Bond Case Briefs

Municipal Finance Law Since 1971

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

Fitch Ratings-New York-31 January 2019: Fitch Ratings has published the following updated report: "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria". This report updates the report published on Jan. 22, 2018 titled "U.S. Public Finance Variable-Rate Demand Obligations and Commercial Paper Issued with External Liquidity Support Rating Criteria". The key elements of Fitch's external liquidity rating criteria remain consistent with those of its prior criteria report.

Contact:

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

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

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

Additional information is available on www.fitchratings.com

Read About New SEC Rule 15c2-12 Disclosure Obligations and Upcoming Issuer Enhancements to EMMA in the Latest MSRB Newsletter.

Read the Newsletter.

GFOA Releases Primer on Infrastructure Financing.

Understanding Financing Options Used for Public Infrastructure

Report CoverUnderstanding Financing Options Used For Public Infrastructure ("the Primer") provides an overview of tax-exempt bond and other financings used by state and local governments and entities.

The Primer covers numerous issue areas related to tax-exempt financings. These sections include:

- The fundamentals of tax-exempt bonds and other financing tools that are available to state and local governments and related entities;
- The role tax-exempt bonds play in infrastructure financings and as an investment product; and
- Congressional actions over the past fifty years related to this market.

This Primer was prepared in coordination with several members of the Public Finance Network (PFN). The PFN is a coalition of organizations interested in preserving the tax-exempt status of state and local government bonds.

Download the report.

About the Public Finance Network

Formed in 1988, the Public Finance Network is a coalition of organizations united to preserve state and local government use of tax-exempt bonds. The Network represents the wide array of local and state government financing and infrastructure activities. The Public Finance Network is administered by the GFOA and its Director of the Federal Liaison Center, Emily Brock. For information about the Network and financing issues, contact any of its members, call (202) 393-8467 or write to 660 North Capitol St., NW, Suite 410 Washington, D.C. 20001.

GFOA Report: Infrastructure Funding in the New Budget Environment.

Infrastructure Funding in the New Budget Environment

Federal grants have helped maintain a quality standard of living for communities across the country for over a century. There are over a thousand federal grant programs that transfer funds to state and local governments in support of a multitude of policy issues. State and local governments rely on the funds from federal grants to assist in providing what the citizens of their localities need. Over the years, the federal grant system has grown and changed to accommodate the constantly shifting priorities of American communities. Transportation, healthcare and education initiatives are all supported in some way by federal grants. Today, federal and local lawmakers meet the challenges of updating and enhancing our nation's infrastructure through collaborative efforts; underlining the importance of federal transfers to state and local governments.

This report provides information on trends, key issues, and case studies related to infrastructure funding.

Download the report.

The Pros and Cons of 'Target Maturity' Bond Funds.

These new products combine the benefits of a traditional bond fund with a fixed maturity

date. They have their critics.

There’s a new type of bond fund that aims to solve a shortcoming of traditional bond funds. But the jury is out as to whether they are worth buying.

Bond funds offer investors broad diversification, professional management and regular income—benefits tricky to achieve with a collection of individual bonds. But they also have a downside: no fixed maturity date. Investors can’t simply wait out a downturn, knowing the price will move toward face value as maturity approaches, as they can with an individual bond.

To address that perceived shortcoming, some fund providers in recent years have introduced a hybrid product offering the benefits of a traditional fund plus a fixed maturity date. Though some experts disdain these “target-maturity bond funds,” others say they can be a good choice for some investors in today’s volatile market, especially those looking for steady income and a return of principal for an expected need—such as paying for college, buying a home or starting retirement.

“In today’s market, these target-maturity funds are especially appealing,” says Jay Srivatsa, chief executive officer at Future Wealth, a wealth-management firm in Los Gatos, Calif. “It takes the volatility and randomness out of the equation and, most importantly, takes out the investor’s emotional reactions to the stock-market gyrations. Knowing that X amount will be available on year X gives peace of mind.”

Target-maturity funds are easier to research and purchase than individual bonds, he says, and they appeal to investors who don’t want to face long-term interest-rate risk.

Older investors may find this option worth a look in today’s environment, says Ankur Patel, vice president at Lenox Wealth Advisors’ New York office.

“As we continue to see baby boomers enter retirement, an entire generation of investors will be looking to reduce risk, generate income and invest more in bonds,” he says.

How they work

Investors who buy individual bonds know that, barring a default, they will receive a predictable income and a return of principal on the maturity date. Earnings in bond funds are less predictable because the fund must constantly buy and sell individual bonds to maintain an average maturity promised investors.

That means the fund can suffer a loss if it must sell bonds when prices are down. That’s because rising rates drive down prices of older bonds that pay less than new ones. While falling rates can lift bond prices, they can be harmful if the fund must replace older bonds with new ones that pay less, reducing the fund’s yield.

Target-maturity funds—not to be confused with target-date funds, which gradually shift assets from stocks to bonds to increase safety as the target date approaches—tackle these problems by purchasing bonds maturing at about the same time. When the fund’s maturity date arrives, the fund closes and investors receive their principal just as they do with individual bonds, though the amount isn’t guaranteed up front and can be subject to market conditions. Income is relatively dependable—but, again, not guaranteed—because the fund doesn’t need to replace holdings along the way.

The two big players are Invesco, which offers a series of BulletShares corporate and emerging-markets “defined maturity” exchange-traded funds maturing every year from 2018 to 2028, and

BlackRock Inc.’s BLK 0.42% iShares, which has corporate and municipal bond ETFs maturing from 2020 to 2028.

Fees are modest, typically below 0.5%, though that can add up over time. Of course, an investor owning individual bonds would have no annual fees. Investors also face commissions on ETF trades, though that can be minor for the buy-and-hold investor these funds are designed to serve.

Critics weigh in

Despite their appeal to some, these funds do have critics. “I do not typically recommend target-maturity bond funds because their annual costs are significantly higher [than index bond funds] for a buy-and-hold investment, and there is a lack of flexibility,” says Debra Taylor, founder of Taylor Financial Group, a wealth-management firm in Franklin Lakes, N.J.

“The benefit is that the funds are packaged up in one place, and they do provide diversification for the smaller investor,” she says. “However, the more-sophisticated investor may be better off purchasing the individual bonds and creating their own ladders.” (A ladder is an assortment of bonds with various maturities.)

Most experts seem to agree that these funds are best for investors with an expected cash need at the maturity date, rather than those who will reinvest. The principal may be returned at an inconvenient time for reinvestment—when yields are low, for instance. Because the fund won’t replace its holdings, you can’t expect the fund yield to rise as rates go up, as it would with an ordinary fund that gradually adds new bonds that pay more.

In today’s market, many experts recommend funds with short maturities of under three to five years, since longer-term bonds don’t currently pay enough extra to justify their greater risk.

Young people with long investing horizons are especially unsuited to these funds, Ms. Taylor says, because they can ride out bond-price dips. With maturities out to only 2028, target-maturity funds serve investors who expect to need their money in 10 years or less.

Dennis Shirshikov, a financial analyst at FitSmallBusiness.com in New York, warns that many bonds in these funds will mature months before the fund closes, leaving cash to sit idle. And Mr. Patel of Lenox Wealth Advisors says investors should expect fund yields to drop in the final year to the level of bank savings. Also, many of these funds own bonds that can be called early, worsening the problem of cash buildup even before the year of maturity.

Getting out early

Investors also should know that they can lose money if they unload one of these funds before maturity. That could happen if rising rates drive down bond prices. Also, since these ETFs are traded like stocks, there’s no guarantee an investor will find a buyer if he or she wants to get out early, though experts say lack of liquidity hasn’t been a serious problem.

“These are generally not a great short-term trading option,” Mr. Shirshikov says. “In fact, you will likely be better served with other bond products if you are interested in trading on bond volatility or interest-rate movements.

“However, if you are considering locking your money away in a CD or purchasing government bonds with set maturity with the hope of taking the money out at a later date and earning some interest in the process, this is a great product to invest in,” he says.

The Wall Street Journal

By Jeff Brown

Feb. 1, 2019 4:26 p.m. ET

[How Does PG&E Impact California's Municipal Bond Outlook?]

Nisha Patel, muni portfolio manager at Eaton Vance, examines California’s municipal bond market. She speaks with Bloomberg’s Taylor Riggs in this week’s “Muni Moment” on “Bloomberg Markets.”

Watch video.

Bloomberg MarketsTV Shows

January 30th, 2019, 9:31 AM MST

PG&E Bankruptcy May Have Wider Ramifications for California.

The municipal bond market has a small amount of direct exposure to the bankruptcy of PG&E (PCG), California’s largest utility, though the Chapter 11 filing creates uncertainty for the state and localities where the utility operates.

The company, which provides natural gas and electric service to 16 million people in northern and central California, emphasized in a customer alert that it will not be “going out of business” as it embarked on plans to restructure an estimated $51.7 billion in debts balanced by assets of $71.4 billion.

PG&E Corp. (PCG) and its primary operating subsidiary, Pacific Gas and Electric Co. filed for Chapter 11 Tuesday in the U.S. Bankruptcy Court for the Northern District of California.

All three ratings agencies dropped the utility’s ratings to junk after it reported a few weeks ago that it was facing up to $30 billion in liabilities from California wildfires.

The California Public Utilities Commission, the utility’s regulator, reported in December it was exploring such options as splitting PG&E’s (PCG) gas and electric operations or even requiring that regional companies be created.

San Francisco Mayor London Breed, in a letter to the director of San Francisco’s Public Utilities Commission, reportedly requested an analysis of the city’s options in the face of PG&E’s (PCG) likely bankruptcy, “including the possibility of acquiring and building electrical infrastructure assets.”

A California PUC spokeswoman said she did not know if the commission would have the power to move ahead on those plans now that the utility is in bankruptcy, but said the commission would work with the court.

The company signaled earlier this month that it planned to file for bankruptcy in compliance with a recently enacted state law that requires it to provide a 15-day notice before taking that step.

Municipal bonds comprise less than $1 billion of PG&E’s outstanding debt. “And $762 million of the $920 million in municipal debt was backed by bank letters of credit, so actual exposure to PG&E (PCG) in the municipal market is quite small,” Nuveen analysts wrote in a Jan. 22 report.

The municipal bonds are unsecured general obligations of PG&E (PCG), according to Nuveen.

“The corporate bonds generally have a covenant by which if a lien is granted to other creditors it must be granted to the corporate bonds,” Nuveen analysts wrote. “The municipal bonds are exempt from this provision and could be subordinated to the other debt.”

The municipal debt was issued through two state conduit issuers, the California Pollution Control Financing Authority and the California Infrastructure & Economic Development Bank.

The conduit issuers provide access to the tax-exempt bond market for private companies and nonprofits and have no responsibility to pay the debt back.

Put simply, the conduit issues the bonds, places the proceeds with the trustee, who then re-lends the money to the borrower, said Tim Schaefer, California’s deputy treasurer for public finance. The CPCFA is staffed out of the treasurer’s office.

The borrower, in this case PG&E (PCG), has the responsibility to provide disclosure prior to the bond sale and after on the risks for bondholders, Schaefer said.

The risk to bondholders is minimal, because the banks will buy the variable rate demand obligations back from the current bondholders, said Matt Fabian, a partner with Municipal Market Analytics.

A search on the Municipal Securities Rulemaking Board’s EMMA site of the CUSIPs indicated the banks had not executed a mandatory tender of the debt as of Tuesday afternoon.

In an earlier interview with The Bond Buyer, Joan Hempel of Moody’s Investors Service said that the banks have the right to terminate the letter of credit early and call for a mandatory tender. The banks can make the payment and pay the bondholders off early and then PG&E (PCG) would be obligated to pay the bank back directly.

The bank letters of credit means the bank has an irrevocable and unconditional obligation to make the payments directly to the bondholders, Hempel said. The bank then has a reimbursement agreement under which PG&E (PCG) agrees to pay the bank. So the bondholders look to the bank as the first source of payment of the bonds, she said.

There are five banks with exposure instead of just one with a concentrated position, which helps to spread out the risk, Fabian said. As of last Friday, he said, the liquidity banks were MUFG Union Bank with $149 million, Sumitomo Mitsui Banking Corp. with $165 million, TD Bank with $100 million, Mizuho Bank with $200 million and Canadian Imperial Bank with $149 million.

In conjunction with the bankruptcy filings, PG&E (PCG) also filed a motion seeking interim and final approval of the bankruptcy court to enter into an agreement for $5.5 billion in debtor-in-possession financing with J.P. Morgan, Bank of America (BAC), Barclays (BCS), Citi, BNP Paribas (BNPQF), Credit Suisse (CS), Goldman Sachs (GS), MUFG Union Bank and Wells Fargo (WFC) acting as joint lead arrangers.

The DIP financing, when approved, will provide PG&E (PCG) with capital needed to operate throughout the bankruptcy, according to the company.

