for private property that had been used as housing for minimum security jail detainees, and thus, lease between county board of commissioners and private property owners was invalid in absence of appropriation of funds on hand under Indiana Public Purchasing Act, in declaratory action by county that lease was effectively cancelled, although lease mistakenly

referenced power of cancellation in county commissioners as opposed to county council.

Dispute over validity of lease between county and private property owners of property that was to be used as housing for detainees of minimum security jail arose from contract, not from injury or death of person or damage to property, and thus, manager of private property was not required to file tort claim notice in order to challenge whether county acted in good faith, in declaratory judgment action by county.

Record supported finding that economic reality, not personal animus against owner or manager of private property, motivated ending of funding for lease for private property that was being used as housing for minimum security jail detainees, and thus, trial court did not commit clear error by finding that county council did not violate good faith requirement of statute governing public purchasing, in declaratory judgment action by county board of commissioners that lease was effectively cancelled.

PUBLIC UTILITIES - NEW YORK

Raia v. Town of Southampton

Supreme Court, Appellate Division, Second Department, New York - September 18, 2019 - N.Y.S.3d - 2019 WL 4458095 - 2019 N.Y. Slip Op. 06637

Property owner brought action against town after road work redirected flow of storm water runoff onto owner's property.

The Supreme Court, Suffolk County denied town's motion for summary judgment. Town appealed.

The Supreme Court, Appellate Division, held that town was not liable for flow of storm water runoff which was redirected onto property owner's land as a result of road work.

Town was not liable for flow of storm water runoff which was redirected onto property owner's land as a result of road work, where the town did not divert the water by artificial means onto the property or make any improvements that were not in good faith.

A landowner will not be liable for damages to abutting property caused by the flow of surface water due to improvements to his or her land, provided that the improvements were made in good faith to make the property fit for some rational use, and that the water was not drained onto the other property by artificial means, such as pipes and ditches.

JURY AWARDS - LOUISIANA

Perry v. Starr Indemnity & Liability Company

Court of Appeal of Louisiana, Second Circuit - September 25, 2019 - So.3d - 2019 WL 4658490 - 52, 720 (La.App. 2 Cir. 9/25/19)

Passenger, who suffered back and neck injuries in automobile collision, filed personal injury action against driver, driver's employer, and liability insurer.

Following trial in the District Court, jury awarded passenger $545,000 for future medical expenses, $250,000 for past and future physical pain and suffering, and refused to award damages for loss of

enjoyment of life.

Passenger filed motion for judgment notwithstanding the verdict (JNOV), seeking to increase award for future medical expenses and general damages, which was denied. Passenger appealed.

The Court of Appeal held that:

- Jury's award of $545,000 for future medical expenses was not so low as to be manifestly erroneous;
- Jury's award of $250,000 for past and future physical pain and suffering was not abusively low; and
- Jury's award of $0.00 for loss of enjoyment of life was not abusively low.

WATER & SEWER FEES - MICHIGAN

Shaw v. City of Dearborn

Court of Appeals of Michigan - September 19, 2019 - N.W.2d - 2019 WL 4548372

City resident brought action against city, alleging that water and sewer rates charged to residents qualified as unlawful taxes, rather than valid user fees, because they were imposed without authorization by city voters in violation of constitutional amendment, and that such rates unjustly enriched city.

The Circuit Court, Wayne County, entered summary disposition in favor of city. Resident appealed.

The Court of Appeals held that:

- To the extent that resident's claim that city violated amendment relied on city's alleged plan to spend money from rates in order to complete sewer-separation project, such claim was not ripe;
- Evidence was insufficient to establish that city paid for sewer-separation project with funds obtained from increasing water and sewer rates;
- Resident failed to establish that charge for operation and maintenance of sewage storage structures, which was included in rates, constituted tax;
- Rates served regulatory purpose of providing water and sewer service to residents, as necessary for such rates to constitute valid user fees;
- Residents paid proportionate share of expenses associated with operation and maintenance of water and sewer systems, and thus water and sewer rates constituted valid user fees;
- Individual residents decided amount and frequency of their usage of city's water and sewer systems, and thus water and sewer rates constituted valid user fees; and
- Resident failed to demonstrate inequity based on rates, as necessary to establish that city was unjustly enriched by collecting rates.

To the extent that city resident's claim that city violated constitutional amendment prohibiting governmental units from imposing taxes not authorized by law or charter without voter approval relied on city's alleged plan to spend money from water and sewer rates charged to residents in order to complete sewer-separation project, such claim was not ripe, where claim rested on speculation about possible future events.

Evidence was insufficient to establish that city paid for sewer-separation project with funds obtained from increasing city residents' water and sewer rates, and thus that such increase constituted tax, as necessary for resident to prevail in action brought against city, alleging violation of constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; resident presented no evidence that city charged residents for separation work, and record indicated

that city actually charged residents for other, ancillary work, quotes from city officials that seemed to indicate that rate funds were spent on separation project were taken out of context, and record stated that project was funded by bonds and loans to be paid by approved taxes.

City resident failed to establish that charge for operation and maintenance of structures used to hold sewage, which was included in water and sewer rates city charged residents, constituted tax, and thus that city violated constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; resident conceded that charges did not finance investment in infrastructure, as city paid for construction of structures with previously-approved funds, and although resident argued that not all residents benefited from structures, since structures were used for sewage discharged by only some residents, structures were part of system that benefited entire city, and city was not required to individualize rates based on usage.

Sewer and water rates that city charged residents, which included charge for operation and maintenance of structures used to hold sewage, served regulatory purpose of providing water and sewer service to residents, as necessary for such rates to constitute valid user fees, rather than taxes that violated constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; although rates generated funds to pay for operation and maintenance of city's water and sewer systems in their entirety, such funds supported underlying regulatory purpose of providing water and sewer service to residents, and charge for operating and maintaining structures was part of cost of providing sewer service.

City residents paid proportionate share of expenses associated with operation and maintenance of water and sewer systems, and thus water and sewer rates that city charged residents, which included charge for operation and maintenance of structures used to hold sewage, constituted valid user fees, not taxes, as necessary for resident to prevail in action brought against city, alleging violation of constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval; city determined water and sewer rates charged to residents based on residents' metered-water usage, and resident failed to establish that such method was insufficiently precise measurement of actual costs of using water and sewer systems.

Where municipality's charge to residents for either storm or sanitary sewers reflects the actual costs of use, metered with relative precision in accordance with available technology, including some capital investment component, sewerage may properly be viewed as a utility service for which usage-based charges are permissible, and not as a disguised tax, as necessary to avoid violating constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval.

Individual residents voluntarily decided amount and frequency of their usage of city's water and sewer systems, through controlling how much water they used, and thus water and sewer rates that city charged residents, which included charge for operation and maintenance of structures used to hold sewage, constituted valid user fees, rather than taxes that violated constitutional amendment prohibiting imposition of taxes not authorized by law or charter without voter approval.

City resident failed to demonstrate inequity based on water and sewer rates that city charged residents, as necessary to establish that city was unjustly enriched by collecting such rates; resident presented no evidence that rates had been increased in order to pay for city's sewer-separation project, and thus that they constituted unconstitutional tax, that there was anything improper about charge for operation and maintenance of sewage storage structures that was included within rates, or that rates were unreasonable.

ZONING & PLANNING - OHIO

Wesolowski v. City of Broadview Heights Planning Commission

Supreme Court of Ohio - September 17, 2019 - N.E.3d - 2019 WL 4418981 - 2019 -Ohio-3713

Landowner brought declaratory judgment action against city planning commission, seeking declaration that she was entitled to certificate of approval for subdivision application.

The Court of Common Pleas granted partial summary judgment for landowner, granting a declaratory judge ordering the commission to issue certificate of approval. Commission appealed. The Court of Appeals affirmed. Commission appealed, and the Supreme Court accepted jurisdiction.

The Supreme Court held that:

- Statute providing 30-day time limit for consideration of subdivision applications applied to both city and village planning commissions, and
- City's adoption of subdivision regulation was exercise of its police power that did not prevail over conflicting statute.

Subsection of statute governing approval of subdivision applications, which provided 30-day time limit for consideration of subdivision applications by "the planning commission, the platting commissioner, or the legislative authority of a village," applied to both city planning commissions and village planning commissions, though it did not specifically refer to "cities"; subsection did not contain clear, limiting language found in other subsections of statute, but rather included general reference to "planning commission" without qualifier, and if General Assembly had intended subsection to apply only to villages, it knew how to use limiting language.

City planning ordinance regarding approval of subdivision applications was exercise of police powers that conflicted with statute governing approval of subdivision applications, and thus statute prevailed over ordinance; ordinance was planning ordinance that did not relate to matter of internal city governance, but rather regulated conduct of city citizens by imposing requirements on subdivision applicants and prescribed manner in which city planning commission had to carry out its public functions, and ordinance conflicted with statute, as statute provided 30-day time limit for consideration of subdivision applications, while ordinance did not impose deadline for responding to applications.

REFERENDA - OHIO

State ex rel. Save Your Courthouse Committee v. City of Medina

Supreme Court of Ohio - September 17, 2019 - N.E.3d - 2019 WL 4438969 - 2019 -Ohio-3737

Courthouse preservation organization sought writ of mandamus and prohibition against city, city's director of finance, and county board of elections, to declare invalid a city ordinance authorizing mayor to enter into agreement with county commissioners to share design, planning and construction costs for new combined city and county courthouse, to prevent city fees from being used to build courthouse, and to compel board of elections and city to allow additional 10-day period to gather signatures after board determined there were not sufficient signatures to place on ballot an initiative measure that would allow city electors to vote on courthouse project.

The Supreme Court held that:

- Doctrine of laches could not be applied to bar organization from seeking requested relief;
- City did not exercise "quasi-judicial authority," as needed for writ of prohibition to issue; and
- Provision of state Constitution providing for additional ten days for filing of additional signatures to a statewide initiative or referendum petition if the petition or signatures are determined to be insufficient did not impose duty to allow ten days to gather additional signatures in support of municipal initiative petition, so as to require writ of mandamus to issue.

Doctrine of laches could not be applied to bar courthouse preservation organization from seeking relief in form of writs of mandamus and prohibition against city and county board of elections to declare invalid a city ordinance authorizing mayor to enter into agreement with county commissioners to share costs for new combined city and county courthouse, to prevent city fees from being used to build courthouse, and to compel board of elections and city to allow more time to gather signatures after board determined there were insufficient signatures to place on ballot an initiative measure allowing city electors to vote on project; when council approved ordinance, organization had no legal interest to vindicate and only had process for placing initiative on ballot.

City did not exercise "quasi-judicial authority," as needed for writ of prohibition to issue to block city ordinance, by reviewing case law and statutes and deciding that courthouse preservation organization was not entitled to additional ten days to gather signatures to place initiative on election ballot that would allow city electors to vote on new courthouse project, the funding for which had been approved by passing of challenged ordinance; although city took action that had legal ramifications, it did not receive evidence, place witnesses under oath, or take any other actions that qualified as judicial, as opposed to legislative.

Provision of state Constitution providing for additional ten days for filing of additional signatures to a statewide initiative or referendum petition if the petition or signatures are determined to be insufficient did not impose duty to allow ten days to gather additional signatures in support of municipal initiative petition, so as to require writ of mandamus to issue to compel city and board of elections to allow courthouse preservation organization additional ten-day period to gather petition signatures after board determined there were not sufficient signatures to place initiative measure on ballot that would allow city electors to vote on courthouse project, the funding for which had been approved by passing of city ordinance.

ZONING & PLANNING - WASHINGTON

Church of Divine Earth v. City of Tacoma

Supreme Court of Washington - September 19, 2019 - P.3d - 2019 WL 4508496

Church brought action against city for damages, based on city requiring an eight-foot right-of-way dedication for a permit to build a parsonage, and for a violation of the Public Records Act (PRA).

After church's separate Land Use Petition Act (LUPA) petition was resolved in its favor, and after a bench trial, the Superior Court entered a judgment in favor of city. Church appealed. The Court of Appeals affirmed, and church petitioned for further review.

The Supreme Court held that:

- Trial court erred in permitting testimony of reasons for city imposing eight-foot right-of-way dedication requirement on permit for church to build parsonage that had not informed the city's

final decision to impose the permit condition, and
- City's subjective belief that City eight-foot right-of-way dedication requirement on permit for church to build parsonage was lawful was insufficient to avoid incurring liability for damages based on an unlawful permitting decision.

To show that a permit condition for an uncompensated dedication of land is lawful, the government must: first, show the development will create or exacerbate an identified public problem; second, the government must show that the proposed condition will tend to solve or alleviate the public problem; finally, the government must show that the condition is roughly proportional to the development's anticipated impact; and in fulfilling these requirements, the government must, to some degree, quantify its findings, and cannot rely on speculation regarding the impacts or mitigation of them.

City's subjective belief that City eight-foot right-of-way dedication requirement on permit for church to build parsonage was lawful was insufficient to avoid incurring liability for damages based on an unlawful permitting decision, when the statute required an objective standard, asking instead whether the city's final decision should reasonably have been known to be unlawful.

Cities Are Buying Bond Insurance That May Be Giving Them Nothing.

- **Bond insurance didn't result in lower yields, study finds**
- **Companies say study is flawed and failed to capture benefits**

Around noon one Wednesday in July, two school districts from California's Central Valley auctioned off their bonds to Wall Street underwriters.

Both had the same credit rating. The deals were of similar size. They were being issued for the same purpose of refinancing higher-cost debt, and each gave banks the option to include the cost of insuring the bonds against default to help get them the lowest possible interest rates.

There was one key difference, though. The Washington Unified School District's debt was sold without insurance. But the winning bidder for Stanislaus Union School District's bonds included a $17,800 policy from Build America Mutual Assurance Co. to guarantee against the remote risk that the money won't be paid back. That extra layer of security for investors was supposed to save the district money by making buyers willing to accept lower yields.

It didn't.

When the results of the auctions came in, the Stanislaus district wound up with slightly higher rates than Washington on every single bond with the same maturity, suggesting it got little or nothing in return for its money.

The sales underscore doubts about the business model of the bond-insurance industry, which once backed more than half of the nation's municipal debt issues until the biggest companies were roiled by the financial crisis more than a decade ago. A study by researchers from Pennsylvania State University and the University of Georgia found that buying such insurance is a bad deal for the vast majority of governments: Between 2009 and 2016, those that insured their general-obligation bonds paid a total of about $260 million more in borrowing costs than their model suggested they should have, even before the costs of the policies are factored in.

"We tortured the data every which way to Tuesday trying to find some evidence that this insurance

wrap was lowering offering yields and we just can't," said Kimberly Cornaggia, an assistant professor of finance at Penn State's Smeal College of Business and one of the study's authors.

Flawed Study

Build America Mutual and Assured Guaranty Ltd. disputed the study's results, saying the analysis was flawed because it failed to account for market movements between bond pricings and included AAA and AA rated governments that rarely buy insurance. Both said the results are in conflict with the savings that lower-rated local governments and their financial advisers see from buying bond insurance.

"BAM members choose insurance because it generates net savings on their transactions, period," said Grant Dewey, the head of Municipal Capital Markets at Build America Mutual. "Their underwriters and municipal advisers calculate and confirm that every day by evaluating spreads on comparable transactions and by comparing investor demand for insured and uninsured bonds."

He said the comparison of the two California districts doesn't adequately capture the savings, since Stanislaus's sale, unlike Washington's, included some longer-maturing securities that typically get the most benefit from insurance. Nathalie Wells, chief business official for the Stanislaus district, didn't respond to requests for comment.

The bond insurance industry has shrunk to a shadow of its former self since the credit crisis, when MBIA Inc., Ambac Financial Group Inc. and Assured Guaranty were stripped of their AAA ratings because of losses tied to toxic mortgage-backed securities. The major credit rating companies also adjusted their methods in response to an outcry from public officials who said they had been consistently rating states and cities too low, leaving them buying guarantees from insurance companies that were at far bigger risk of defaulting.

At its peak in 2005, insurance covered 57% of new municipal bond issues. This year, insurers guaranteed about 6% of the $265 billion of fixed-rate debt issued. Assured Guaranty and Build America Mutual, the industry's two main companies, are rated AA by S&P Global Ratings, the third-highest rank.

No Benefits Seen

The results of the study by Cornaggia, her Penn State colleague Giang Nguyen and the University of Georgia's John Hund suggest the business should be even smaller. About two-thirds of insured general-obligation bonds issued between 2008 and 2016 had A ratings — a level high enough that they didn't reap any savings from buying insurance over that time, according to the authors' calculations. About 8% had even higher grades.

The researchers studied a sample of more than 700,000 general-obligation bonds issued between 1985 and 2016.

Over the 30-year period, municipalities saved $496 million on their interest bills by paying for insurance, since for much of that time they benefited from the high ratings of the insurance companies they paid. Still, that savings was a fraction of the estimated $17 billion in premiums collected from state and local governments by just two big insurers, MBIA and Ambac, from 1995 to 2008, according to the scholars.

Prior to the financial crisis, "if you bought insurance from a triple-A rated insurance company, it got priced like a triple-A bond, but as soon as those insurance companies are single-A or even double-A rated that's not triple-A certification and the investors just aren't as interested," Cornaggia said.

The study's authors determined how much insurance costs or saves a municipality by using a model that factored in characteristics like bond size, issue size, state, credit rating, use of proceeds, maturity, and coupon to predict what the yield on a particular insured bond would be without insurance.

If the yield on the insured bond was higher than the yield on an uninsured bond with the same characteristics predicted by the model, the municipality was considered to have lost money, according to the authors.

Yet some of the findings are puzzling. For example, it shows that insurance, on average, lowered borrowing costs for Aa2 rated bonds over 30 years, but didn't save money for lower-rated Aa3 and A1 bonds. Cornaggia said she couldn't explain why.

"We are agnostic empiricists," she said.

Municipalities aren't the only ones buying overpriced insurance, Cornaggia said, comparing it to fabric stain coverage sold at furniture stores or warranties on televisions. The difference with bond insurance is that the beneficiaries of the policy — investors — aren't paying the premiums.

"The person making the decision about whether to insure the bond isn't actually the taxpayers, it's an agent making a decision on behalf of those principals," she said. "I do think there's a risk aversion on the part of the municipal officer making the decision."

Bloomberg Markets

By Martin Z Braun

September 26, 2019, 6:30 AM PDT

GASB Proposes Guidance On Replacement Of Interbank Offered Rates With New Reference Rates.

Norwalk, CT, September 26, 2019 — The Governmental Accounting Standards Board (GASB) today proposed new accounting and financial reporting guidance to assist state and local governments in the transition away from existing interbank offered rates (IBORs) to other reference rates.

Some governments have entered into agreements in which variable payments made or received depend on an IBOR, most notably the London Interbank Offered Rate (LIBOR). As a result of global reference rate reform, LIBOR is expected to cease to exist in its current form in 2021. That is prompting governments to amend or replace financial instruments tied to LIBOR.

The provisions of Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*, require that governments terminate hedge accounting if they change a critical term of a hedging derivative instrument, such as the reference rate of its variable payment. In addition, replacement of the rate on which variable payments depend in a lease contract would require, under Statement No. 87, Leases, that a government apply the provisions for lease modifications, including remeasurement of the lease liability or lease receivable.