The PUC board granted exemptions for the utility to obtain the DIP financing at a heated meeting Monday at which protestors shouted “no bailout for Wall Street” while commissioners discussed the matter. The extensions do not extend to the transfer of ownership of any utility asset that is pledged as part of the DIP finance, however.

PUC President Michael Picker urged his fellow commissioners to approve the exemptions, saying that if PG&E (PCG) were not able to secure the financing and continue to operate it could represent a substantial public safety and health risk because it could compromise hospitals and public facilities.

California Gov. Gavin Newsom said his focus through the bankruptcy remains “protecting the best interests of the people of California.”

“My administration will continue working to ensure that Californians have access to safe, reliable and affordable service, that victims and employees are treated fairly, and that California continues to make forward progress on our climate change goals,” Newsom said.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 01/30/19 12:08 PM EST

Puerto Rico Wins Approval of $18 Billion Bond Restructuring.

Puerto Rico won court approval Monday for a restructuring deal that wipes out one-third of its $18 billion in sales-tax bond debt, a milestone in its quest to fix its broken finances.

U.S. District Judge Laura Taylor Swain confirmed a debt adjustment plan covering the revenue bonds known as Cofinas, marking the largest renegotiation yet of the U.S. territory’s bond and pension obligations.

The write-downs imposed on the Cofina bonds, first issued as rescue financing in 2007, will save the island government $17 billion in interest and principal payments over the coming decades as it tries to reverse a decade of economic decline and out-migration.

Creditors holding more than $14.5 billion in Cofina debt supported the accord, which resolves one of the thorniest conflicts in Puerto Rico’s unprecedented, court-supervised bankruptcy.

The settlement is tied to a negotiated split of the sales taxes pledged to Cofina that releases 46% of the money back to the island’s government — providing $456 million a year on average that otherwise was earmarked for bondholders.

Judge Swain acknowledged that the settlement “commits substantial portions of Puerto Rico’s scarce revenues to bond payments over a period of decades,” while also slashing claims from bondholders, including individual investors who bought Cofina securities for their retirement.

But she concluded the adjustment plan “is essential to ensure that Puerto Rico is on a path that will restore its access to financial markets as it builds a stronger economy.”

The settlement marks the first adjustment plan approved under the quasi-bankruptcy process created by Congress under a 2016 rescue law that also installed an oversight board to manage

Puerto Rico's spending and pilot the debt- restructuring process.

The oversight board was able to wring savings from Cofina's bondholders in part because of lingering doubts about the strength of their claims on sales-tax revenue. Critics of the Cofina structure have long insisted that sales taxes never should have been transferred out of the government's control, and other creditors holding Puerto Rico general obligations said they, not Cofina bondholders, had an ironclad claim on the revenue.

First issued in 2007, the Cofina bonds were backed by sales taxes that provided investors a secure source of repayment and lowered Puerto Rico's financing costs after the municipal bond market lost confidence in the U.S. territory as a borrower.

The Cofina bonds quickly became a go-to financing source that made up roughly 40% of Puerto Rico's core government obligations when it entered bankruptcy protection in 2017.

Doubts about who owned the sales taxes — the government or Cofina's bondholders — have clouded Puerto Rico's bankruptcy since it entered court protection in 2017. Forcing Judge Swain to decide the issue could have wiped out Cofina's bondholders completely — or guaranteed them a 100% recovery if the pledge was upheld.

The Cofina plan instead relinquishes more than 46% of the pledged sales taxes, supplying cash to correct the government's budget imbalance and ameliorate politically unpopular austerity measures.

BY DOW JONES & COMPANY, INC. | MUNICIPAL | 02/04/19 05:47 PM EST

By By Andrew Scurria

Write to Andrew Scurria at Andrew.Scurria@wsj.com

Puerto Rico Rebound Lures Mutual Funds Back to Island's Bonds.

- **Pimco, AllianceBernstein have boosted holdings since hurricane**
- **Once big buyers, mutual funds sold when fiscal crisis worsened**

Traditional bond buyers are going back to Puerto Rico.

After shunning the U.S. territory for much of the past six years, municipal-bond mutual funds are again buying the government's debt as it recovers from the 2017 hurricane and inches closer to winning a potential court approval to restructure more than $17 billion of sales-tax-backed debt, a major step in its record-setting bankruptcy.

Pacific Investment Management Co. held about $506 million of commonwealth securities as of Sept. 30, nearly 10 times the $52 million held the month before Hurricane Maria, according to data compiled by Bloomberg. AllianceBernstein LP increased its exposure to $347 million, as of Nov. 30, up from $53 million in August 2017. Capital Group and Massachusetts Financial Services Co. increased their exposure by nearly 50 percent.

Continue reading.

Bloomberg Markets

By Michelle Kaske

January 31, 2019, 7:19 AM MST

PG&E Bankruptcy's Ripple Effects Will be Felt Beyond California.

- **Investors, utilities across the U.S. could share the pain**
- **Settlements for wildfire victims may be later and smaller**

PG&E Corp., owner of the largest electric utility in America's most populous state, plans to file for bankruptcy Tuesday, and the ripple effects are likely to stretch far beyond California and the company's stakeholders.

Power-plant operators that sell electricity to its utility are already being downgraded to junk. Federal taxpayers may get stuck with the bill for government loans to renewable-power projects in California if they can't be repaid. And the shape of the Golden State's electricity industry could fundamentally change, with delays to a clean-energy mandate and a bigger role than ever before for public power.

More directly affected, of course, are stockholders, bondholders and thousands of PG&E retirees and their families who are casting nervous eyes on the pension fund. Wildfire victims suing the company — PG&E's stated main reason for bankruptcy -- also risk later, smaller settlements.

Continue reading.

Bloomberg Markets

By David R Baker

January 28, 2019

Shutdown Dashes Wall Street's Hope Trump Would Boost Bond Sales.

- **'You would have to be crazy to think they could help at all'**
- **At conference, little chance seen for infrastructure bill**

If Wall Street's municipal-bond departments are looking for Washington to help them drum up business, the prospects appear bleak.

Big underwriters would have liked for President Donald Trump to make good on his campaign promise to enact a major infrastructure plan, since states and cities would likely issue debt to cover their share of the projects.

But sales of new state and local government bonds tumbled 22 percent last year, and the record-long shutdown that tarnished Trump's relationship with the new Democratic majority in the House of Representatives left those at a Bond Buyer conference in New York pessimistic.

"Can you rely on the federal government for help at all?" asked Howard Cure, director of municipal-bond research at Evercore Wealth Management. "Based on what happened with the shutdown you would have to be crazy to think they could help."

There's certainly a need for help: The American Society of Civil Engineers estimates the country needs to increase its spending by $2 trillion through 2025 to get its roads, schools and other infrastructure in adequate shape. Trump spoke disparagingly of the state of affairs before taking office.

Dan Tomson, co-head of public finance at Citigroup Inc., the second-largest municipal bond underwriter, said it was "unlikely" that a federal infrastructure bill would be passed this year.

So the industry seems to have settled around a much more modest agenda in Congress, like expanding the use of so-called private activity bonds, issued on behalf of businesses, or resurrecting advance refundings, a refinancing tactic that was essentially killed off by Trump's tax bill. That was a big driver of the bond-sales slowdown last year.

"Our agenda as an industry — first and foremost, we have to keep what we have," said Bob Spangler, co-head of public finance at RBC Capital Markets. He said the preservation of the tax break for municipal bonds is crucial. "It is painfully aware to all of us that Washington's actions do matter in terms of our marketplace."

Bloomberg Markets

By Danielle Moran

January 29, 2019, 2:35 PM MST

A Few Lessons About Public-Private Partnerships in Higher Ed.

As many institutions look to public-private partnerships as a financing solution for their biggest and most important projects, Charles G. Renner describes some of the ins and outs.

It has been more than a decade since a report by the Institute for Higher Ed Policy first noted a worldwide shift away from public funding sources and toward private capital to finance higher education projects. The report appeared just months before the eruption of the global financial crisis that left an indelible scar on state and local public finances still seen today. The long-term effects of that crisis have only reinforced the logic that made private capital an attractive financing option in the first place.

The cold, hard fact is that available public funds for higher education have been shrinking. The Center on Budget and Policy Priorities, a Washington-based research and policy institute, reported that 46 of 50 states "are spending less per student in the 2015-16 school year than they did before the recession." Nine of those states have seen inflation-adjusted spending declines of greater than 30 percent. On average, states are spending 18 percent less per student than before the crisis. This trend has provided little evidence of reversing.

To compensate for the funding shortfall, colleges and universities have a limited range of options. Many have decided to raise tuition, but tuition costs had been outpacing inflation for a generation prior to the crisis, and the market can bear only so much. Indeed, many institutions, particularly private ones, are already offering significant discounts off of their sticker prices to entice students to enroll. Others have opted to curb their academic programs and offerings; over the past year, many have announced downsizing and consolidation initiatives, including the elimination of majors and degree programs, intercollegiate athletic teams, and faculty and administrative positions. But such measures, too, have limited use. An institution can cut only so much without jeopardizing its ability to fulfill its mission and attract students.

Finally, some colleges and universities have increased drawdowns on their endowments, but this is more a short-term act of desperation, not the application of a long-term, sustainable financing solution. Besides, despite the cachet of the larger endowments — Harvard University sports an endowment over $37 billion — most institutions have fairly modest endowments that are little more than rainy-day funds. Last year, in a study by the National Association of College and University Business Officers, the median endowment value of an American higher education institution was $127.8 million, and 44 percent of all endowments were valued at $100 million or less.

One should also consider that the financial and risk profiles of the average American college or university have changed significantly in the past generation. Notably, many institutions have seen their debt-to-endowment ratios increase because of poor investment performance, increased drawdowns on the endowment itself or larger amounts of debt. And even those with the largest endowments are confronting new threats and challenges. For instance, in the spring of 2016, members of the Connecticut Legislature sought to tax Yale University's endowment. The idea was quickly scotched a few weeks later, but the proposal gives context to the discussion over higher education funding — colleges and universities are being squeezed because the states themselves are under financial stress.

These are the factors that have created the difficult circumstances in which higher education finds itself. It is also the reason so many institutions are looking to public-private partnerships as a financing solution for their biggest and most important projects.

The P3 Delivery Model

A public-private partnership, or P3, is long-term agreement between a public entity and a private industry team that is tasked with designing, building, financing, operating and maintaining a public facility. The past decade has seen a steady increase in the use of P3 structures, both inside and outside higher education. In 2016, something of a watershed year for P3, multiple high-profile projects came online in response to a variety of public needs, including a $1-billion-plus water infrastructure project servicing San Antonio, and a $300-million-plus renovation of the Denver International Airport's Great Hall.

The emergence of the P3 option is happening where it matters most: projects that would be otherwise unattainable under the traditional public-improvement delivery models. For instance, 10 years ago, only a handful of higher education P3 projects were up and running; today, we are approaching three dozen such projects.

The biggest challenge is, of course, the financing component, but P3 teams bring much more to the table than money — they give public entities access to expertise and innovation that can add significant value to projects at each phase of development.

Several recent higher education P3 projects demonstrate how the P3 delivery model and team approach can enable colleges and universities to take on projects they might not have otherwise been able to pursue.

Wayne State University student residential facility.

Wayne State sought out private partners for a project to demolish an existing 407-bed apartment building and replace it with new and renovated residential space. It went from issuing a request for proposals to obtaining financing in relatively record time and began leasing new beds in August 2018. To expedite construction, the private partner secured bridge financing as part of the overall capital stack, enabling the project to tap into generally favorable financing for the larger private placement of debt.

The university not only locked in favorable financing terms and paid off existing debt, but it also moved much of the worry and risk from operations onto the private partner by engaging in a full P3 approach. That includes design, construction, financing, operations and maintenance of the project over a 40-year life cycle, freeing up university resources to focus on academic and other needs.

University of California, Merced, 2020 campus expansion.

While residential projects have long been the focal point of higher education P3s, we are beginning to see more ambitious uses of the model. UC Merced 2020 is one example: a campuswide expansion covering some 219 acres and almost two million square feet of new facilities. The $1.2 billion project is likely the largest and most comprehensive P3 in American higher education. The mix of uses features academic learning, administration, research, residential and utilities, among others.

The project includes all project phases and employs an “availability” method of payment whereby the university will compensate a concessionaire directly according to a predetermined formula and schedule for the postconstruction operations and maintenance of the facilities over a 39-year life cycle.

Needless to say, a partnership of this size and scale requires solid relationships, as well as an agreement capable of accommodating changing conditions. The agreement contained flexible provisions to account for a variety of outcomes, including a 50/50 split among partners for any future refinancing gains, as well as a 50/50 split regarding potential cost-saving measures introduced by the developer.