The objective of the Exposure Draft, *Replacement of Interbank Offered Rates*, is to address the

accounting and financial reporting implications that result from IBOR replacement. The proposed Statement would:

- Allow governments to continue using hedge accounting for certain hedging derivative instruments that are amended or replaced to change the reference rate from an IBOR
- Clarify the hedge accounting termination provisions when an IBOR is replaced as the reference rate of a hedged item
- Clarify that the uncertainty associated with reference rate reform does not, by itself, affect the probability that an expected transaction will occur
- Remove LIBOR as an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap
- Add the Secured Overnight Financing Rate and the Effective Federal Funds Rate as appropriate benchmark interest rates
- Clarify the definition of reference rate, and
- Provide an exception to the lease modifications guidance in Statement 87 for certain IBOR-related lease contract amendments.

Removal of LIBOR as an appropriate benchmark interest rate as proposed would be effective for reporting periods beginning after December 15, 2020. All other requirements of this proposed Statement would be effective for reporting periods beginning after June 15, 2020. Earlier application would be encouraged.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by November 27, 2019.

San Diego Turns to Smart City Tech to Bolster 'Promise Zone'

An initiative to address quality-of-life concerns in an underserved community in San Diego has identified priorities like job creation or affordable housing, and is turning tech to help shepherd those goals.

A neighborhood in San Diego will turn to smart city technologies to improve quality-of-life outcomes around job training, affordable housing and transit access.

The area known as the “Promise Zone” is located in the southeast portion of the city and is home to about 85,000 residents. Formed in 2016, the zone covers about 6.4 square miles and includes ethnically diverse regions as well as underserved populations. The aim is to grow local, state and federal partnerships to promote investment there.

It has been identified as a region where the use of community engagement could formulate a road map for smart city projects as part of San Diego’s goal to build inclusive and smart communities.

“This is really looking at how the city, in partnership with the community, can prioritize investments in technology, within the boundaries of the Promise Zone,” said Jason Anderson, president and CEO of Cleantech San Diego, a smart city projects coordinator for more than a dozen cities and public agencies in the San Diego metro region. “The key to this, and really what the city wanted to start with, is community engagement.”

The city wanted to start with a community that “for the most part has not necessarily been served from a digital perspective,” Anderson explained Tuesday during a Meeting of the Minds webinar.

Meeting of the Minds is a nonprofit dedicated to studying smart cities issues and solutions.

“They wanted to make sure that as smart city programs are implemented or deployed throughout the city of San Diego, they’re beneficial to all community members, and wanted to really start within those underserved communities,” he added.

At this point in the process, some of the key priorities — like job training and affordable housing — have been identified. A next step will involve exploring technology-aided solutions to address these priorities, said project team members. Some of those early tech possibilities include the deployment of sensors on LED streetlights to measure traffic counts, or putting out several pilot kiosks to provide various pieces of community information, said Steph Stoppenhagen, director of business development at Black & Veatch, a smart cities consulting company working on the project.

“It should be worth noting that this is a road map. This is a process,” Anderson reminded. “This is really identifying the priorities and the potential technologies that the city should invest in, or could invest in, as it relates to the needs of the community. This is a first step in a many-step process.”

The city will have the final word on how to move forward. This research phase of the project is being funded by the Community Development Block Grant program. Later funding could take a range of paths including public-private partnerships.

A central goal of many smart city projects is putting technology to work to improve the lives of all residents, but especially those who may have been historically underserved. It’s often what’s meant when leaders speak of creating “equity” in cities, and the importance of not always hanging smart city tech in only the most robust neighborhoods.

“Again, going back to that notion of, investment in technology is cool. And it’s bright and shiny and some of those types of things. But if we’re not addressing some of the fundamental needs within the community, and training and employment options being one of those, then we’re really missing the bigger picture,” said Anderson.

“If we’re trying to answer some hard questions about creating technology to help the quality of life, wouldn’t this be the best place to start?” added Stoppenhagen. “And I think that that has definitely caught the eye of a lot of other cities and regions, to follow this project, and to hopefully replicate it.”

GOVTECH

BY SKIP DESCANT / SEPTEMBER 26, 2019

California’s More Than Dreamin’ about Public Banks.

A bill to set in motion massive structural economic change could easily be hundreds, maybe thousands of pages long. AB 857 — which creates a legal pathway in California for public banks owned by city and county governments, where cities and counties would deposit public dollars — clocks in at a mere 29 pages.

“What we wanted to do was create a very lightweight bill that grafts public banks onto the existing state banking law rather than create a standalone financial code section that only covers public banks,” says Sushil Jacob, who played a lead role in drafting the bill as the legislative committee co-

chair for the California Public Banking Alliance, a coalition of grassroots groups hailing from ten cities across the state.

Keeping the bill relatively short and sweet was essential, Jacob says, to crafting something that legislators and legislative staff and lawyers and consultants could digest, deliberate over, and ultimately pass in the same year it was introduced.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO

SEPTEMBER 24, 2019

Uniform Commercial Code Financing Statement is Integral in Bond Defaults.

Proper attention to the unsexy "Uniform" Commercial Code financing statement may well be the single most consequential checklist item in a secured bond financing from the perspective of bondholder recovery in a default situation. Bizarrely, no transaction participant takes express responsibility for the initial filing of the UCC financing statement at a bond closing, and frequently no transaction participant other than the issuer or conduit obligor takes responsibility for the filing of required post-closing continuation statements. From a bondholder perspective, it is somewhat akin to expecting the fox to guard the chicken coop.

The result: a non-trivial number of transactions in which the lien promised to bondholders is never perfected, or becomes unperfected after the bonds are issued, in which case the lien is ineffective against other creditors with the consequence that bondholders that purchased bonds on the premise of secured status receive the greatly reduced recovery of unsecured creditors.

There are a few relatively simple — and largely costless —- steps that bondholders with sufficient leverage can insist upon before placing their purchase orders on a secured bond transaction to protect their investment and decrease the possibility that their investment will be unsecured when it matters most.

UCC Perfection Requirements

Each state and/or U.S. territory has its own version of the UCC, and some versions may have atypical provisions. Generally, however, the principles below are applicable in most jurisdictions.

The UCC governs the creation and perfection of security interests in personal property, including accounts and their proceeds and revenues, gross revenues, net revenues and receipts, which are not UCC terms. The UCC generally is inapplicable to a security interest created by a state governmental unit to the extent another state statute expressly governs the creation, perfection, priority, or enforcement of such security interest. Noncompliance with the UCC may not imperil secured creditor status with respect to security provided by a municipal issuer if such issuer's enabling statute provides for an alternative to the UCC's requirements as to, for example, creation or perfection of a lien and such alternative requirements have been satisfied. However, on a conduit bond issue, the UCC almost always applies to the security interest provided by the non-governmental conduit borrower, and noncompliance may result in unsecured status of the claim against the only

party responsible for repayment of the bonds.

Most UCC noncompliance issues arise from the failure to properly perfect a security interest. A security interest in accounts and their proceeds must be perfected by the filing of a financing statement. A financing statement is sufficient for perfection purposes only if it provides the name of the obligor and the name of the secured party; and describes the collateral covered by the financing statement. A description of collateral is sufficient if it "reasonably identifies" what is described or if it describes the collateral as "all assets" or "all personal property."

Certain events occurring after the filing of an initial financing statement may result in loss of perfected status.

For example, if the debtor/obligor's name changes such that a search under the name in the original financing statement would not disclose financing statements filed under the debtor's new name, the financing statement is ineffective to perfect a security interest in collateral acquired by the debtor more than four months after the name change, unless an amendment to the financing statement providing the new name is filed within four months after the name change.

In addition, a filed financing statement generally is effective for a period of five years after the date of filing, and lapses (and therefore perfection lapses) if a UCC continuation statement is not filed within the six-month period preceding the end of the five-year period. Timely filing of a continuation statement extends the effectiveness of the financing statement for additional five year periods.

A Short List of Perfection Safeguards

The UCC's requirements are technical and often unforgiving of unintended and arguably small inaccuracies, and the adverse consequences of noncompliance can be financially disastrous for a lender or bondholder. There are various steps bondholders can take that can eliminate or substantially reduce the risk of a UCC mishap.

1. Insist on a Disclosed and Meaningful Perfection Opinion

In most secured bond issues, the underwriters, as a closing condition, require a legal opinion as to the status of the liens securing the bonds. On non-conduit bond issues, the opinion regarding the lien may be included in the bond counsel opinion, and may be published in the official statement for the bonds. In the case of conduit bond issues, the key liens typically are addressed in the opinion of the conduit obligor's counsel, which typically is not published in the official statement. Given the importance of secured status on a secured transaction, bondholders should insist that the offering document include the legal opinions relating to lien perfection to be delivered at closing.

If disclosed, the legal opinions will often reveal common deficiencies that can and should be addressed, if noted by the bondholders, prior to closing. On a non-conduit deal, the opinion will often state that the lien or pledge provided by the issuer is "valid", which does not address perfection. The opinion should state that the lien is valid and perfected.

On conduit deals, the opinion of conduit obligor's counsel often says "upon filing of the UCC financing statement in [applicable UCC registry], the lien in the [revenues/other personal property collateral] will be perfected to the extent that such lien is capable of being perfected under the UCC by the filing of a financing statement." Such an opinion is not a perfection opinion, just an opinion that if the UCC is filed, the lien will be perfected. If the filing does not occur, the bondholders will be unsecured and, if damaged by such status, left with little recourse but to seek recovery from some solvent party to the transaction based on some purported implied duty to file the financing

statement and subject to statute of limitations and other defenses. Such a situation is entirely avoidable through insistence that the UCC financing statement be filed prior to closing, which the UCC expressly authorizes.