Even when a college or university decides not to use a full P3 model, contemplating such a project often leads to a better result than only considering more traditional options. In 2014, the University of Kansas solicited private partners for a planned $350-million P3 that sought to add some 55 acres of academic, recreational, residential and utilities space to the campus. Ultimately, the university opted to create a nonprofit corporation and borrow the full project outlay from an out-of-state public finance entity rather than tapping private finance. But because the procurement process followed best practices for P3 selections, university stakeholders received the benefit of risk analyses and financial projections from multiple potential private partners, and an innovative debt-only financial approach was selected for the project.

Lessons for Other Institutions

The success of these projects suggests a few lessons for other higher education institutions. First, tapping into the full potential of the P3 model depends greatly on assembling the right partners. A well-rounded P3 team includes people with high-level expertise in private-development equity, architecture, engineering, contracting and law. Aside from the access to innovation and best-in-class skills, the team concept is important because P3 projects are long-term in nature. The relationships on which P3 projects depend will necessarily span many years; therefore, higher education participants need to carefully develop criteria for evaluating potential partners.

Also, few large-scale projects are finished without some kind of unanticipated challenge arising, so it is important to select partners who have demonstrated the stability and commitment required to see projects through to completion. Higher education administrators should study carefully their potential partners' portfolio of projects and evaluate how each dealt with the inevitable circumstances that challenge a team's ability to finish a project or to operate and maintain it afterward.

In addition, each of the foregoing projects had institutional champions who advocated for the P3 solution and oversaw the process through to completion. The role of champions in the P3 delivery model cannot be understated. They play a crucial role in securing buy-in for the project at the earliest possible stage and developing strategies to overcome obstacles. Establishing consensus on the campus also provides potential private partners the needed assurance to commit fully to a P3 project and helps to secure the best possible pool of P3 talent.

It is unlikely that the fiscal circumstances facing America's colleges and universities will improve greatly over the next decade, and the competition for students is fierce. When applied competently and in the right manner, a public-private partnership allows administrators to create solutions that differentiate their campuses and brand them as places capable of getting things done. More institutions should seriously consider this option.

Inside Higher Ed

By Charles G. Renner

January 28, 2019

Bio
Charles G. Renner is a partner in the Kansas City, Mo., office of law firm Husch Blackwell LLP and is the leader of the firm's public-private partnerships practice group.

[S&P Global Ratings Clarifies Its Rating Action And Display Of Ratings Following Various Credit Enhancement Rating Withdrawals.]

Recently, S&P Global Ratings withdrew various credit enhancement program ratings. In this report, we address frequently asked questions we have received from market participants to provide greater clarity on how we proceeded with the withdrawals.

[Continue Reading]

Jan. 29, 2018

[Report: 63 Out of America's Largest 75 Cities Can't Pay their Bills, Acquired $330 Billion in Unfunded Debt.]

According to a recent analysis of the 75 most populous cities in the U.S., 63 of them can't pay their bills and the total amount of unfunded debt among them is nearly $330 billion. Most of the debt is due to unfunded retiree benefits such as pension and health care costs.

“This year, pension debt accounts for $189.1 billion, and other post-employment benefits (OPEB) – mainly retiree health care liabilities – totaled $139.2 billion,” the third annual “Financial State of the Cities” report produced by the Chicago-based research organization, Truth in Accounting (TIA), states.

“Many state and local governments are not in good shape, despite the economic and financial market recovery since 2009,” Bill Bergman, director of research at TIA, told Watchdog.org.

The top five cities in the worst financial shape are New York City, Chicago, Philadelphia, Honolulu, and San Francisco. These cities, in addition to Dallas, Oakland, and Portland, all received “F” grades.

In New York City, for example, only $4.7 billion has been set aside to fund $100.6 billion of promised retiree health care benefits. In Philadelphia, every taxpayer would have to pay $27,900 to cover the city’s debt; in San Francisco, $22,600 per taxpayer.

TIA analyzes state and city data to make it more accessible and easy to understand for taxpayers and citizens, who TIA argues, “deserve easy-to-understand, truthful, and transparent financial information from their governments.”

By the end of Fiscal Year 2017, 63 cities did not have enough money to pay all of their bills, the report states, meaning debts outweigh revenue. In order to appear to balance budgets, TIA notes, elected officials “have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers.”

In order to determine the “taxpayer burden,” TIA divides the amount of money needed to pay bills by the number of city taxpayers. The Taxpayer Burden equals the amount of money each taxpayer would need to pay to pay off their city’s entire debt. Cities that can’t pay their bills are identified as “sinkhole cities.”

The Taxpayer Surplus is the amount of money left over after all bills are paid, divided by the estimated number of taxpayers in each city. Cities that have a surplus and or can pay their bills are called “sunshine cities.”

This year, there were 63 sinkhole and 12 sunshine cities. The top five cities in the best financial shape are Irvine, Charlotte, Washington, D.C., Lincoln, and Fresno.

Despite the majority of cities’ low rankings, financial conditions improved for most of the cities analyzed, TIA states.

“A favorable investment environment helped improve results, particularly in government pension funds [leading to a lower net pension liability],” Bergman said. “This helps illuminate a need for improving the timeliness of government financial reporting, and we’ve had a reminder in recent months that stocks can go down as well as up.”

One major problem area TIA identifies is that city leaders have acquired massive debts despite the balanced budget requirements imposed on them.

“Unfortunately, some elected officials have used portions of the money that is owed to pension funds to keep taxes low and pay for politically popular programs,” TIA states. “This is like charging earned benefits to a credit card without having the money to pay off the debt. Instead of funding promised benefits now, they have been charged to future taxpayers. Shifting the payment of employee benefits to future taxpayers allows the budget to appear balanced, while municipal debt is increasing.”

As part of the ranking, TIA graded each municipal government with scores of “A” through “F.” Governments that received a C grade came close to meeting their balanced budget requirement. “A” or “B” grades were given to governments that met their balanced budget requirements and have a Taxpayer Surplus. “D” and “F” grades apply to governments that did not balance their budgets and have significant Taxpayer Burdens.

No cities received an “A” grade. Twelve cities received a “B;” 24 a “C;” 31 a “D;” and eight failed.

TIA is a nonprofit, politically unaffiliated organization composed of business, community and academic leaders interested in improving government financial reporting.

By Bethany Blankley | Watchdog.org Jan 30, 2019

America's Largest Cities Are Practically Broke.

Sixty-three, out of America’s most populous seventy-five, cities do not have enough money to pay all of their bills. Chicago-based municipal finance watchdog, Truth in Accounting (TIA) revealed these stark news in its third annual, Financial State of the Cities. According to TIA, “This means that to balance the budget, elected officials have not included the true costs of the government in their budget calculations and have pushed costs onto future taxpayers.” TIA divides the amount of money needed to pay bills by the number of city taxpayers to come up with what it calls Taxpayer Burden™.

Based on TIA’s grading methodology, for the second year in a row, not a single one of the 75 cities received an ‘A’. TIA, however, was unable to rank and grade two of the most populous cities, Newark and Jersey City in New Jersey, because unfortunately, they do not issue annual financial reports that follow generally accepted accounting principles, GAAP.

A grade: Taxpayer Surplus greater than $10,000 (0 cities).

B grade: Taxpayer Surplus between $100 and $10,000 (12 cities).

C grade: Taxpayer Burden between $0 and $4,900 (24 cities).

D grade: Taxpayer Burden between $5,000 and $20,000 (31 cities).

F grade: Taxpayer Burden greater than $20,000 (8 cities)

Continue reading.

Forbes

Jan 29, 2019

by Mayra Rodriguez Valladares
Contributor – Banking & Insurance

TIA 2019 Financial State of the Cities.

On January 29, Truth in Accounting released its third *Financial State of the Cities* report, a comprehensive analysis of the fiscal health of the nation's 75 most populous cities based on fiscal year 2017 comprehensive annual financial reports.

This year, the study found that 63 cities do not have enough money to pay all of their bills, and in total, the cities have racked up nearly $330 billion in unfunded municipal debt. The study ranks the cities according to their Taxpayer Burden or Taxpayer Surplus™, which is each taxpayer's share of city bills after available assets have been tapped. Check out the data for your city at the State Data Lab.

Download the new report here.

January 28, 2019

Senators, House Members Request Clarity from Treasury on OZ Issues.

Seven U.S. senators and nine members of the House of Representatives – all original co-sponsors of the Investing in Opportunity Act, the forerunner of the opportunity zones (OZ) incentive – sent a letter Thursday to Treasury Secretary Steven Mnuchin, calling for further clarity on several issues related to the OZ regulations. Among other things, the letter asks Treasury to remove the requirement that an OZ business derive 50 percent of its gross income from active conduct of a trade or business in the qualified OZ, but simply require that it derive at least 50 percent of total gross income from the active conduct of its trade or business. The letter also seeks more timing flexibility for opportunity funds to make investments; says fund-level activity should not disallow the tax benefit to opportunity fund investors who don't take distributions from the fund or sell their interest before the 10-year holding period, regardless of whether there is "churn" in the opportunity fund's investments; and asks that future regulations include reasonable reporting requirements.

Learn more about OZs at the Novogradac 2019 Opportunity Zones Spring Conference, April 25-26 in Denver.

Friday, January 25, 2019

IRS Reschedules Public OZ Hearing for February 14.

Read the IRS notice.

Novogradac 2019 Opportunity Zones Spring Conference.

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Municipal Liability Under the ADA for Website Inaccessibility.

Executive Summary: Many business owners have faced litigation under the Americans with Disabilities Act (ADA) by disabled individuals who claim the businesses' websites are inaccessible. Now, many plaintiffs are turning their attention to municipalities and their websites.

Websites and the Americans with Disabilities Act: The ADA was enacted decades ago, before companies or municipalities even had websites. Yet courts across the country repeatedly have held that the law applies to internet accessibility, resulting in an increasing trend in ADA litigation over websites. Serial plaintiffs visit a multitude of websites and then pick a niche. Some sue art galleries without screen readers that enable the visually impaired to navigate the site, or hotels whose websites do not list their accessible accommodations. Lately, though, these plaintiffs and their attorneys have begun targeting cities, towns, and counties, alleging that their websites are inaccessible, most often for the visually or hearing impaired. Although the ADA offers a plaintiff only injunctive relief, the real damages come in the form of excessive attorneys' fees, which usually make it more prudent to simply settle a case as soon as possible. Yet in New York and California, two of the states with the largest volume of ADA lawsuits, local laws also offer plaintiffs monetary damages.

Implications for Municipalities: As a result, New York, California, and Florida lead the country in volume of website litigation. The trend is spreading to other states. Title II of the ADA prohibits a "public entity" from discriminating against "a qualified individual with a disability," on account of the individual's disability. The ADA regulations state that "a public entity shall take the appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." Further, "a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 C.F.R. § 35.160(a). Such auxiliary aids and services may include, but are by no means limited to, qualified interpreters on-site or through video remote interpreting services; real-time closed captioning; and closed caption decoders. 28 C.F.R. § 35.104. The specific type of auxiliary aid needed will vary on a case-by-case basis, as people with various disabilities will need different accommodations.

Among the issues raised by recent lawsuits are a plaintiff's inability to attend or otherwise participate in a town board or city council meeting due to that person's disability, and the need to watch the meeting on the town's website. Without closed captioning, for example, a hearing impaired person would not be able to participate in the meeting. Although there is no explicit requirement to livestream or simulcast a municipality's council meetings, a municipality does have a duty to provide auxiliary aids to disabled persons attempting to take part in the meetings.

In Minnesota, a disability advocate who suffers from autism has brought multiple website lawsuits against towns and counties in that state. He alleges that, as a result of his condition, he has muscular problems that impede his use of a mouse to navigate a website. Serial plaintiffs in Florida have filed dozens (if not more) of lawsuits alleging website inaccessibility, including against municipalities. One plaintiff frequently claims that videos on municipalities' websites are inaccessible to people such as himself who are hearing impaired. Still other serial plaintiffs have begun virtually crossing state lines. For example, one Florida serial plaintiff has sued Nassau County, New York over the alleged inaccessibility of its website.

Bottom Line: In sum, although there is no blanket requirement that every city needs to livestream and provide real time captioning for their meetings, or to provide any specific auxiliary aides to use its website, the proliferation of municipal website lawsuits presents a real risk of liability. Municipalities are advised to work with their IT departments or otherwise to take proactive steps to ensure that their websites are accessible to those with visual, hearing, and muscular impairments.

January 30, 2019

FordHarrison

SEC Is Ready To Execute Its 2019 Examination Priorities.

The U.S. Securities and Exchange Commission's Office of Compliance Inspections and Examinations published its 2019 examination priorities on Dec. 20, 2018. Since this occurred just prior to the implementation of a partial government shutdown, OCIE has had little chance to demonstrate how it will execute on these priorities.

With furloughed staff back in place, however, registered investment advisers, registered funds and broker-dealers can be certain that OCIE staff will quickly begin examinations focused on these identified priorities.

Please see full Issue for more information.

by Kelley A. Howes

February 1, 2019

Morrison & Foerster LLP

FINRA Announces 2019 Regulatory Priorities.

On January 22, 2019, the Financial Industry Regulatory Authority, Inc. ("FINRA") released its annual priorities letter highlighting its regulatory program's points of emphasis for the coming year. The most immediately recognizable difference between this year's edition and previous ones is that its traditional title, "Examination Priorities," has been updated to include "Risk Monitoring," the process by which the self-regulatory organization initially identifies problem areas through surveillance, firm reporting, surveys, questionnaires, and examination findings.

FINRA's 2019 "Risk Monitoring and Examination Priorities Letter" (the "Letter") also discusses three entirely new priorities: online distribution platforms, fixed income mark-up disclosure, and regulatory technology. Finally, the Letter lists ongoing areas of focus, and alerts firms that it will continue to assess protocols to handle the risks posed by "bad actors" with problematic regulatory histories.

New Priorities

Online Distribution Platforms

FINRA expressed concern that member firms increasingly engage with online platforms that distribute securities through Rule 506(c) of Regulation D and Regulation A under the Securities Act of 1933, yet incorrectly fail to treat such engagements as the sale or recommendation of securities that would trigger FINRA's rules.

An online platform is a web-based marketplace for securities that automatically displays orders, executes trades, and provides transaction data. If a platform meets the definition of an "exchange" under the federal securities laws, it must register as a "national securities exchange" or operate under an exemption, such as the one available in Regulation ATS requiring registration as a broker-dealer. Although some platform operators are not broker-dealers, many FINRA members support these platforms by acting as selling agents or brokers of record, or performing custodial, escrow, back-office, or financial technology-related functions.

FINRA made clear that even when its members do not act as operators, such support constitutes the sale or recommendation of securities and falls within the scope of FINRA's jurisdiction. Accordingly, FINRA intends to evaluate how firms conduct reasonable basis and customer-specific suitability analyses, supervise communications with the public, and meet AML requirements with respect to this business. In addition, as these platforms are often widely accessible to the public via the internet, FINRA will evaluate how firms address the risks of offering documents or other communications that omit material information, contain false or misleading statements, or promise high returns.

Regulations D and A set forth exemptions to the 1933 Act's requirement that all offerings of securities be registered with the Securities and Exchange Commission ("SEC"). Rule 506(c) of Regulation D permits broadly-advertised private offerings, but only if all investors qualify as "accredited investors" under Rule 501 (i.e., high net worth individuals, banks, insurance companies, brokers, and trusts). As such, FINRA will look closely at how member firms involved with online platforms distributing these offerings verify that all investors are accredited.

Regulation A exempts registration of public offerings that do not exceed $50 million in any one-year period, as long as issuers file offering statements with the SEC and provide investors documentation called offering circulars, similar to prospectuses (more information on offering circulars available here). Crucially, such offerings need not be limited to accredited investors, and increasingly take place via online platforms. When member firms assist with such offerings online, FINRA will evaluate the risk of excessive or undisclosed compensation arrangements between members and issuers.

Fixed Income Mark-Up Disclosure

This year, FINRA will also focus on ensuring compliance with the newest version of FINRA Rule 2232, "Customer Confirmations." Amended in May 2018, Rule 2232 now requires a member to disclose the amount of mark-up or mark-down applied to a trade in fixed income securities with a retail customer, if the member also executes an "offsetting" principal trade in the same security on the same trading day. "Offsetting" occurs when the customer's order must be satisfied out of the member's prior inventory, rather than securities that the member gained through principal transactions that day. The purpose of the amendment is to ensure disclosure of transaction cost information with respect to bond trades to parallel the existing, comparable requirement set forth in Exchange Act Rule 10b-10 for equity trades. FINRA has further encouraged consistent disclosure regarding bond trades by working with the Municipal Securities Rulemaking Board to establish similar requirements through Rule G-15. In light of these goals, FINRA has pledged to monitor any changes in firms' behavior to avoid triggering these mark-up and mark-down obligations altogether.

Regulatory Technology

Lastly, FINRA will monitor firms' use of technological tools meant to streamline compliance with the securities laws, to catch any risks arising from supervision and governance systems, third-party vendor management, safeguarding customer data, and cyber security.

Ongoing Priorities

In addition to these three new areas, the Letter also discussed ongoing areas of focus. These include Sales Practice Risks, Operational Risks, Market Risks, and Financial Risks. Although these areas have long held FINRA's attention, the Letter emphasized aspects of these topics that will be particularly important in 2019.

Sales Practice Risks

Within Sales Practice Risks, FINRA highlighted the importance of monitoring protection of senior investors, as well as controls related to outside business activities and private securities transactions. In light of the increasing number of "baby boomer" customers who are seniors, FINRA will assess firms' supervisory systems to ensure that they exercise heightened scrutiny over these types of accounts to prevent conflicts of interest and financial exploitation. In particular, FINRA will examine how firms stop representatives who act as fiduciaries to elderly clients outside of their employment—i.e., by holding power of attorney or acting as trustee—from using their broker roles to direct funds to themselves. FINRA will also review controls instilled to meet the requirements of new FINRA Rule 2165, which permits a member to temporarily hold disbursements of funds or securities from the account of a "specialized adult" if the member believes that the client is being exploited.

FINRA continues to keep eye on outside business activities and private securities transactions, and particularly cited situations in which associated persons raise funds from their customers for outside entities beyond the reach of their firms' supervision. The Letter emphasized this scenario is especially concerning when an associated person controls or has an interest in such outside entity, and when the entity has a potentially misleading name similar to the name of an established issuer. FINRA also pointed readers towards proposed FINRA Rule 3290, which would replace its current rules regarding outside business activities and private securities transactions. FINRA is currently considering public comments to this proposal.

Operational Risks

Among Operational Risks, FINRA will focus on customer due diligence and supervision of digital assets. FINRA plans to monitor compliance with FinCEN's Customer Due Diligence Rule, which became effective last year, requiring firms to identify the beneficial owners of customers that are legal entities, and monitor their accounts to recognize and report suspicious activity.

As digital assets are increasingly transacted in the securities marketplace, FINRA is particularly focused on how member firms handle these assets in compliance with the securities laws. The Letter prioritizes review of the approach firms use to determine whether a particular digital asset is a security, and whether firms have appropriate protocols in place to mitigate the risks of these transactions. FINRA pledged to pursue these goals in close coordination with the SEC.

Market Risks

One prominent market risk FINRA continues to monitor is market manipulation. This year, FINRA will do so with attention to correlated exchange-traded products and correlated options that track broad market indices. FINRA will use pattern exploration to better identify the exploitation of unique characteristics of these products through machine learning.

Financial Risks

Finally, FINRA will continue to evaluate firms' business models, particularly with respect to liquidity funding and plans in place to address potential financial crisis. The Letter specified that firms may need to update their stress test assumptions, in light of increased volatility in the market last year. Additionally, as the government securities repurchase agreement ("repo") market experienced significant rate spikes in 2018, FINRA will check whether firms whose liquidity plans rely on government repo funding have established protocols to account for similar disruptions in the future.

In Step with the SEC

Some of FINRA's concerns overlap with the SEC's priorities for the coming year, which were released in December by the Office of Compliance Inspections and Examinations ("OCIE"). OCIE is a department within the SEC that examines market participants to ensure compliance with the securities laws and monitor risk.

Like OCIE's letter, FINRA's Letter flagged digital assets and potential conflicts of interest arising from an advisor's fiduciary status as critical areas for regulatory focus. Given the recent uptick in use of digital assets in the securities space, for the first time, OCIE considered digital assets important enough to be its own prioritized category in the coming year. FINRA also echoed OCIE's attention to potential abuse when an advisor acts as a fiduciary to a client.

Conclusion

As the foregoing reflects, FINRA's 2019 regulatory slate is a mix of the old and new, reflecting the Wall Street watchdog's intent to remain true to its core regulatory mission while simultaneously staking out fresh ground. FINRA's three new priorities represent an effort to keep pace with today's ever-evolving technological landscape, and to warn its member firms this landscape is not without regulatory risk.

by Jeff Kern & Kate Ross

January 31, 2019

Sheppard Mullin Richter & Hampton LLP

Airbnb Still Isn't Collecting Local Taxes Everywhere.

While the company has stepped up collection efforts in recent years, a new report argues that local lawmakers should ensure Airbnb collects all lodging taxes.

More and more, when booking to stay in a house or apartment through Airbnb, a visitor will be charged a local or state tax, just like when staying at a hotel.

But this collection effort by the popular online hosting company isn't universal. A new report that weighs the economic benefits and costs associated with short-term rentals through Airbnb argues it should be, saying local governments should insist that the tax regimes—and other regulations—are the same as for the hotels they compete with.

"If the lodging tax in a city is X percent, Airbnb should have to pay that full amount in a transparent way," said Josh Bivens, research director at the Economic Policy Institute, in an email. "And if a building is zoned for residential units and not short-term travel accommodations, then Airbnb shouldn't be allowed to offer full-apartment rentals in it."

Continue reading.

Route Fifty

By Laura Maggi,
Managing Editor

JANUARY 31, 2019

The Economic Costs and Benefits of Airbnb.

No reason for local policymakers to let Airbnb bypass tax or regulatory obligations

Summary
"The sharing economy" refers to a constellation of (mostly) Silicon Valley–based companies that use the internet as their primary interface with consumers as they sell or rent services. Because this term is "vague and may be a marketing strategy" (AP 2019), we refer to these firms less poetically but more precisely as "internet-based service firms" (IBSFs).

Economic policy discussions about IBSFs have become quite heated and are too often engaged at high levels of abstraction. To their proponents, IBSFs are using technological advances to bring needed innovation to stagnant sectors of the economy, increasing the quality of goods and services, and providing typical American families with more options for earning income; these features are often cited as reasons why IBSFs should be excused from the rules and regulations applying to their

more traditional competitors. To skeptics, IBSFs mostly represent attempts by rich capital owners and venture capitalists to profit by flouting regulations and disguising their actions as innovation.

The debates about whether and how to regulate IBSFs often involve theories about their economic costs and benefits. This report aims to inform the debate by testing those theories. Specifically, it assesses the potential economic costs and benefits of the expansion of one of the most well-known of the IBSFs: the rental business Airbnb.

Continue reading.

Economic Policy Institute

By Josh Bivens • January 30, 2019

Did You Know That the Site of the Super Bowl, Mercedes-Benz Stadium in Atlanta, Georgia, Was Partially Financed Through Municipal Bonds?

Read more on EMMA.

Along the Coasts, Communities Gird for Rising Seas.

Facing the threat of extreme weather, coastal regions of the U.S. are stepping up protection efforts

BOSTON — State officials along the East and Gulf Coasts are pushing for projects worth billions of dollars to protect populous coastal regions from rising oceans and extreme weather.

In Maine, Democrats are seeking a public vote on a $50 million bond to fund a steel waterfront infrastructure to protect against rising sea levels. Florida's new Gov. Ron DeSantis, a Republican, recently proposed investing $2.5 billion to protect the Everglades and the appointment of a chief science officer to address environmental concerns. Louisiana's Democratic Gov. John Bel Edwards pledged $55 million in state surplus and about $300 million in offshore oil revenue for coastal and levee improvements.

In Massachusetts—where a tidal surge last year pushed the water level at Boston Harbor to the highest ever recorded, causing flooding—Republican Gov. Charlie Baker proposed raising the tax on real-estate transfers by 50% in much of the state to generate more than $1 billion over the next decade. The funds would help local communities fortify infrastructure from sea walls to flood-control systems.

Continue reading.

The Wall Street Journal

By Jennifer Levitz and Cameron McWhirter

Feb. 3, 2019 11:00 a.m. ET

New York Set to Cut 30-Year Bond Sales Amid Buyer ‘Resistance’

- **Longest-dated yields have edged up this month, hurting returns**
- **NYC official ‘exploring ways to move down the yield curve’**

The demand for 30-year municipal bonds is weakening, so New York City is reducing the supply.

The nation’s most-populous city, one of the biggest borrowers in the $3.8 trillion state and local government debt market, is planning to sell fewer of the longest-dated bonds because of investor “resistance” amid concerns about higher interest rates and price volatility, Marjorie Henning, the city’s deputy comptroller for public finance, said at a Bond Buyer Conference in New York.

She said that marks a shift from past years, when investors were moving away from intermediate-maturity debt.

30-year yields have edged up while others were little changed
The yields on 30-year municipal bonds have edged up this month while those on 10-year securities have been little changed, according to Bloomberg’s benchmark indexes. That’s driven securities that mature in 2022 or longer to the worst performance in the market, according to Bloomberg Barclays indexes.

New York plans to issue just over $10 billion of bonds for projects in fiscal year 2020, which begins July 1, $11.5 billion in 2021 and $12.6 billion the year after.

“One of the things that we’re exploring is ways to move down the yield curve,” she said.