2. Insist on a “Public Finance Transaction” Financing Statement When Applicable

UCC financing statement mishaps can occur either because of an inadequate or unfiled initial financing statement or because of lapse of a filed financing statement due to failure to file a timely continuation statement. For any bond issue with at least one maturity of at least 20 years secured by a security interest governed by the UCC of a state that provides for public finance transaction financing statements, the statement should state that it is filed in connection with a public finance transaction and, in a conduit transaction, the secured obligation, be it the loan agreement or a master note, should run to the governmental issuer and be assigned to the bond trustee versus running directly to the bond trustee. Neither of these requirements is difficult or costs anything, and it makes continuation a non-issue for 30 years (versus the standard 5 years) — long enough for virtually all bond issues, taking into account likely refinancings.

3. Insist that the Bond Documents Require that the Bond Trustee or Master Trustee File Continuation Statements, and that Name Changes be Addressed

Because bond trustees traditionally have asserted that they are unwilling to take on the potential liability associated with assuming and then failing to fulfill a duty to file continuation statements, many indentures or master indentures place the responsibility for filing continuation statements on the issuer or conduit obligor. But there is no adverse consequence to an issuer or borrower for failing to continue a continuation statement.

There are trustees that will agree to undertake the obligation to timely file such continuation statements, in reliance on internal tickler systems. Insistence by bondholders on the use of such trustees contributes to the creation of a market standard that will encourage more reluctant trustees to join the club. In addition, bondholders should insist that reporting provisions in bond documents require the reporting on EMMA of any name change to the issuer or any obligor, accompanied by an opinion of counsel that UCC financing statements have been amended as required to continue perfection of the applicable liens.

4. In Times of Trouble, Review the UCC Financing Statements

Issuers and conduit obligors rarely file for bankruptcy out of the blue. Once a filing occurs, bondholders can be assured that counsel for the debtor and competing creditors will pore over the UCC financing statement filing status, and the contents of UCC financing statements, seeking to find some omission or flaw that can be argued to void or render ineffective all or a portion of the lien securing the bonds. Most financing statement mishaps can be cured by filing a new, correct financing statement if such cure occurs prior to the commencement of the preference period preceding a bankruptcy filing, typically 90 days. These days, financing statements are readily available online. As red flags arise concerning an issuer’s or obligor’s financial health, it behooves substantial bondholders to ask internal or external counsel to conduct a UCC financing statement review for the applicable issuer or obligor.

The Bond Buyer

by Len Weiser-Varon

September 23 2019

Len Weiser-Varon a member of Mintz Levin's Public Finance practice with a specialty in workouts and restructurings.

NASACT 2019 Annual Conference Recap.

NASACT President D. Clark Partridge, state comptroller of Arizona, and our Arizona co-hosts, Legislative Auditor Lindsey Perry and State Treasurer Kimberly Yee, welcomed almost 500 to Scottsdale for the association's 104th annual conference.

Read the Recap.

National Association of State Auditors, Comptrollers and Treasurers

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Fitch Ratings: Scale May Translate to Better Ratings for U.S. NFP Hospitals

Link to Fitch Ratings' Report(s): Size and Scale Factor into Hospital Ratings

Fitch Ratings-New York-26 September 2019: Increased M&A activity among U.S. not-for-profit hospitals does not necessarily translate into an instant fix for profitability, according to Fitch Ratings in a new report.

M&A among not-for-profit hospitals is here to stay, driven by the belief that scale is the only way to succeed in a rapidly transforming and innovative sector. "Historically, people went to hospitals out of necessity, not for convenience," said Senior Director Olga Beck. "Now hospitals need to offer a wide array of services with patients demanding that it be adjusted to fit their busy lives."

A recent Fitch analysis of its rated hospitals, however, shows that bigger is not instantly better in terms of profitability over the short term. In fact, profitability at the median level is virtually identical for larger, medium sized and smaller health systems. The same holds true for other key metrics like days cash on hand and net adjusted debt to adjusted EBITDA.

Where size and scale do matter is in a hospital's longer-term financial picture. While not necessarily more profitable than its smaller counterparts, larger hospitals are in a much better position structurally to fend off a future economic downturn. "Increased size and scale absolutely enhance a hospital's stability at virtually every measurable data point," said Beck. "With the tools available to them, Fitch expects that in the long run, large systems should be able to prove their advantages by exhibiting less volatility in times of stress and/or acquiring essentiality with a strong clinical reputation in very high-acuity care that provides them with a broad patient base."

'Size and Scale Factor into Hospital Ratings' is available at 'www.fitchratings.com' or by clicking on the link.

Contact:

Olga Beck
Senior Director
+1-212-908-0772
Fitch Ratings, Inc.

300 West 57th Street
New York, NY 10019

Kevin Holloran
Senior Director
+1-512-813-5700

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

Additional information is available on www.fitchratings.com

Fitch 2019 Late Cycle Roundtable: Key Risks for U.S. States in a Potential Downturn

How will potential federal fiscal deterioration affect U.S. states? In this latest installment of the Late Cycle Roundtable series, Katie Falconi, Americas Regional Credit Officer, leads a discussion on how rising budget deficits and public spending could affect U.S. public finance issuers.

Watch the Roundtable.

Hunt for Tax Havens Fuels $47 Billion Stampede Into Muni Debt.

- **Muni-bond inflows are greater than in 54-week record in 2016**
- **'Voracious' appetite as fallout over tax overhaul continues**

Municipal bonds have never been at risk of becoming the next big thing for bubble-chasing investors, like crypto currencies or tech IPOs.

But 2019 has been marked by an unusually large stampede into the $3.8 trillion state and local government debt market because of a motive that's nearly as old as civilization itself: avoiding taxes.

Municipal-bond mutual funds and exchange traded funds have pulled in about $46.9 billion over the last 38 straight weeks. That's the biggest cash haul since 2010 and eclipses the $38.1 billion they picked up during the 54-week stretch that ended in 2016, according to Refinitiv's Lipper US Fund Flows data.

Several factors are helping to feed the demand, including interest-rate cuts that have pushed up the price of outstanding bonds and sent the market to its biggest gain since 2014. But a major reason is the tax overhaul that capped the federal deduction of state and local taxes, which caused some Americans to use their investments as a way to drive down what they owe.

"Munis have become more of a pure investment. It's a tax vehicle for many," said Peter Block, head of municipal bond strategy at Ramirez & Co., who described the appetite for tax shelters as "voracious."

"Clearly it's taking off as a tax strategy for the advisory community," Block said.

While the muni market has weakened recently, it's still delivered returns of about 6.7% this year, and it has fared better than others as prices retreated after August's big rally. The muni market's one-month loss of 0.84% compares with the 0.95% loss for Treasuries and the 0.75% loss for corporate bonds, according to Bloomberg Barclays indexes.

Meanwhile, offerings of new municipal bonds this year haven't kept pace with demand because the tax overhaul did away with a major refinancing tactic and states and cities remain hesitant to run up debt. But for those who do sell, they can lock in borrowing costs near historical lows.

"You have this limited supply of bonds– great for you guys to issue debt," Terry Goode, a senior portfolio manager at Wells Capital Management, told municipal representatives at a Bond Buyer conference in San Francisco on Tuesday. "And people like me are clamoring for those particular bonds."

Bloomberg Markets

By Romy Varghese

September 27, 2019, 10:30 AM PDT

— *With assistance by Maria Elena Vizcaino*

U.S. States Won't Join Century Bond Club Even If They Want To.

- **California, New York have debt maturities limited by law**
- **Citigroup says even those who could may be 'uncomfortable'**

The U.S. Treasury is considering whether to join a number of European governments that have embarked on a bond-market experiment by selling debt that doesn't come due for a century.

But don't expect America's state governments to follow suit.

Even if they wanted to put off repaying their debts for 100 years, many states are prevented from doing so because of constitutional or statutory limits that impose a type of fiscal discipline.

In California, the nation's biggest municipal-bond issuer, the constitution bars the state from selling debt that matures after 50 years. In New York, statute limits that to 30 years. For the most part, Hawaii can't borrow for longer than 25. Utah and Delaware are capped at two decades. And in Maryland, it's even shorter: general-obligation bonds have to mature in 15 years or less.

"That's not an option for us even if we wanted to consider it," said Christian Lund, Maryland's debt management director.

That suggests that so-called century bonds will remain a rare presence in the $3.8 trillion municipal-securities market, despite a recent uptick in such sales by universities. Both New Jersey's Rutgers University and the University of Virginia this year sold bonds that don't mature until 2119.

Martin Luby, a public finance professor at the University of Texas at Austin's Lyndon B. Johnson School of Public Affairs, said states are concerned about the injustice of kicking the bill for today's public works projects to unborn generations. And states typically try to structure bond issues so they're not still paying off the debt even after the project it financed is no longer in use.

“States don’t want to burden future taxpayers,” he said. “There is also this uncertainty on whether they are going to be able to pay for this asset in 50 years or 100 years.”

Citigroup Inc., one of the biggest underwriters, doesn’t expect a surge of century bond issuance even from governments that may have legal authority to do so, the bank’s analysts led by Vikram Rai said in a note to clients Monday. Rai said “most issuers will be uncomfortable taking such a strident view on duration.”

Tennessee is one of them. The state doesn’t have a constitutional barrier to selling extremely long-dated debt. But it does have a policy that limits the maturity of its bonds to 20 years after they’re issued or a related project is completed, whichever is soonest, unless state officials decide otherwise.

When asked if Tennessee would consider joining the century bond club, John Dunn, a spokesman for the state comptroller, was succinct in his emailed response: “This is an easy one for the state of Tennessee. The answer is NO.”