Bloomberg Markets

By Martin Z Braun

January 29, 2019, 11:51 AM MST

Commentary: Super Bowl’s Mercedes-Benz Stadium Has That New-Subsidy Smell.

Sunday’s Super Bowl, a rematch 17 years in the making, harkens back to a thrilling 2002 title game between Tom Brady’s underdog New England Patriots and the high-flying St. Louis (now-Los Angeles) Rams. But the host of this year’s game, Atlanta’s sparkling new Mercedes-Benz Stadium, reminds us of something less thrilling: the $1 billion or so that politicians give away in unnecessary public handouts to professional sports every year.

The $1.6 billion stadium was underwritten by $248 million in local bonds. Once taxpayers pay those off, they’ll then write the NFL’s Atlanta Falcons an annual check for stadium operations and upkeep. Our calculations suggest taxpayers will pay around $1.02 billion over the course of the deal. Combined with $77 million in sales tax rebates, infrastructure investments, and city-provided land, locals could be on the hook for over five times the initial $200 million estimate.

The story is the same in most other sports cities. And like other sports teams, the Falcons rake in buckets of money: corporate sponsorships ($900 million) and personal seat licenses ($267 million) could have paid for 75 percent of the stadium cost alone, not to mention annual revenue from season ticket sales ($550 to $3,850 per ticket), TV revenue and merchandise licensing ($256 million), stadium concessions, and other events held in the stadium.

There are only so many tax dollars to go around. Misspending them to enhance sports industry profits means that public services must be cut, taxes have to be higher, or both. Atlanta will spend about as much on the stadium as it would cost to employ an additional 300 Atlanta police officers or educate 2,900 public school students for 30 years.

Perhaps even worse, Americans from coast to coast share the burden. The income that lenders earn on the municipal bonds typically used to finance stadium construction is exempt from federal income taxes. That means the rest of us have to pay higher taxes (or see the federal deficit climb even higher) to make up for the shortfall.

A tax exemption for stadium subsidies may sound like small potatoes, but Brookings Institution researchers estimated the loophole was responsible for $3.7 billion in lost federal revenue between 2000 and 2014. President Obama tried to end it, as did House Republicans in last year’s tax reform, but the sports industry won each time.

Lately there have been encouraging examples of taxpayers and principled political leaders standing up to the sports industry. Last fall local citizen groups in Austin and Seattle gathered signatures to force public referenda that would require popular votes on future stadium subsidies — which is meaningful, since 70 percent of Americans say they’re against giving money to sports teams.

Meanwhile, a group of Atlanta taxpayers are challenging another tax exemption. Their lawsuit argues that even though the Falcons’ stadium is built on publicly owned land, the fact that the team controls all events and revenue it generates means it should pay local property taxes. That could amount to $700 million over 30 years.

And in the Washington, D.C. area, Virginia Delegate Michael Webert has for the past two years partnered with Maryland Delegate David Moon and D.C. Council member David Grosso to advance perhaps the best idea of all: an “interstate compact” that would prohibit subsidies for a new Washington Redskins stadium. This would prevent their three governments from engaging in a taxpayer-funded bidding war to attract the team.

If all 50 states were to sign on to a similar agreement, we could permanently end the subsidy war for sports teams. As a bonus, it would eliminate a major reason that leagues restrict the number of teams, so new franchises could expand into more cities.

Fans may be excited to experience the Super Bowl at Atlanta’s new state-of-the-art facility, but they should remember that the money that subsidizes stadiums could go to much better purposes. Sunday’s spectacle will show yet again that the NFL doesn’t need — or deserve — public money.

By Michael Farren and Anne Philpot Tribune News Service (TNS)

Jan 28, 2019 Updated Jan 28, 2019

GFOA Members Lobby Congress on Muni Exemption.

WASHINGTON — Members of the Government Finance Officers Association are asking House lawmakers to sign onto a bipartisan letter seeking an assurance that any infrastructure legislation enacted this year won't jeopardize the tax exemption for municipal bonds.

More than 100 GFOA members who are attending their organization's winter meeting here are expected to visit members of Congress Tuesday. GFOA's goal is to get more than 218 House members, a majority of the chamber, to sign on to the letter, written by House Municipal Finance Caucus co-chairs Reps. C.A. "Dutch" Ruppersberger, D-Md., and Steve Stivers, R-Ohio.

The letter is addressed to House Ways and Means Committee Chairman Richard Neal, D-Mass., and ranking member Rep. Kevin, Brady, R-Texas.

Neal has been a longtime member of the Municipal Finance Caucus, but Brady has not and in late 2017 shepherded through his chamber legislation that proposed terminating tax-exempt private activity bonds and advance refundings as part of the Tax Cuts and Jobs Act.

The exemption for PABs was saved during conference negotiations with the Senate over the final tax bill, but the elimination of advance refundings remained in the final bill.

Emily Brock, director of GFOA's federal liaison center, told members of the debt committee Monday that preservation of the muni tax exemption should be their starting point in discussions with lawmakers.

GFOA also is asking its members — who represent local governments in places ranging from San Bernardino, Calif., and Rock Hill, S.C. — to ask House members to join the bipartisan Municipal Finance Caucus.

Legislatively in the muni bond area, GFOA's priorities include reinstatement of advance refundings and enhancement of what is being described as "bank eligible" bonds to lawmakers and their staffers.

Bank eligible bonds refers to what has been known in the muni industry as bank qualified or BQ debt.

The lobbying seeks to raise the limit for bank eligible bonds to $30 million per individual borrower and link the limit to inflation so that smaller borrowers such as small airports and rural public cooperatives can finance their bonds through local banks.

The current limit for bank qualified debt is $10 million and it applies to conduit issuers rather than the individual borrowers.

The 2009 American Recovery and Reinvestment Act economic stimulus bill temporarily increased the bank eligible bonds limit to $30 million for borrowers so GFOA has examples of how it was used.

However, in the last Congress there was no House sponsor of a bill on bank qualified loans or bank eligible bonds. Two Democrats on the Senate Finance Committee — Sens. Robert Menendez of New Jersey and Ben Cardin of Maryland — sponsored a Senate version of the bill. Their bill also would allow individual small borrowers who are part of a larger pooled debt issue to place $30 million in bank eligible debt.

As part of the new legislative push, a three-member GFOA delegation was scheduled to meet Tuesday with the staff of Senate Finance Committee Chairman Charles Grassely, R-Iowa, to explain how an increase in the limit on bank eligible bonds might benefit small borrowers in Iowa.

GFOA also wants its members to ask lawmakers to support permanent repeal of the excise tax on so-called Cadillac health plans enjoyed by member of some public employee unions. A bipartisan bill introduced last week, H.R. 748, by Rep. Joe Courtney, D-Conn., to do that already has 41 cosponsors, including 18 Republicans.

The Cadillac tax was one of the revenue raisers included in the Affordable Care Act.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/28/19 01:27 PM EST

SEC Recommends No Action Against Former Babylon Town Finance Adviser.

Jacob assisted Babylon Town with annual bonding by acting as a "liaison between the town, the brokerage firms, and bond counsel," according to a town spokesman.

The U.S. Securities and Exchange Commission has concluded its investigation into Babylon Town's former municipal finance adviser and is taking no further action.

Sheldon Pollock, assistant regional director for the SEC's Division of Enforcement, sent a letter to the town in November that stated the SEC had finished its investigation of Doug Jacob, a subcontractor for the town. "Based on the information we have as of this date, we do not intend to recommend any enforcement action by the Commission against the Town," the letter stated.

However, according to SEC guidelines, the notice "must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation," Pollock noted. An SEC spokeswoman declined to comment to Newsday.

On June 30, 2017, the SEC sent a letter to the town asking employees to preserve documents related to municipal bonding work by Jacob because the SEC believed the information was "relevant to an ongoing investigation." For more than a decade, Jacob assisted the town with annual bonding by acting as a "liaison between the town, the brokerage firms, and bond counsel," according to town spokesman Kevin Bonner.

The SEC's letters did not detail the nature of the investigation but town Supervisor Rich Schaffer has said they were looking into whether Jacob's dual roles as finance adviser and subcontractor with the town had violated the federal Dodd-Frank Act by not putting the municipality's interests ahead of his own. Jacob did not respond to a request for comment.

Jacob owns Red Hill, a general services company founded in 2007 that provides more than two dozen nonunion workers for various departments through a contract the town has with Herbert L. Greene, a solid waste consultant who lives in Williamsburg, Virginia. In the town's latest contract with Greene, which took effect in December, Greene earns $85 per hour, while Jacob, listed as a subconsultant, earns $93.50 per hour.

After the SEC announced the investigation, Jacob, who lives in Pelham in Westchester County, stepped down as finance adviser, in what the town called a temporary move pending the outcome of the investigation. Since 2017 the town has been using Capital Markets Advisors LLC of Great Neck for its annual bonding. Bonner said yesterday that the town will continue to use the company.

In a statement, Schaffer said the investigation result did not surprise him. “Doug Jacob always does what is best for the Town of Babylon,” he wrote. “He has spent the last three decades helping improve the town’s finances and is a big reason for our Triple-A bond rating.”

Newsday

By Denise M. Bonilla
denise.bonilla@newsday.com @denisebonilla

Updated January 29, 2019 9:59 PM

[Infrastructure – Stays In the USA (Please Help)]

According to the Federal Trade Commission’s website, only products made with “all or virtually all” U.S. parts that are processed in the U.S. may bear the cherished *Made in the USA label*. In addition, according to the FTC’s guidelines, products that include foreign parts, but that are assembled in the U.S., may bear an *Assembled in the USA* label. Although the FTC does not appear to have guidelines on a *Stays in the USA* label, or a *Comprises the USA* label, we can think of at least one sort of item that might qualify – our country’s infrastructure – its roads, airports, hospitals, schools and utilities. (And if we tried to print up labels to slap on all of those, we would need to add “labelmakers” to that list, too.)

It will not surprise you that this blog will then make what is for you, our readers, an obvious progression – in order to have solid infrastructure, however, we will need for the #1 financing tool for infrastructure – tax-exempt bonds – to be strong. For more than a century, tax-exempt municipal bonds have provided a significant portion of all infrastructure financing. Let’s keep it that way. In an effort to nip in the bud any future flirtations with the idea of eliminating or taking a road-grader to tax-exempt bonds (if you need a reminder of what happened in the fall of 2017 click here, here or here), Rep. Dutch Ruppersberger (D-MD) and Rep. Steve Stivers (R-OH), who are the co-chairs of the Municipal Finance Caucus, drafted a letter to the House Committee on Ways and Means highlighting the benefits of tax-exempt municipal bonds. There’s something for everyone in the letter (“an expression of fiscal federalism . . . freeing up resources for other needs. . . “), which is all of one page (clear ideas don’t require too many words, after all). We ask that you (yes, you) contact your Congressional representatives and ask them to sign onto the letter and, if you are feeling ambitious, also ask them to consider joining (if they are not already a part of) the Municipal Finance Caucus.[1]

Letter to House Committee on Ways and Means

[1] Extra credit for artistic renderings of your favorite local infrastructure with the “Stays in the USA” label.

The Public Finance Tax Blog

By Cynthia Mog on January 28, 2019

Squire Patton Boggs

National Association of State Treasurers (NAST) 2019 Legislative Conference.

February 10, 2019 – February 12, 2019

MSRB board members and staff will discuss “three burning questions” at the Mayflower Hotel in Washington, D.C.

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TAX - LOUISIANA

Board of Supervisors of Louisiana State University v. 2226 Canal Street, L.L.C.

Court of Appeal of Louisiana, Fourth Circuit - December 19, 2018 - So.3d - 2018 WL 6683220 - 2018-0254 (La.App. 4 Cir. 12/19/18)

Owners of properties, that had been expropriated by a university and Veterans Administration for construction of new medical facilities following Hurricane Katrina, moved to release monies remaining in registry of the court pursuant to a settlement agreement and city opposed contending that the monies were owed as property taxes.

The District Court granted the release. City appealed.

The Court of Appeal held that the property owners were entitled to withdraw the funds from court registry under settlement agreement.

Property owners were entitled to withdraw funds from court registry under settlement agreement; property owners had settled after expropriation of their properties to build medical facilities, and only remaining monies were those earmarked for alleged property taxes, but settlement provided that property owners were entitled to withdraw any remaining funds to the extent permitted by law, and there was no express exclusion pertaining to taxes.

TAX - INDIANA

Daw v. Hancock County Assessor

Tax Court of Indiana - December 5, 2018 - N.E.3d - 2018 WL 6498872

Property owners filed petition for review of Indiana Board of Tax Review’s determination that declined to address their annexation and storm-water claims and that they failed to show that assessment of their property should be changed.

The Tax Court held that:

- Town’s storm-water charges were taxes, rather than user fees;
- Board’s decision was a final determination;
- Claims arose under Indiana’s tax law; and
- Property owners failed to establish a prima facie case for a reduction of assessment of their property.

Town’s storm water charges were taxes, rather than user fees, as required for property owners’ appeal from Indiana Board of Tax Review's determinations on their annexation and storm-water claims to be an original tax appeal within the jurisdiction of the Tax Court; town imposed storm-water charges on nearly all the real property within its corporate boundaries, owners of that property received bills for the charges either on a monthly basis with the billing statements for their other town services or biannually with their property-tax bills, and property owners could not decline the service or control the extent to which the service was used.

Indiana Board of Tax Review's decision with respect to property owners annexation and storm-water claim was a final determination, as required for property owners' appeal from the decision to be an original tax appeal within the jurisdiction of the Tax Court, even though Board determined that it lacked the statutory authority to address the claims; decision ended the administrative process with respect to those claims and ultimately compelled the property owners to challenge that determination by filing an appeal with the Tax Court.

Property owners annexation and storm-water claims arose under Indiana's tax law, as required for property owners' appeal from Indiana Board of Tax Review's determinations on the claims to be an original tax appeal within the jurisdiction of the Tax Court, even though claims did not challenge the collection of taxes directly; claims could arise under Indiana tax laws if they challenged earlier steps in the taxation or assessment process.

Property owners failed to establish a prima facie case for a reduction of assessment of their agricultural property, even though they applied an alternative valuation methodology as allowed under the guidelines of the Department of Local Government Finance; property owners failed to show that they actually converted property's decreased crop production capacity into a value or that their valuation method comported with generally accepted appraisal principles

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'Green Bonds' May Be Our Best Bet for Environmental Damage Control.

The popularity of green bonds as a way to finance environmentally friendly projects is on the upswing, say Malcolm Baker and George Serafeim.

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

In the absence of a global carbon pricing scheme, bond markets will be central to financing climate change and other environmental interventions. So-called green bonds appeal to investors who are looking for a safe place to park their money, as well as doing a little bit of good for the world.

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

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

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

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

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

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

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

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

Green bonds priced at a premium

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

That means that investors are placing a premium on green bonds and are willing to accept a lower rate of return in exchange for the environmental benefits. Given the typical duration of municipal bonds, this yield difference amounts to a green bond price that is in the range of 0.6 percent to 2 percent higher than a comparable brown bond.

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

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

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

"One way to make them more appealing to issuers is to offer them at more favorable terms," Baker says. "If I'm an entrepreneur or state government and I have to choose between a project that is green and one that isn't, one factor in that decision will be the terms at which I can finance it. That is the sense in which green bonds can theoretically push firms and municipalities in the direction of doing something environmentally friendly."

That would make green bonds attractive as part of the solution to improving the environment and combatting climate change. “It’s one of the many different actions in a larger menu of potential solutions, that would include investor engagement with corporate management and more powerful political interventions such as regulation and taxation,” Serafeim says.

As green bonds continue to gain in popularity, the researchers are interested to see if they continue to command a premium price. As more green bonds are issued, especially by government entities in Europe and China, their price could fall due to an increase in supply. On the other hand, as they continue to gain in popularity, more investors could value green bonds, pushing up price due to increased demand.

“It is a bit of a battle between the number of investors who place extra value on green bonds versus the total supply of these types of bonds,” Baker says. Either way, the positive trend towards seeing more interest in green bonds from both municipalities and investors can only help in the battle to address climate change.

29 JAN 2019 **|** by Michael Blanding

Harvard Business School

Infrastructure Must Be the Top Priority for Congress this Year.

With fresh crops of lawmakers on Capitol Hill, infrastructure is a popular topic again. Will the conversation change or will urgent infrastructure needs knotted with unending debate over failed delivery plans continue to go unaddressed? Lasting positive economic benefits require aligning public financial incentives with compelling projects. Thoughtful dialogue is necessary on risks, returns, operations, maintenance, state and local responsibilities, and the mix of sector funding for the coming decades.

Infrastructure is a broad subject area with a leading purpose to increase nationwide economic productivity and social welfare. Our occasional infrastructure disruptions offer blunt reminders that essential services cannot be taken for granted. It is easy to project the long term fallout of critical infrastructure failure when it results in depressed productivity, stunted economic growth, and perhaps lower quality of life. Reducing federal regulatory red tape may no longer be the largest impediment.

While the federal government plays an important role, state and local governments are best positioned to advance new innovative solutions. Reinvigorating our infrastructure can be achieved through introduction of an updated process for the value over a full life cycle of the project including design, building, finance, operation, and maintenance. Better interagency coordination is also required. The challenges remain the same today as they always are with voluminous needs spread across multijurisdictional projects with far ranging levels of financial flexibility.

Greater consumption of data driven insights combined with changing economics, glaring upfront costs, dangling phantasmagoric federal incentives and impediments, and insufficient government interagency coordination make it virtually impossible to craft good policy addressing the nationwide needs in the short term. Finding the balance within legal and business frameworks to bring the best value to all regions, parties, citizens, and investors will be evolutionary rather than revolutionary.

Ideas embrace more than transportation, renewable energy, or water projects. Social infrastructure is ripe with opportunities such as health care, housing, and education. New construction is not required for every project. Years of pent up demand combined with innovative materials, engineering, and information can allow a publicly sponsored enterprise to provide a quality product while exhausting possibilities of each revenue stream, along with creating and capturing some value previously lacking.

Information technology can now precisely measure operational services including toll road use and electricity consumption. Many elements run under separate public agencies or governance structures. Exploiting value from existing operations through analytics can help achieve optimal utilization. Innovative financing strategies will also surface, but public private partnerships are establishing a strong beachhead. Diverse capital is available with many investors seeking to finance or take on projects.

In a public private partnership, the government transfers economic risks to the private sector for a set period while maintaining the ownership of public assets. Significant capital is available to finance viable projects through public private partnerships. Incentives are needed for projects with unclear economics such as rural broadband. Traditional municipal bonds remain reliable vehicles for financing costs. Publicly sponsored enterprises can create value previously lacking, but advancements offer their own challenges such as cyber threats to advanced infrastructure.

Public policy must keep the focus on cyber protections as we modernize our infrastructure. Incentives should include performance contracts and maintenance plans. Projects should use time tested financing options such as municipal bonds and incorporate public private partnerships. Regional initiatives may prove to be better investments than shovel ready multijurisdictional national projects. Lawmakers should streamline and expand interagency coordination and employ new technology to operate and maintain infrastructure. The process of aligning incentives must be updated to refocus on value over a full life cycle of the project. Congress should take up this important work. The conversation needs to change.

THE HILL

BY ROBERT AMODEO, OPINION CONTRIBUTOR — 02/01/19 06:00 PM EST

Robert Amodeo is the head of municipal investments at Western Asset Management, which is a subsidiary of Legg Mason. His opinions are not meant to be viewed as investment advice or a solicitation for investment.

State of the States 2019: Getting America Connected.

The nation's governors are laying out policy priorities for the coming year — some for the first time. Many are focused on technology-driven economic and workforce development as paths to prosperity.

The influx of new governors across the country cast a slightly different tone in this year's State of the State addresses. Typically the most notable policy speech given by each state's top elected official, veteran governors often make the address equal parts retrospective and prospective, pointing to their successes during their terms thus far, while hinting at their plans to take on issues that continue to need attention. But new governors don't have a record to point to just yet, so their speeches tend to be more forward-looking. Government Technology editorial staff reviewed each speech and rated it from 1 to 5 based on the strength of its technology initiatives.

Based on early speeches, common themes predominate, with most governors laying out plans to strengthen state education systems with a parallel focus on job creation. Technology factors heavily into both. Many speeches refer to specific programs aimed at injecting more resources into things like coding and other science, technology, engineering and math (STEM)-related curriculum. Likewise, luring and growing tech-related industry to their states is high on the list of many leaders who are eager to rattle off the names of new investments from familiar tech giants with footprints throughout the country.

In easily the most often discussed tech-related priority, about half of governors got specific about the importance of continuing to work on extending the benefits of high-speed Internet to every corner of their state. Incoming Virginia Gov. Ralph Northam said it was the top issue identified by his constituents, while many others included specific budget requests for broadband in their speeches. Colorado Gov. Jared Polis offered a familiar sentiment on connectivity: "In the 21st-century economy, broadband is critical infrastructure that everyone must have access to," he said, asking the Legislature to join him in delivering for Coloradans.

Connecticut Gov. Ned Lamont lamented the state's budget shortfall, and pointed to some specific ways technology could help address it. Advocating for a one-stop-shop-style experience for citizens interacting with government, he called on policymakers to support the creation of "the first all-digital government" in Connecticut, with an emphasis on shared services and tech-powered efficiencies throughout the enterprise. North Dakota Gov. Doug Burgum again delivered a tech-heavy speech, asking lawmakers to support nearly $200 million in IT infrastructure improvements to strengthen cybersecurity and modernize key programs with updated tools. Burgum was also one of a few state leaders to specifically talk about the potential of emerging technologies, asking for an additional $30 million for infrastructure to support the development of the drone industry in North Dakota.

See our analysis of how the rest of the nation's governors fared below. Evaluations will be added as additional speeches are delivered.

Continue reading.

GOVTECH.COM

BY NEWS STAFF / JANUARY 31, 2019

Policy and Politics Program Director Talks Effectiveness of Public-Private Water Systems.

On Monday, the Ford School of Public Policy hosted an event featuring Manny Teodoro, director of the Policy and Politics Program and associate professor at Texas A&M University, who has conducted significant research on the nation's water systems. The event, titled "Water System Finance: the Political Pitfalls of Public-Private Partnerships," covered the effects of public-private partnerships on water systems.

Teodoro started his talk by introducing a unique caveat in the water market — the disparity in the visibility of the price of water and its quality in the market.

"With water, the cost is much more visible than quality," Teodoro said. "Most of the contaminants in water are invisible to us. However, the price of water is very easily and readily observable."

As such, Teodoro argued if a water system is run by the local government, then it will naturally focus on reducing the price of water to appease residents — a stance that will also inadvertently lead to lower water quality.

“The goal of every politician who wants to get re-elected wants to minimize price and maximize quality,” Teodoro said. “However, because of how much more visible prices are than quality for water, the long-run outcome is low prices and low quality.”

Alternatively, in private-run water systems, the price companies are allowed to charge for water is limited by how much they invest in their water infrastructure, which is a limit enforced by the public utilities commission. Because of this, they are incentivized to over-invest in their water infrastructure, which will lead to high quality water but also high prices.

“The goal of every company is to make profit,” Teodoro said. “As such, they are incentivized to maximize investment so that the public utilities commission will allow them to raise prices in conjunction with their higher investments. As such, private water tends to be high price and high quality.”

However, Teodoro also argued public-private partnerships are not the solution to this dilemma.

“In public-private partnerships, the local government sets the price for the water and the private company has to figure out how to maximize its profits within that,” Teodoro said. “As such, the incentive for these private companies is to reduce operating costs. This results in low-priced water but also low-quality water.”

Furthermore, Teodoro disputed the perception that public-private partnerships are a solution for financially constrained water markets, emphasizing how they are a mechanism, not a self-sufficient source of revenue.

“Privatization of public partnerships are not sources of capital. In the end, the money’s coming from the same people,” Teodoro said. “The rate increases are still going to be needed to upgrade infrastructure, or else they will continue to fail.”

After the talk, Sheny Puspita, a Public Policy graduate student, reflected on her views of the water systems and her main takeaways from the talk.

She discussed how more successful systems tend to be small, privately-owned water plants, but improvements are needed in larger, public water systems.

“The private-owned model only works with small-scale water plants, but we need to improve number of larger-scale water plants,” Puspita said.

Puspita also acknowledged private water plants do tend to produce higher quality water and operate more efficiently.

“I believe that private water plants will enhance the quality of water and efficiency of water plants,” she said.

Puspita spoke of her concern of how politicians would use public-private partnerships to shield themselves away from their responsibility for their constituencies’ water systems.

Marc Jaruzel, a Public Policy graduate student, echoed some of the skepticism for public-private water system partnerships.

“Public-private partnerships aren’t necessarily the fix-all,” Jaruzel said. “There is some evidence that it may be beneficial, but we just can’t say definitively whether P3s will be beneficial or not.”

Jaruzel commented on how having competing public water systems would not be a feasible solution either.

“I think public competition would be really challenging because you would have to have different pipes laying in the ground from different companies,” Jaruzel said. “I think it would take a really creative solution to get utilities to compete in a similar way as other businesses.”

THE MICHIGAN DAILY

MICHAEL ZHANG
Daily Staff Reporter

Monday, January 28, 2019 – 8:38pm

In the Zone.

A new federal program may be a boon to distressed cities – if it targets the right ones.

York, Pa., grew up making things. The brick smokestacks that break up the skyline are inescapable reminders of its industrial past. Buildings that once housed factories employing hundreds of workers have now been converted into warehouses that employ only a handful of people, at wages that don’t come close to rivaling those of their industrial predecessors.