Bloomberg Markets

By Danielle Moran

September 24, 2019, 9:29 AM PDT

— With assistance by Romy Varghese

BondLink Partners with IHS Markit for Muni Bond Transparency.

An alliance between one company that profiles bond issuers and another that facilitates bond sales aims to make it easier for investors to view a government’s credit information before buying.

A new partnership between two financial-service companies has proposed to make the municipal bond market more transparent for investors.

According to a news release last week, the partnership is between BondLink, a cloud software company in Boston that builds websites for governments to share information with potential investors, and Ipreo by IHS Markit, a London-based financial data and analytics company formerly known just as Ipreo, before it was acquired by IHS Markit, a competitor, in August 2018. Ipreo by IHS Markit makes software for selling bonds, and through this partnership, potential investors who buy through Ipreo will have access to credit information about issuers via BondLink.

In an email, BondLink co-founder and CEO Colin MacNaught said the partnership could make bond issuers more transparent, giving investors easy access to information they need to evaluate potential bond deals.

“Issuers who focus on their digital presence by taking advantage of integrations like this can attract more investors and gain a competitive edge, and we’re proud to partner with Ipreo by IHS Markit,” he wrote.

The news release said BondLink also has an agreement with Fidelity Investments to put information about issuers on Fidelity.com.

These relationships could boost the profile of BondLink, which has raised $12 million in seed funding since its launch in 2016 and been used by the states of Florida and Georgia and the city of Chicago.

GOVTECH

BY ANDREW WESTROPE / SEPTEMBER 26, 2019

S&P: Long-Term Credit Challenges Facing U.S. State And Local Governments In Coal-Producing Regions

Table of Contents

For nearly a decade, U.S. coal production has been on the decline. Global efforts to stem emissions of carbon dioxide from fossil fuels and the availability of cheap alternative renewable energy sources will limit future growth of coal production. In S&P Global Ratings' opinion, reliance on coal-related revenue and economic activity, absent diversification, may result in long-term credit deterioration for some U.S. government entities.

Analyzing the credit impact of declining coal production involves our assessment of environmental, social, and governance (ESG) factors. S&P Global Ratings has a long record of incorporating ESG factors into its analysis of public finance entities. (For more information, see our report, "Through The ESG Lens: How Environmental, Social, And Governance Factors Are Incorporated Into U.S. Public Finance Ratings," published Oct. 10, 2018, on RatingsDirect.) In our state government analysis, we assess the effects on the coal industry as the U.S. transitions to more renewable energy sources, the weak demographic trends of coal-reliant areas, and management's ability to address the resulting fiscal effects of this decline.

Continue reading.

Taxable Advance Refunding Bonds and the World's Most Boring Ice Cream Cone: Squire Patton Boggs

Taxable debt tempts us to put the Internal Revenue Code back on the library shelf and the tax lawyers back into their pen. But if you use taxable debt to refund tax-exempt debt, or if you might ever refund that taxable debt with tax-exempt debt, then we regret to inform you that we ought to be involved. In a series of posts, we're going to take a look at some of the questions and complications that arise when issuers and borrowers incorporate straight taxable debt into the same lineage as tax-exempt debt. First up: a taxable advance refunding of tax-exempt bonds.

It might seem odd that an issuer would consider issuing taxable debt, which generally has a higher

interest rate than tax-exempt debt, to fund a long-term escrow at the low reinvestment rates that have prevailed for the past 15 years (what fancy folks call “negative arbitrage”) to retire tax-exempt debt. In certain rate environments, such as the present, where shorter-term interest rates applicable to refunding escrow securities are almost equal to the longer-term interest rates that apply to the refunding bonds, it can make sense. The prohibition against the issuance of tax-exempt debt to advance refund tax-exempt bonds enhances the incentive to issue taxable advance refunding bonds in this type of interest rate market.

When you’re assembling the working group to issue the taxable advance refunding bonds, you might be tempted to ignore the tax-exempt bond rules and the public finance tax lawyers on your team. Don’t. Let’s discuss why.[1]

Continue Reading

By Johnny Hutchinson and Michael Cullers on September 25, 2019

The Public Finance Tax Blog

Squire Patton Boggs

Options for Existing Opportunity Zone Property Owners (Podcast Listener Questions)

You’ve got Opportunity Zone questions. We’ve got Opportunity Zone answers. This is the inaugural edition of Opportunity Zones Podcast Listener Questions. Today’s listener questions deal with options for existing Opportunity Zone property owners, incentives for Opportunity Zone businesses, and more. If you’d like to submit your own question or comment, leave a voicemail on the Opportunity Zones Podcast hotline — call (682) 800-1505.

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Opportunity Db

September 25, 2019

Bond Interest Rates Dropped for Public Hospitals Under ACA, Study Finds.

Public hospital borrowing costs significantly decreased under the ACA, according to a study cited by Yahoo Finance.

The study, released by University of Illinois at Chicago’s Government Finance Research Center, found that short and medium-term yields on municipal hospital bonds have dipped 39 basis points [relative to a control group of nonhospital bonds] since the U.S. Supreme Court upheld the federal health law in 2012, the Yahoo report stated. This means public hospitals saved $3 million per bond issue on interest rates.

Dermot Murphy, co-author of the study and a UIC associate professor of finance, told Yahoo Finance investors originally were skeptical.

“For all they knew, the ACA might be repealed next month,” he said. “After the Supreme Court ruling in 2012, however, investors got a shot of confidence that the [legislation] was more likely to remain the law of the land.”

After the 2012 ACA decision, investors were more confident, leading to lower interest rates for municipal hospital bonds, the study found. According to Yahoo Finance, the study also found that bond yields dropped another 17 basis points in states that expanded Medicaid under the ACA.

“Political uncertainty surrounding the ACA still remains a concern for municipal bond investors in the long run, even if legal uncertainty was significantly reduced following the Supreme Court ruling,” Mr. Murphy said.

Becker’s Hospital Review

by Kelly Gooch

September 27th, 2019

Muni Market Divides Over Disclosure.

Nearly a year after Securities and Exchange Commission Chairman Jay Clayton raised concerns about muni investors relying on stale disclosure, a fundamental disagreement has emerged about whether issuers are doing enough to provide fresh information.

While investor analysts seek more frequent continuing disclosure, underwriters and issuers maintain that the data they provide in accordance with the agreements they enter into when they sell their bonds is adequate. That impasse has been a subject of increased contention in recent months, and reared its head again Tuesday during a panel discussion at The Bond Buyer’s California Public Finance Conference.

“When they are in compliance, it’s still not enough,” said William Oliver, a panelist who is industry and media liaison for the National Federation of Municipal Analysts.

The panel’s discussion on the subject of regulation focused on the question of disclosure of interim financial information, something that has been a hot topic especially since Clayton’s initial December, 2018, pronouncement that he is concerned that investors in the muni market are relying on information that is many months old.

Clayton has returned to the topic in other public statements, and NFMA earlier this year acted on his interest to ask for the SEC to provide guidance about the types of information it would consider valuable to improving disclosure. Issuers have said that producing audited financials necessarily takes time, and have raised concerns that they might expose themselves to liability if they were to post interim unaudited financial information that turned out to be inaccurate.

“Maybe we should focus in on compliance with the continuing disclosure requirements as written,” said Leslie Norwood, a managing director and head of munis at the Securities Industry and Financial Markets Association. Norwood said she wanted to make sure to draw a distinction between issuers who are not living up to their continuing disclosure agreements and those who are in compliance.

She noted that in sectors where the market has demanded interim data, such as healthcare, it has

become the standard practice for issuers to release that information much more regularly. But most investors are able to sell their bonds without doing so, she said, adding that it may be unwarranted to impose additional responsibilities on issuers. She wondered whether this is what investors really want.

“It is what investors want,” Oliver said. “It’s what they’ve wanted for the last 25 years.”

Heidi Schrader, the debt and treasury manager for the City of Riverside, California, pushed back on the ideas that issuers could reasonably provide this information and that investors are demanding it.

“We don’t operate on a profit like a corporation, and we have limited resources,” she said. “We’re not having any problems selling to the market because they do think we have sufficient disclosure.”

Daniel Kurz, a vice president at Morgan Stanley (MS), said he doesn’t think issuers are being penalized in the primary market due to any perception of sluggish disclosure.

“In today’s market, we’re not seeing a pricing penalty,” he said.

“I do think it can impact the secondary market,” he added, explaining that some investors might choose to hold off on a purchase until fresh financial information comes out. But in the primary market, with such strong demand and moderate supply, issuers aren’t suffering due to their disclosure agreements.

Kurz said underwriters can be hesitant to ask issuers to agree to more regular disclosure in a continuing disclosure agreement because issuers often say they can’t provide accurate information more quickly.

“We’d rather have the information be late than inaccurate,” Kurz said.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 09/25/19 01:03 PM EDT

TAX - COLORADO

Griswold v. National Federation of Independent Business

Supreme Court of Colorado - September 23, 2019 - P.3d - 2019 WL 4581487 - 2019 CO 79

Organization that represented interests of small business owners brought action against state of Colorado and its Secretary of State, alleging that funding mechanism whereby Colorado’s Department of State charged for some of its services to then fund its general operations was unconstitutional under the Taxpayer’s Bill of Rights (TABOR).

The District Court granted summary judgment in favor of state. Organization appealed. The Court of Appeals reversed and remanded. Parties filed cross-petitions for certiorari.

The Supreme Court held that:

- Court of Appeals erred in remanding for further development of factual record, and
- Funding mechanism was not unconstitutional under TABOR.

Court of Appeals erred in remanding for further development of factual record, on appeal from trial

court's grant of summary judgment in favor of state of Colorado and its Secretary of State, in action brought by organization that represented interests of small business, alleging that funding mechanism whereby Colorado's Department of State charged for some of its services to then fund its general operations was unconstitutional under Taxpayer's Bill of Rights (TABOR), where the Court mistook absence of evidence as to whether post-TABOR increase in revenues collected by Department resulted from any government action to support organization's case for genuine dispute of material fact, even though parties stipulated to facts and denied there was genuine dispute of material fact.

Funding mechanism whereby Colorado's Department of State charged for some of its services to then fund its general operations was not unconstitutional under the Taxpayer's Bill of Rights (TABOR), absent showing that post-TABOR adjustments to the charges constituted new tax, tax rate increase, or tax policy change.

TAX - LOUISIANA

Downtown Development District of City of New Orleans v. City of New Orleans

Court of Appeal of Louisiana, Fourth Circuit - May 8, 2019 - 272 So.3d 917 - 2018-0726 (La.App. 4 Cir. 5/8/19)

Special taxing district located within city brought claims alleging city illegally withheld money from tax assessed to benefit district.

The District Court granted district's request for preliminary injunction and denied district's request for writ of mandamus. City appealed.

The Court of Appeal held that:

- District was political subdivision of State and a separate juridical entity from city;
- City's obligations to district were not extinguished under doctrine of confusion;
- District stated cause of action against city;
- District was entitled to injunctive relief without the requisite showing of irreparable injury;
- City could not use proceeds of special tax to fund state retirement systems;
- Preliminary injunction was not vague or overly broad; and
- District was not entitled to writ of mandamus.

Special taxing district contained within city was political subdivision of State and a separate juridical entity with capacity to sue city; district had separate source of tax revenue used for enhanced services to district's geographic area, district board had hiring and employment authority, power to enter into contracts with city, and authority to acquire and dispose of property, and district did not appear in charter of city.

City's obligations to special taxing district were not extinguished under doctrine of confusion, even though city collected special tax in same manner as other ad valorem taxes, where the special tax proceeds were to be turned over to district and used exclusively to benefit district, and thus did not become city funds.

Special taxing district did not need city council approval to bring action against city for illegally withheld money from tax assessed to benefit district, where district's enabling statute did not require city council approval to hire attorneys or file suit.

Unlawful conduct exception applied, entitling special taxing district to injunctive relief without the requisite showing of irreparable injury in its action against city for illegally withholding money from tax assessed to benefit district, where city's act of withholding portion of dedicated special tax to defray city's pension obligations violated district's enabling statute, and the preliminary injunction issued by the district court restrained city conduct and thus was not a mandatory injunction.

City could not use proceeds of special tax to fund state retirement systems, where enabling statute of special tax district prohibited city from using dedicated special taxes for purposes other than to benefit district.

Preliminary injunction issued by district court enjoining city from withholding proceeds of special tax dedicated for exclusive benefit of special tax district was not vague or overly broad; the parties to the injunction were identified and the acts enjoined, restraining city from withholding more than a two percent collection fee from the special tax, were sufficiently described.

Special taxing district was not entitled to writ of mandamus in its action against city for illegally withholding money from tax assessed to benefit district, where district acknowledged another remedy was available; district combined its request for mandamus with alternative claims for declaratory judgment and damages through which district could seek relief through ordinary procedure.

New York Report Studies Risks, Rewards of the Smart City.

The New York Office of the State Comptroller commissioned an informational report on the deployment of new technologies in cities statewide, highlighting innovative efforts and the importance of strong cybersecurity.

The New York state comptroller tasked his staff with analyzing the deployment of new technologies at the municipal level while cautioning local leaders and the public about cyberthreats.

New York Comptroller Thomas DiNapoli announced the report, *Smart Solutions Across the State: Advanced Technology in Local Governments*, during a press conference last week in Schenectady, which was featured in the 25-page document for its deployment of an advanced streetlight network.

"New technologies are reshaping how local government services are delivered," DiNapoli said during the announcement. "Local officials are stepping up to meet the evolving expectations of residents who want their interactions with government to be easy and convenient."

The report showcases online bill payment for people to resolve parking tickets, utilities and property taxes; bike-share programs using mobile apps to access bicycles in downtown areas; public Wi-Fi through partnerships with telecommunication companies; and more.

Yvonne Martinez, assistant director of operations in the Office of the State Comptroller's (OSC) division of Local Government and School Accountability, said the comptroller charged her and her staff with educating municipal leaders on methods to modernize local government. Martinez said the team focused on what cities had implemented or were in the process of deploying, regardless of geographic location or demographics.

"Over the past several years, we knew there were different types of local governments moving in the direction of adapting newer technologies to improve the lives and experiences of their citizenry,"

Martinez said. “We thought this was the perfect opportunity to do some of the leg work for local officials and help them understand what the lay of the land is in New York, and, more importantly, what does that mean in terms of additional risk that they might have to deal with should they pursue some of these types of programs.”

She said staff wrote the report to be accessible and comprehendible for New York residents and lawmakers. Researchers described projects in layman’s terms and steered away from complex technical terminology, she said.

“It’s one thing to highlight it as informational — this is going on around the state — versus this is absolutely a project that we know was perfectly executed and has a stamp of approval from the comptroller’s office,” Martinez said. “That wasn’t our goal. Our goal was more informational: Here’s what’s going on around the state. It’s a challenge because if the comptroller is speaking to these matters, some people might assume otherwise. We tread very carefully.”

The modernization of communities across New York could create possibilities for partnerships between municipalities, counties and the state, she said. The report details how a city might attempt to emulate some of the projects included. Martinez said local government leaders should collaborate and share best practices if they decide to innovate their jurisdictions in similar ways.

But Martinez warned that interconnected infrastructure comes with new risks that cities need to be prepared for. From the conception of the report, OSC staff meant to dovetail their findings with a cautionary message about cyberthreats, she said.

“We always intended to include that because this is something that’s been going on for years,” she said. “We knew that this report would have to have a dedicated discussion on the risk. In the run-up to the release, we were reminded that those risks aren’t going away.”

OSC has found common cybersecurity weaknesses during its audits of IT systems, such as a lack of data security policies and plans, unsecured networks that could allow unauthorized access, and IT access logs that haven’t been reviewed internally, according to the report.

“That’s a part of our ‘tread carefully’ message: The more data you collect about and on your community, the more at risk you are and your community depends on you to protect their data,” Martinez said.

GOVTECH

BY PATRICK GROVES / SEPTEMBER 26, 2019

Illinois’s Risk to Bond Buyers Is Getting Hotter – Literally

- **Temperatures on the rise in western Illinois and the Midwest**
- **Moody’s says warmer temperatures could harm local economies**

Wall Street has a number of reasons to be concerned about the credit quality of Illinois, the lowest-rated U.S. state: mounting pension obligations, billions of dollars in unpaid bills and a shrinking population. Now investors can add climate change to that list.

Western Illinois and Missouri are two areas that are expected to experience the greatest rise in

extreme temperatures by 2040, according to a report Tuesday by Moody's Investors Service. Rising temperatures threaten to curb agricultural production and labor productivity, increase the costs for infrastructure and heighten energy demand as residents struggle to cool their homes and businesses.

"If significant enough, now and over ensuing decades, these difficulties have the potential to lower revenue, increase expenses, impair assets and increase liabilities and debt," along with other effects, Moody's said in the report. Data was provided from climate intelligence firm Four Twenty Seven Inc., which Moody's acquired a majority stake in earlier this year.

Climate change has become an increasingly prevalent risk factor in the municipal bond market, where the security of the debt is often based on the health and economic ability of a local tax-base. The destructive nature of extreme weather events exasperated by climate change and the long-dated nature of municipal bonds has driven investors to weigh such risks in their portfolios.

The amount of outstanding debt of local governments that face high projected heat stress is concentrated in the Southeast, particularly Florida, and the Midwest, with nearly half in Illinois, Moody's said. About 21% of $895 billion of outstanding local government debt rated by Moody's is exposed to high or very high heat stress, according to the report. About $78 billion of that is from the Southeast, and $69 billion is from the Midwest, Moody's said.

"Heat stress threatens to cause local governments to pay unanticipated costs for emergency response, infrastructure repair and adaptive strategies," the report said.

The Midwest will undergo an especially high percentage change in extreme temperatures, according to Four Twenty Seven projections, cited in Moody's report. Some areas will see the hottest average day in 2030-2040 be about 7% higher than the hottest average day during the 1975-2005 period, according to the report.

Credit is affected as rising temperatures threaten to damage local economies and local government operations, according to Moody's."Heat stress will result in both rising temperatures and contribute to a greater frequency and severity of extreme climate events, such as heat waves, droughts or wildfires," Moody's said in the report. "Many local governments will face costs from financing adaptation and climate change plans."

Bloomberg

By Danielle Moran

September 24, 2019, 5:00 AM PDT

— *With assistance by Romy Varghese*

MTA to Sell $25 Billion of Congestion-Fee Bonds in Record Budget.

- **City congestion pricing would pay bulk of $52 billion budget**
- **Billions could help fix regional transit crisis, officials say**

New York's Metropolitan Transportation Authority board unanimously approved its largest five-year capital spending plan ever Wednesday, with almost half of it financed through congestion pricing

fees on motorists entering midtown Manhattan.

The $51.5 billion spending plan for 2020 through 2024 is 70% larger than the current capital budget and relies on $25 billion of municipal bonds that will be financed by charging congestion pricing fees to enter Manhattan's central business core. When the state legislature and Governor Andrew Cuomo enacted the law in June, they expected $1 billion a year in revenue from such fees to pay debt service on about $15 billion of borrowing. The additional $10 billion of debt will need to be paid for with higher fees, lower interest rates, or both.