Mayor Michael Helfrich grew up in York. He remembers when middle-class jobs were only a short walk away from the homes of the men and women who produced everything from Pullman cars to Pfaltzgraff dinner plates to York Peppermint Patties. Those companies are gone. Pullman succumbed to competition from Detroit automakers. Hershey’s bought the York candy factory and moved production to its own plants, which eventually landed in Mexico in 2009. Pfaltzgraff was purchased in 2005 and its operations moved to China.

But most of the jobs haven’t left because of competition or consolidation as much as they’ve left to escape York’s taxes, which are almost three times the rate in surrounding York County. The taxes have led to a vicious cycle — innovation, development and flight — that has persisted for decades. “We used to build wealth in the city of York,” Helfrich says. “In almost 50 years, we have not seen that. Our growth has been, ‘Can you come here and give us some jobs?’ Meanwhile, the wealth was going somewhere else. It wasn’t building in York.”

Along with the commercial exodus came an exodus of residents. York’s population declined by almost a third from 1950 to 2000. It has since inched back up as families pushed out by rising rents in New York and Philadelphia, or those fleeing crime in Baltimore, have landed in the city. But with unemployment approaching 9 percent, York is now a place with epidemic levels of poverty. More than one-third of the city’s residents live in poverty, a higher rate than in Baltimore or Philadelphia and twice the poverty rate in New York City.

Nonetheless, Helfrich has high hopes that a new federal incentive package might bring business back to York. So-called opportunity zones, an incentive with bipartisan support, were included in the 2017 federal tax law to lure capital from Wall Street to struggling cities and towns across the country. The Economic Innovation Group (EIG), a D.C. think tank launched by Sean Parker, the founder of Napster and former president of Facebook, worked for four years on the incentive, which is meant to fix a problem that has been evident to economists and mayors for years but has eluded a solution.

That problem worsened when the recession officially ended in mid-2009. The ensuing recovery was uneven. The economic expansion was led by a handful of urban hubs, the rock stars of the recovery. Austin, Los Angeles, New York City, San Francisco, Washington, D.C., and their surrounding metro areas were far outpacing most of the country in job growth. From 2010 to 2017, nearly half of the job growth occurred in the nation's largest 20 metro areas. About half of the net increase in business establishments across the country from 2007 to 2016 took place in either D.C. or New York City. A generation ago, the opposite was the case. Job growth in the 1990s was led by rural and suburban counties, not urban centers. What the post-recession economy has favored — an educated workforce, density and an established startup culture — has left places like York far behind. "The rising tide," says John Lettieri, president and CEO of EIG, "isn't lifting all the boats."

Lettieri, Parker and their colleagues created a blueprint they hoped would help even out jobs and wealth creation across the country. Investors had gotten fat on Wall Street bets. Much of their newfound money was sitting idle. If those funds could be shielded from capital gains, EIG theorized, they could be moved off Wall Street and invested in new ventures in other places.

Their idea was to allow investors to reduce their capital gains exposure in exchange for investment in certain low-income Census tracts to be designated as opportunity zones. For a place to qualify as an opportunity zone, at least 20 percent of its residents have to live in poverty, or the earnings of the residents have to be below 80 percent of the area's median income. In return for their money, investors would be able to reduce the capital gains tax liability on their investment by 10 percent if they left their money in the zone for five years. If they didn't move the money for seven years, they would receive a 15 percent reduction in capital gains taxes. If they kept it there 10 years, they would receive a 15 percent reduction in capital gains taxes and escape any liability on gains that came from investment in the zone. Congress bought into the idea. U.S. Treasury Secretary Steven Mnuchin estimated that $100 billion in capital would move off Wall Street as a result of the program.

Governors were allowed to mark 25 percent of the qualifying Census tracts in their states as opportunity zones. In June, the Treasury Department certified more than 8,700 zones across the United States and Puerto Rico. The exact rules are still being set, but investors needed to have their money in the opportunity zone funds by Dec. 31 to take full advantage of the benefit.

Helfrich pounced on the chance to leverage the tax incentives in opportunity zones, hoping they would be enough to overcome the high taxes in the city. He worked closely with Gov. Tom Wolf, himself a York native, to designate five city Census tracts as opportunity zones. As the deadline approached in December, only a handful of investors showed interest in York's opportunity zones, and most of those weren't large private equity firms from outside the city, but local investors.

York's problem attracting outside investment to its opportunity zones has been even more frustrating considering where capital was moving. An opportunity zone fund targeting Chicago raised $105 million in 17 hours in November. When Amazon announced it had picked Long Island City, in the New York borough of Queens, as one of two sites to host the company's second headquarters, investment sprinted to the opportunity zone that would be adjacent to the tech giant. Goldman Sachs, for example, announced it was putting $83 million into a real estate deal nearby.

Like York, Long Island City was once an industrial hub. The red neon Pepsi-Cola sign on the banks of the East River lit up the front of a bottling plant that churned out thousands of sodas each day. In the 1920s, the boom from industry lured the Bank of Manhattan to build a tower in Long Island City at the foot of the newly constructed Queensboro Bridge. When the bank opened in 1927, it was the tallest building in the borough, a title it would hold for 63 years. The surrounding square near the foot of the cantilever bridge was dubbed the Times Square of Queens.

Long Island City's fortunes turned, just as they did in York. The bottling plant closed in 1999. The Bank of Manhattan branch was abandoned. The hands on the tower clock stopped ticking. And the slow and steady economic decline took its toll on the residents. As the factories emptied out, the demographics of the surrounding neighborhood shifted. The neighboring housing project went from a mix of white and black working-class people to largely poor residents, according to New York City's own estimates, and almost exclusively black and Latino.

But unlike York, Long Island City has recovered in the last decade. With Manhattan and Brooklyn rents choking the wallets of the city's young professionals, it has become one of the hottest places in the city for renters, especially affluent white renters. From 2010 to 2015, Long Island City was tied for first place among neighborhoods in New York in its influx of white residents. Median home prices went up 51 percent in the last six years. And rents in the neighborhood are the highest in Queens, according to the real estate firm Zillow.

The old Bank of Manhattan tower is slated to be transformed into office and retail space with a luxury apartment complex right next door. Amazon will make an area already attractive to affluent professionals even more attractive. The company is kicking in $2.5 billion in real estate investment in the neighborhood. But since poverty persists in Long Island City, especially in the housing projects, the area was certified as an opportunity zone in June. The designation allowed Goldman Sachs to cash in on its real estate deal. The company called the timing of its announcement, on the same day as Amazon declared that it would move to Long Island City, a coincidence. And perhaps it was, but analysts see a trend in the actions of major investors. "If you look at the behavior of the real estate industry," says Timothy Weaver, an urban policy assistant professor at the University at Albany, "it is amassing vast amounts of money and directing money to take advantage of the policy." To critics, opportunity zones are threatening to bestow huge grants on communities that don't really need them.

Opportunity zones are the latest in a long series of efforts by the federal government to direct investment to impoverished areas. Since the New Deal, the government has been trying to jumpstart economic growth in portions of the country where the economy was faltering. In the 1970s, the Department of Housing and Urban Development launched Community Development Block Grants and Urban Development Action Grants to revive struggling cities. Those programs were popular with the progressive administrations and congresses that dominated federal politics during that period.

Also in the 1970s, Republicans, led by U.S. Rep. Jack Kemp, began proposing market-driven solutions to the same problems, referring to them most often as enterprise zones. Nearly all of these solutions were based on tax incentives or the loosening of economic regulations. Slightly different versions, under different names, were created and enacted by Democrats in the Clinton and Obama years. But the percentage of Americans living in poverty remained nearly unmoved through all the decades. Equally troubling was the increase in those living in extreme poverty. The number of Americans whose earnings equal less than 50 percent of the federal poverty line has more than doubled in the last 40 years, according to the Census.

Opportunity zones borrows a bit from the playbooks of the previous plans. But there are some significant changes. The market-driven solutions of the last 40 years have been in line with conservative supply-side economic policies. Investment, goes the theory, drives the economy. Cut taxes and investors will use their capital to make more money and, in turn, create jobs. Democrats in the 1980s and 1990s were largely skeptical of supply-side economics. The party insisted that market-driven programs include local hiring and local contracting provisions to make sure jobs were created in the community and the gains made by investors were shared with local businesses. For example, the empowerment zones that were established under the Clinton administration gave businesses a tax credit for hiring employees who lived in the zones. No such provisions exist in the opportunity zone program, despite backing from some prominent Democrats. Urban policy analysts see the program as an unbridled supply-side program. “It’s almost a purer version of the original vision,” Weaver says. “What happened with the empowerment zones and the enterprise zones is that Congress made compromises that watered them down.”

While companies aren’t required to hire a certain number of local employees, firms must have 70 percent of their tangible assets (property, materials and goods for sale) within the zone, a regulation designed to keep large retailers such as Amazon and Walmart from cashing in on the tax break. Even so, critics still characterize the program as too wide and unrestricted, noting that hot markets such as Chicago, Los Angeles and New York have already shown the most visible successes. Even their poorer neighborhoods are seen as better bets. That’s why Long Island City, not York, Pa., is attracting so much investment. And what critics fear is that the feverish investment in hot markets will lead to displacement of low-income residents. “If these investments are going to be luxury hotels and real estate investments it’s not going to help low-income people,” says Chris Edwards, director of tax policy studies at the Cato Institute. “It’s more likely to displace them.”

When EIG designed opportunity zones, the drafters expected that real estate would be — and in their estimate, should be — the first place for investors in the zones to put their money. Businesses would need offices, and workers would need housing. Gentrification was a concern, so the program included a condition that a developer buying a piece of real estate must make an equal investment in improving the property. If developers paid $1 million for a property in a city, they were required to make $1 million in improvements.

However, in the rules released by the IRS in October, the value of the land was taken out of the calculation for necessary improvements on a property. So only the structure, if there is one, will be factored into the amount of improvement necessary to qualify under the program. In York, Helfrich is worried that investors might see his city as a place to buy up real estate and not invest in businesses. Developers have long been buying factories in the city and converting them to condominiums and loft apartments. “We are very aware of the potential pitfalls of this program,” Helfrich says. “Our city wants to attract job-providing businesses and discourage those who want to gentrify the neighborhoods in our city.”

Despite the market-driven underpinnings behind opportunity zones, libertarian-leaning conservatives are critical of the plan. For one thing, they insist, allowing governors to pick the areas of investment politicizes the program. The original zone map proposed for York included residential neighborhoods. But a lobbying effort by elected officials convinced the governor to move the zones to commercial areas where city leaders wanted the investment to go.

Another concern is that by lumping cities like Chicago, New York and Washington, D.C., with places such as Akron, Ohio; Clarksdale, Miss.; and York, the program is only encouraging more investment in superstar cities. “If you look in Los Angeles and New York City, many of the places that are labeled opportunity zones are places where investment is already happening,” says Weaver, the urban policy professor. “And investors are going to get tax breaks on investments that were going to happen anyway.”

Not only are the zones in the less attractive markets forced to compete with places such as Long Island City for investment, but the smaller markets are also competing with each other. “There are more than 8,000 Census tracts with the same tax advantage," says Brett Theodos of the Urban Institute. It'll be hard for these eager supplicants to distinguish themselves from one another. It would be simpler, he says, to play it safe and invest in Chicago, New York or Seattle.

Then there's the issue of the Treasury Department rules. One of them states that 50 percent of the gross income generated by a business in a qualified opportunity zone must result from sales made within the zone. That would essentially disqualify all but retail and real estate investment. Lettieri of EIG has been critical of the 50 percent gross revenue rule, saying that if it remains in effect, opportunity zones will fail to spur the kind of economic activity that can revive the areas the program was designed to serve. "The No. 1 outcome we should be driving for here is to support new businesses," Lettieri says. "The gross income rule is damaging to businesses unless you are a laundromat or hardware store who doesn't sell anything online."

The public comment period for the Treasury rules closed Dec. 14. EIG submitted comments in opposition to the 50 percent rule, but as of publication, it was still in the tax code.

The combined result of all this is that Helfrich is fielding only a handful of calls from outside investors. Still, there is some interest. John McElligott is the founder and CEO of York Exponential, a robotics firm that programs, designs and constructs its robots in York. On the day Governing visited the robotics plants, McElligott was set to meet with angel investors about the company's expansion. McElligott wants to construct a $136 million robotics campus on a parcel of land called the Northwest Triangle. Gov. Wolf gave the company $6 million toward the project, but York Exponential is looking to investors for the rest of the capital to create what the CEO believes will transform York into a tech hub for hardware and manufacturing. "We are not going to be a research and development community," McElligott says. "York is going to be less Facebook and more Ford."