"Much of those funds we'll receive from the Central Business District Tolling or other revenues are lock-boxed for capital projects," said MTA Chairman Patrick Foye at a board meeting Wednesday, where he promised changes to reduce construction and labor costs. "Without new funding resources for operations or cost cuts, we will continue to face significant financial constraints with forecasted deficits in future years."

The steep spending increase would pay for long-term fixes for a regional transit system that officials acknowledge has been underfunded for decades. City subways have been operating with an obsolete signal system developed in the 1930s that needs to be replaced. New subways, buses and commuter train cars are on the shopping list, and repairs include new railroad track and maintenance in the city's underground tunnels. New York City Transit President Andrew Byford, who runs the subway and bus system, has estimated that his system alone needs as much as $30 billion over the next decade.

The agency is also engaged in multi-billion dollar, multi-year projects that have experienced cost overruns, including planned extension of Long Island Rail Road service to Manhattan's east side through Grand Central Terminal. That project, originally scheduled for completion in 2009, is now due to open in late 2023. Another project to extend a Second Avenue subway line north to Harlem's 125th Street from 96th Street still lacks about $3 billion in sought federal funds.

New York Mayor Bill de Blasio, who has balked at increasing the city's subsidy to the agency's operations and construction costs, said he would back increasing the city's share of agency spending, which amounts to $3 billion in city tax revenue, up from $2.66 billion in the current plan. Yet, he warned that city money should not be counted upon in the event the MTA fails to implement congestion pricing on time. The legislature also committed $3 billion in state tax revenue to the plan, in the state budget it approved in June.

The program to require motorist fees upon entering Manhattan south of 60th Street faces a Dec. 31, 2020 deadline for plans to be drafted. A panel responsible for setting prices and policies has yet to be appointed by the MTA's Triborough Bridge and Tunnel Authority.

The mayor also said the board should have postponed a vote on the capital plan until a forensic audit was completed "to ensure accuracy in MTA forecasts, projections and capital plans."

The agency's capital plan "requires a full review that yields guarantees on the MTA's cost estimates, the agency's ability to execute a plan of this size, and its ability to reform the way it delivers large projects to prevent delays and cost overruns," de Blasio said in a letter to Foye Wednesday. "It is equally important that we respect the city's budget process, the key stakeholders involved in its formulation and adoption, and the need to evaluate how a contribution of this size would compete against other pressing city capital needs."

Foye responded to de Blasio's letter without addressing de Blasio's concerns, emphasizing the mayor's support for the agency's goals. "We look forward to continuing the conversation with the

city in the weeks ahead," Foye said during Wednesday's board meeting. "We're continuing to focus on our operating budget deficits and to find ways to reduce costs and balance the budget as statutorily required each year as we work toward the November financial plan."

Bloomberg Markets

By Henry Goldman

September 25, 2019, 12:14 PM PDT

New Jersey's Debt Is a Hot Commodity in Hunt for Higher Yields.

- **N.J. agency increased bond sale after seeing strong demand**
- **Buyers are hungry for yield amid lowest rates since 1960s**

New Jersey's debt is a hot commodity.

Investor demand for the New Jersey Transportation Trust Fund Authority's bond sale on Tuesday was so strong that the agency was able to add $200 million to the $800 million offering. And it repriced the $1 billion at lower yields than initially offered, a positive for a state beset by large debt and pension costs.

The demand came as investors seek refuge from municipal-bond yields that are the lowest since the 1960s. The Garden State agency offered two attractive features: a BBB+ credit rating and a unique structure.

The deal included debt with 3.25%, 3.5% and 4% coupons, straying from the 5% coupon that state and local debt issuers typically offer. Investors look to such structures as a way to pick up extra yield to account for the risk of interest rates rising. That risk includes the chance that a steep drop in prices could cause some of their income to be taxed under a provision of U.S. law known as the de minimis rule.

That meant the $1 billion offered yields as much as 1.67 percentage points higher than AAA rated issuers, according to data compiled by Bloomberg. The Trust Fund Authority also sold $150 million in fixed-rate notes Tuesday with yields ranging from 2.48% on securities due in 10 years to 2.79% on those maturing in 2034.

About 100 different investors submitted orders totaling $4 billion for the two series of debt, Wells Fargo & Co. spokeswoman AnnMarie McDonald said in an email. Wells Fargo served as senior manager on the deal.

Other issuers have also benefited from state and local debt rallying this week after the release of weaker-than-expected consumer confidence data, Janney Montgomery Scott noted in a Sept. 25 report. The Texas Water Development Board lowered yields on its bond sale this week in light of strong demand for its bonds, Janney said.

Bloomberg Markets

By Amanda Albright and Michelle Kaske

September 25, 2019, 10:30 AM PDT

BDA 3Q Update – Advocacy & Representation of Member Firms

Read the Update.

Bond Dealers of America

September 26, 2019

BDA Continues Aggressive Advocacy on Non-Dealer MA Request of SEC.

After much consultation with the BDA Municipal Division and Legal and Compliance Committee leadership, along with BDA outside counsel-Nixon Peabody and Davis Polk, the BDA has submitted a letter to the SEC opposing the recent requests for guidance regarding private placement activity by non-dealer municipal advisors, while providing framework on potential relief at the request of Commissioner Robert Jackson.

The letter can be viewed here.

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.

The BDA is planning follow a follow up meeting with Commissioner Jackson to discuss the proposal, as well meetings with other Commissioners and staff in the coming weeks.

Prior Actions

Following multiple rounds of 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.

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.

The letter can be viewed here.

Background

PFM, the municipal advisory firm, sent a letter to the SEC last fall asking that the firm “not be required to register as a broker dealer” when conducting certain placement agent activity. They

requested guidance exempting them from BD registration, which they argued "is essential for PFM and other MAs to fulfill their statutory mandate to protect [municipal entity] issuers, and to provide clarity and transparency regarding the role of the MA in municipal financing transactions."

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. The BDA also argued that the guidance PFM is asking for would create an unbalanced competitive environment between dealer and non-dealer MAs, and we emphasized that the act of finding investors, even for a direct placement, is inherently BD activity.

Bond Dealers of America

rcrodriguez

September 25, 2019

Federal Board Files Plan to Reduce Puerto Rico Debt by 60%.

SAN JUAN, Puerto Rico — A federal control board that oversees Puerto Rico's finances filed in court Friday a long-awaited plan that it says would reduce the U.S. territory's debt by more than 60 percent and pull the island out of bankruptcy.

The plan comes three years after the U.S. Congress created the board and would reduce $35 billion in liabilities to $12 billion, a move that some believe would help ease Puerto Rico's financial crisis amid a 13-year recession, pave the way to the board's departure and allow Puerto Rico to regain fiscal autonomy.

"Today we have taken a big step to put bankruptcy behind us," said board chairman José Carrión. "Three years after Congress passed PROMESA and two years after the most severe hurricane in more than 100 years hit Puerto Rico, after more than a decade of economic decline and fiscal disarray, after tens of thousands of Puerto Ricans left their island to find prosperity elsewhere, we have now reached a turning point."

Puerto Rico was dragging more than $70 billion in public debt after decades of mismanagement, corruption and excessive borrowing to balance budgets. In June 2015, the government declared the debt unpayable, and in May 2017, Puerto Rico filed for the biggest U.S. municipal bankruptcy in history.

Since then, deals totaling more than $23 billion have been reached with creditors holding bonds issued by certain Puerto Rico government agencies. The newest plan targets general obligation bonds and other debt held by the government, and it still has to be approved by a federal judge overseeing a bankruptcy-like process as Puerto Rico still struggles to recover from Hurricane Maria.

The island's infrastructure remains weak as evidenced by Puerto Rico's Electric Power Authority announcement late Thursday about selective power cuts given high demand and an overwhelmed power grid that has left tens of thousands without power overnight.

In addition, the fiscal crisis has crippled Puerto Rico's ability to recover from the Category 4 storm that hit in September 2017 because it cannot borrow money since it doesn't have access to capital

markets, officials said.

Board members met on Friday to talk about the plan's details, noting that while they expect creditors to fight back, the restructuring is needed.

Natalie Jaresko, the board's executive director, said Puerto Rico's bankruptcy is larger than that of General Motors in 2009 as she praised the aim to reduce the island's debt by 60%.

"Those are huge numbers," she said. "It's a very important day for Puerto Rico."

However, Carrión acknowledged that the plan itself would not lift Puerto Rico's economy or spur economic development.

"It's not a panacea," he said, adding, "Nothing can happen unless we get out of bankruptcy."

If approved, the debt restructuring plan would reduce Puerto Rico's annual debt service to under 9%, down from almost 30% prior to Congress approving a financial package that led to the creation of the board.

The plan also would restructure general obligation bonds and others issued in previous years by Puerto Rico's government, with creditors who hold bonds issued after 2011 facing bigger cuts since that debt has been challenged as unconstitutional.

In addition, the plan would impose an 8.5% in pension cuts for retirees that receive more than $1,200 a month, a move that Puerto Rico's government has opposed. Puerto Rico's public pension system currently faces more than $50 billion in unfunded pension benefits.

The island's previous governor, who resigned in August amid political turmoil, vehemently opposed pension cuts. However, the new governor, Wanda Vázquez, said in a televised address on Friday that she supports the plan in part because it will help guarantee the continuation of government services and warned retirees would face deeper cuts if it's not approved.

Vázquez said she's convinced the plan is the best option, adding, "We cannot remain stuck in bankruptcy for much longer."

By The Associated Press

Sept. 27, 2019

MSRB to Begin FY 2020 with Focus on Governance.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced its organizational priorities and published its budget for Fiscal Year 2020, beginning October 1, 2019. The FY 2020 priorities include a comprehensive focus on governance, with the formation of a new special Board committee to examine the MSRB's governance practices.

Governance and Leadership
"The Board recognizes that how we govern ourselves as an organization is fundamental to our ability to effectively protect municipal securities investors, issuers and the public interest," said MSRB Chair-Elect Ed Sisk. "We see room for continuous improvement in this area and welcome ideas from policymakers, regulators and stakeholders. Under the leadership of the special committee on

governance, we will examine all aspects of our governance practices, including the size and composition of the Board, to identify opportunities to improve fairness and transparency."

The Board also created a special committee to lead the nationwide search for a new president and CEO following the retirement of President and CEO Lynnette Kelly at the end of FY 2019. The committee will begin the search process by conducting interviews for outside executive search firms in connection with the first quarterly Board meeting of the fiscal year in October.

"While the Board is eager to identify the right candidate to lead the MSRB into the future, we remain confident in the staff's dedication and ability to continue to advance our mission during this time of organizational change," Sisk said. The Board named MSRB Chief Financial Officer Nanette Lawson as interim CEO effective October 1.

Stakeholder Engagement
In addition to establishing two special committees, the Board added a new standing committee on stakeholder engagement to its five permanent committees on audit and risk, finance, nominating and governance, steering, and technology. Board members, including the historic incoming class of five women, serve on one or more committees.

"Under outgoing Board Chair Gary Hall, the MSRB greatly expanded the opportunities for stakeholders to provide feedback directly to the members of the Board," Sisk said. "This standing committee will ensure the Board's strategic discussions and decisions continue to benefit from the diverse perspectives in our market."

Regulation for the Future
In recognition of the rapidly evolving municipal market, the MSRB plans to continue its retrospective rule review and development of new compliance resources. For the third consecutive year, the Board's compliance initiatives will be informed by a Compliance Advisory Group. The Board also will continue for the second year with a Municipal Fund Securities Advisory Group to provide input to the Board on municipal market rules, practices, transparency and education related to municipal fund securities, including 529 savings plans and ABLE programs.

Technology and Data
The Board has authorized an enterprise-wide migration of the MSRB's Electronic Municipal Market Access (EMMA®) website and related market transparency systems to the cloud. A new dedicated data management and analytics department will focus on data governance, quality and analytics, including exploring potential opportunities to leverage cloud technologies to advance the organization's data strategy.

"Making municipal securities data and disclosures available at no cost to investors and the public on the EMMA website was a radical advancement in market transparency a decade ago," Sisk said. "The MSRB believes moving to the cloud will position us to make market data even more accessible, usable and reliable for all market participants."

FY 2020 Budget
Funding these organizational priorities requires rigorous stewardship of resources. In support of the MSRB's continued commitment to public accountability, transparency and responsible financial management, the MSRB is releasing its FY 2020 budget, which provides insights about the organization's revenue, expenses and reserves. Operating expenses of $42 million reflect a 4 percent increase from the prior fiscal year and are indicative of the MSRB's steady commitment to the long-term strategic goals of the organization. Revenues reflect the higher professional fees to be paid by municipal advisors to advance the MSRB's goal of fair and equitable fees across regulated entities.

The Board's strategic focus on managing reserves is continuing, with excess reserves dedicated to fund a $2.3 million operating deficit in addition to funding the MSRB's technology transition to the cloud.

Date: September 23, 2019

Contact: Leah Szarek, Director of Communications
202-838-1500
lszarek@msrb.org

- Muni Bonds Face Climate Change. And Investors Are Ignoring the Risks.
- Local Muni Dealers Die Off as Wall Street Lands Most Deals.
- GASB Tackles Phaseout of Libor, Growth of P3s.
- Muni-Bond Investors Embrace Higher-Risk Issuers.
- CDFA to Host Free Webinar on 2018 CDFA Volume Cap Report.
- Advanced Tax Increment Finance Course.
- FINRA 2019 Advertising Regulation Conference.
- And finally, Unclear On The Concept, Kidnastics Edition, is brought to us this week by *Jaquin v. Canastota Central School District*, in which a kid enrolled in "Kidnastics" (thought we were making that up, didn't you?) was instructed to jump from a gym mat. Per the court, "As the infant jumped, her feet did not lift off the mat, and she fell forward." Wouldn't technically be a "jump" then, would it? Acceptable descriptors for this incident include – but are hardly limited to – header, face-plant, and kersplat! Something tells us that Simone Biles ain't too worried just yet.

IMMUNITY - ALASKA

Haight v. City & Borough of Juneau

Supreme Court of Alaska - September 6, 2019 - P.3d - 2019 WL 4230681

Mother of minor, who died in a motorized watercraft accident in a lake managed in part by city, filed a complaint against city claiming they negligently failed to take measures to ensure safe operation of motorized watercraft on lake.

City filed a motion for summary judgment based on discretionary function immunity. The Superior Court granted city summary judgment and mother appealed.

The Supreme Court held that the city's decision not to regulate safety on the lake was protected by discretionary function immunity.

The city's decision not to regulate safety on the lake was protected by discretionary function immunity, and thus city was not liable to mother of minor who died in a motorized watercraft accident in lake managed in part by city; the State did not require city to regulate lake safety, city's ordinances at the time of minor's death did not address lake safety, and city's land use plans did not address lake safety.

PUBLIC UTILITIES - CALIFORNIA

City of San Juan Capistrano v. California Public Utilities Commission

United States Court of Appeals, Ninth Circuit - September 11, 2019 - F.3d - 2019 WL 4283638 - 19 Cal. Daily Op. Serv. 9043 - 2019 Daily Journal D.A.R. 8755

City brought action alleging that California Public Utility Commission's approval of utility's electrical grid project without giving due consideration to alternative projects, as required by California environmental law, violated its due process rights.

The United States District Court dismissed complaint, and city appealed.

The Court of Appeals held that:

- City lacked standing to bring action in federal court alleging that Commission violated its due process rights;
- Eleventh Amendment barred action; and
- City waived argument that it should have been allowed to amend its complaint to add claims against commissioner.

City lacked standing to bring action in federal court alleging that California Public Utility Commission's approval of utility's electrical grid project without giving due consideration to alternative projects, as required by California environmental law, violated its due process rights.

Eleventh Amendment barred city's action in federal court against California Public Utility Commission alleging that its approval of utility's electrical grid project without giving due consideration to alternative projects, as required by California environmental law, violated its due process rights.

City waived argument that it should have been allowed to amend its complaint against state commission to add claims against commissioner under Ex parte Young, where city argued before district court that Eleventh Amendment did not apply to its claims against commission, and did not ask for leave to add commissioner as party until its reply brief on appeal.

INVERSE CONDEMNATION - ILLINOIS

Kaskaskia Land Company, LLC v. Vandalia Levee and Drainage District

Appellate Court of Illinois, Fifth District - September 5, 2019 - N.E.3d - 2019 IL App (5th) 180403 - 2019 WL 4232601

Landowner brought inverse condemnation action against levee and drainage district, claiming district's prescriptive flood easement over landowner's island property constituted a taking for which landowner was entitled to just compensation.

The Circuit Court granted district's motion to dismiss. Landowner appealed.

The Appellate Court held that:

- Prescriptive flood easement was not taking, and
- Enforcement of prescriptive flood easement was not regulatory taking.

Prescriptive flood easement of levee and drainage district on landowner's island property, which prohibited landowner from interfering with natural flow of floodwater from surrounding river, arose over 40 years before landowner purchased property, and thus prescriptive easement was not taking, as would require compensation in landowner's action against district for inverse condemnation.

Levees constructed by landowner on his island property were legally impermissible nuisances prior to issuance prescriptive flood easement over property, and thus enforcement of levee and drainage district's prescriptive flood easement, which entailed ordering landowner to remove levees it had constructed, was not regulatory taking, as would require compensation in landowner's action against district for inverse condemnation; landowner's levees caused upstream flooding, damaging district's upstream levees.

DEVELOPMENT FEES - INDIANA

Knob Hill Development LLC v. Town of Georgetown

Court of Appeals of Indiana - September 11, 2019 - N.E.3d - 2019 WL 4282112

Real estate developers brought petition objecting to municipal ordinances setting sewer system development charges (SDCs) for new developments and providing for annual increase in such charges.

Following evidentiary hearing, the trial court upheld objection as to rate increase ordinance but overruled objection as to rate-setting ordinance. Developers appealed.

The Court of Appeals held that:

- Inclusion of grants in calculation of sewer utility value served statutory purpose of ensuring new sewer service customers paid equitable shares;
- Sufficient evidence supported finding that previously-paid SDCs were not contributions in aid of construction (CIAC);
- Town could consider factors relevant to planning for future growth in setting SDCs; but
- Annual increases in SDCs could not occur without public hearings.

Municipality's inclusion of infrastructure grants in calculation of total value of sewer utility, for purposes of calculating how much new developments should pay for use of new sewage treatment plant, did not result in a double recovery of funds from grants and from new developments, but, rather, served statutory purpose of ensuring new developments paid just and equitable share compared with existing customers.

Sufficient evidence supported finding, following bench trial on validity of municipal ordinances setting and increasing system development charges (SDCs) for sewer service applicable to new developments, that previously-paid SDCs were not contributions in aid of construction (CIAC), as would preclude their inclusion in calculation of value of new sewer plant; expert, who had advised municipality regarding ordinance, testified that previously-paid SDCs were generally considered user charges rather than CIAC.

Town's consideration of factors relevant to planning for future growth in setting sewer system development charges (SDCs) applicable only to new developments was not ultra vires, but, rather, was permissible under municipal sewage works statute allowing municipalities to consider any factors that they deem necessary.

Municipal ordinance providing for automatic annual increase of 2% for sewer system development charges (SDCs) violated statute requiring municipal legislative bodies to hold public hearings before revising sewer rates as well as sewer service customers' due process rights; statute resulted in revision of fees each year without a hearing.