The campus, McElligott hopes, will be the tipping point in York's renaissance. Once the new facility is operating, he believes other firms will come to York to compete either in building robots or building the materials to support his businesses' growth. As the opportunity zone program was being developed, McElligott traveled to Washington, D.C., at least once a month to lobby on behalf of York's interest.

The proposed York Exponential campus won't die if the 50 percent gross revenue rule remains in place. McElligott is confident his investors will stick with his vision whether or not they reap the benefits of a tax break. But that might not be the case for the tech firms Helfrich and McElligott would like to see orbiting the campus when it is complete. "The program under the 50 percent rule encourages you to create a pizza shop," McElligott says. "We are trying to create jobs." McElligott and Helfrich want what they describe as middle-income jobs, not retail or restaurant employment. In 2017, retail paid an average of $14 an hour, or roughly $30,000 a year, if the employee worked 40 hours a week and received paid leave, according to the Bureau of Labor Statistics.

Even if the Treasury Department removes the 50 percent rule, investors will need some handholding if they are to see places such as York as genuinely appealing targets. None will want to lose the gains made on Wall Street in a risky business proposition. "Naturally the capital in this program is going to flow to real estate," says Steve Waters, founder and CEO of SMB Intelligence, a firm that provides local government with data and information on how to grow their small business sectors. "It's only going to flow to businesses if it's directed."

Many potential investors are looking to the Treasury right now to finalize the rules governing the program. "Investors are champing at the bit to invest in opportunity zones," says Rebecca Mitich, a partner with Husch Blackwell, a law firm that specializes in using tax credits to develop real estate. "There are huge New York private equity funds and giant fund managers who are ready to go but still want additional guidance to proceed.

Lettieri believes the rules for the program are not set in stone. He and others expect more rules, perhaps a revision of the 50 percent gross revenue rule, to come in the spring. And even as the real estate activity around opportunity zones has been red hot, at what appears to be the expense of commercial business applicants, Lettieri and other backers of the opportunity zone idea believe business capital will begin to come off the sideline in 2019 as the program is better defined. If that doesn't happen and the zones remain largely a benefit for real estate development, their creators believe they won't reinvigorate communities like York. "Real estate is the floor, not the ceiling," Lettieri says. "If the road ends with real estate, that is a big shortcoming."

GOVERNING.COM

BY J. BRIAN CHARLES | FEBRUARY 2019

S&P Webcast Replay: 2019 Global Not-for-Profit Higher Education Outlook

Jan. 31, 2019 | New York, NY

S&P Global Ratings U.S Public Finance team held a live, interactive webcast on Thursday, January 31st at 2:00 pm Eastern Standard Time, for a discussion on the Global Not-for-Profit Higher Education sector Outlook, which covered both the U.S. Not-for-Profit Higher Education sector as well as International Not-for-Profit Higher Education conditions.

View The Webcast Replay

Tracking the Unequal Distribution of Community Development Funding in the US.

Abstract

There are clear winners and losers in the competition to attract this capital, including resources coming from the federal government, with some areas drawing more capital than others, even after adjusting for relative needs. Using our recently developed tool, Community Development Financial Flows, we measured flows of federally sponsored or incentivized community development capital to all US counties with more than 50,000 residents. We found that large counties received disproportionately more funding than small counties, and that the level of distress a county experiences does not directly relate to level of funding.

Download report.

The Urban Institute

by Brett Theodos & Eric Hangen

January 31, 2019

- Skadden's 2019 Insights: Political Law: What to Consider When Providing Investment Fund Services to US State and Local Government Entities.
- MSRB to Discuss SEC's Concerns on Disclosure at Quarterly Meeting.
- Hawkins Advisory: Final TEFRA Hearing & Approval Regulations
- FINRA Bond Facts.
- Adviser: EPA Letter to IRS on Opportunity Zones Merits Attention
- Save the Date: Upcoming BDA Infrastructure Events
- *Lake Ridge New Tech Schools v. Bank of New York Mellon, Trust Company, N.A.* – After indenture trustee processed fraudulent pay affidavit, District Court holds that corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds failed to adequately allege that exculpatory clause in agreement was contrary to public policy and failed to adequately allege duty of indenture trustee independent of agreement, and thus failed to state negligence and gross negligence claims.
- And finally, Great Moments in Pedagogy – Eugenics Division is brought to us this week by *Brewington v. City of Philadelphia*, in which the kindly physical education teachers at Walter G. Smith Elementary School sent nine-year-olds crashing head-first into an unpadded concrete wall during a relay race, resulting in some serious head trauma. At first glance, tragic. But on second thought… Might it make sense to select the uh, (in)appropriate children, and speed up the inevitable via concrete wall? 'Cuz singling out the mentally/physically enfeebled for special treatment has always worked out well, right? Right? Hey, where's everyone going?

PUBLIC UTILITIES - CALIFORNIA

San Diego Gas & Electric Company v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - January 15, 2019 - F.3d - 2019 WL 190306

Public utility that provided energy services in California petitioned for review of Federal Energy Regulatory Commission (FERC) declaratory order applying FERC's cancelled or abandoned electricity transmission facilities incentive, which encouraged new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, only prospectively, to investment that had yet to occur, and declining to apply the incentive to $31 million in costs that the utility had already incurred over four-year period, prior to the obtaining the declaratory order.

The Court of Appeals held that:

- Utility was aggrieved by FERC's declaratory order, and thus Court of Appeals had jurisdiction to review utility's petition challenging the declaratory order, and
- FERC's declaratory order was consistent with FERC's incentive rule and supported by substantial evidence.

Public utility that provided energy services in California was aggrieved by declaratory order of Federal Energy Regulatory Commission (FERC), that FERC's cancelled or abandoned electricity transmission facilities incentive, which encouraged new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, did not apply to $31 million in costs that utility already incurred on project, and thus Court of Appeals had jurisdiction to review utility's petition challenging the declaratory order; even though abandonment of the project might never occur, FERC's determination made the utility's project a less attractive investment for outside funders and partners, increasing costs to the utility.

Federal Energy Regulatory Commission's (FERC) declaratory order that public utility failed to establish requisite nexus between abandonment incentive, which encourages new investment in transmission infrastructure projects by assuring recovery of costs of projects abandoned for reasons beyond their developers' control, and $31 million in costs utility already incurred before it sought declaratory order, was consistent with FERC's incentive rule and supported by substantial evidence; order aligned with FERC's longstanding policy that rate incentives must be prospective and that there must be a connection between the incentive and the conduct meant to be induced, and there was no evidence that the utility's four years' worth of investment in the project was beneficially affected by any assurance provided through the abandonment incentive.

SCHOOLS - FLORIDA

Citizens for Strong Schools, Inc. v. Florida State Board of Education

Supreme Court of Florida - January 4, 2019 - So.3d - 2019 WL 98253

Public school students, parents, and citizen organizations brought action against State Board of Education and various state officials for declaratory judgment that Board violated its paramount duty to provide uniform, efficient, and high quality system of free public schools, as required by Florida Constitution.

Following bench trial, the Circuit Court ruled in favor of defendants. Plaintiffs appealed. The District Court of Appeal affirmed. Plaintiffs' application for review was granted.

The Supreme Court of Florida held that challenge to adequacy of entire K-12 system failed to present any manageable standard by which to avoid judicial intrusion into legislature's powers.

Blanket constitutional challenge to adequacy of entire K-12 system failed to present any manageable standard by which to avoid judicial intrusion into legislature's powers in suit alleging low achievement and wide disparities, particularly for children experiencing poverty or attending school in poorer districts; term "high quality" in constitutional amendment requiring adequate provision for "high quality education" lacked straightforward content and could reasonably be viewed as "puffing," and basing measurement of "high quality" solely on assessment results for legislature's core content standards would constitutionalize those standards, could have perverse effect of weakening curriculum standards, and ignored legislative revision of standards.

UTILITY CONNECTION FEES - IDAHO

North Idaho Building Contractors Association v. City of Hayden

Supreme Court of Idaho, Boise - August 2018 Term - December 28, 2018 - P.3d - 2018 WL 6817041

Building contractors association filed action to have city's sewer connection/capitalization fee declared unlawful because as an impermissible tax, rather than a fee for services.

The District Court held fee was lawful and dismissed complaint. Association appealed. The Supreme Court of Idaho vacated and remanded. On remand, the District Court entered summary judgment that fee was impermissible tax, treated the taking as regulatory taking and denied equitable defenses and awarded compensation and attorney fees and costs. City appealed, and association cross-appealed.

The Supreme Court of Idaho held that:

- Study on reasonableness of fee was relevant and should have been considered before trial court granted summary judgment on remand;
- Allowing city to present the evidence would not offend notions of fair play and justice;
- Association's failure to file notice of claim under Idaho Tort Claims Act (ITCA) did not bar its federal takings claim;
- Association's failure to seek review under Regulatory Takings Act did not bar its federal takings claim;
- Factual issues as to whether city conferred a benefit on association as result of sewer connection fee precluded summary judgment on city's equitable defense of unjust enrichment; and
- Simple interest, rather than compound interest, applied to federal takings claim.

Study on reasonableness of city sewer connection/capitalization fee was relevant and should have been considered, after remand from Supreme Court, before trial court granted summary judgment to building contractors association that fee was impermissible tax; trial court misread Court's reversal of prior summary judgment.

Allowing city to present evidence of reasonableness of city sewer connection/capitalization fee in response to building contractors association's summary judgment motion following remand from Supreme Court decision would not offend notions of fair play and justice; city was not required to conclusively establish fee's purpose when imposed, its evidence, construed in its favor, established case for reasonableness, and allowing determination to stand could lead to a windfall to developers at taxpayer expense.

Genuine issues of material fact arising from consulting study on city's $2,280 sewer connection/capitalization fee precluded summary judgment for building contractors association that fee was impermissible tax.

Building contractors association's failure to file notice of claim under Idaho Tort Claims Act (ITCA) did not bar its federal takings claim arising from city's sewer connection/capitalization fee.

Building contractors association could not seek compensation under Regulatory Takings Act for city's sewer connection/capitalization fee, and, thus, association's failure to seek review under the Act did not bar its federal takings claim.

Genuine issues of material fact as to whether city conferred a benefit on building contractors association as result of sewer connection fee precluded summary judgment on city's equitable defense of unjust enrichment in association's suit challenging fee.

Simple interest, rather than compound interest, applied to federal takings claim, as post-judgment interest was a procedural matter governed by state law.

INDENTURE TRUSTEES - INDIANA

Lake Ridge New Tech Schools v. Bank of New York Mellon, Trust Company,

N.A.

United States District Court, N.D. Indiana - November 13, 2018 - F.Supp.3d - 2018 WL 5982136

Corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust brought Indiana state court action against indenture trustee, alleging breach of contract, negligence, and gross negligence after indenture trustee allegedly processed fraudulent pay affidavit.

Following removal, trustee moved to dismiss for failure to state a claim.

The District Court held that:

- Corporation failed to adequately allege post-agreement conduct which could have modified terms of agreement, and thus failed to state breach of contract claim based on alleged breach of such conduct;
- Corporation failed to state claim for breach of agreement provision prohibiting misconduct and gross negligence;
- Corporation failed to adequately allege that exculpatory clause in agreement was contrary to public policy;
- Corporation failed to adequately allege duty of indenture trustee independent of agreement, and thus failed to state negligence and gross negligence claims; and
- Corporation failed to adequately allege that economic loss doctrine did not bar negligence and gross negligence claims.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege post-agreement conduct which could have modified terms of agreement, and thus failed to state breach of contract claim against indenture trustee based on its alleged breach of such conduct; corporation alleged that indenture trustee, in processing what allegedly turned out to be fraudulent pay affidavit, had breached protocol which had developed following agreement, but protocol was consistent with agreement, which provided minimum framework for processing pay affidavits, and none of protocol evinced bargained-for-exchange between corporation and indenture trustee for something of value.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege misconduct or gross negligence by indenture trustee, and thus failed to state breach of contract claim against indenture trustee based on agreement provision prohibiting misconduct and gross negligence; corporation alleged that pay affidavit sent from e-mail account of authorized officer and processed by indenture trustee had actually been fraudulent, but trust indenture agreement provided that indenture trustee would conclusively presume that directions purporting to have been sent by authorized officer had been so sent by such officer.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to allege imbalance in bargaining power sufficient to render against public policy exculpatory clause in agreement which absolved indenture trustee of liability for processing fraudulent pay affidavit submitted through e-mail, and thus corporation failed to state breach of contract claim based on alleged processing of such affidavit; corporation did not allege that it had only been able to negotiate with indenture trustee, and no other party, for administration of trust, or that any supposed weaker bargaining position had prevented it from negotiating away exculpatory clause.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege separate duty of indenture trustee independent of indenture trust agreement, and thus failed to state negligence or gross negligence claims against indenture trustee based on its alleged processing of fraudulent pay affidavit; corporation alleged that indenture trustee was liable for failing to select agents and employees in manner which would have prevented alleged unauthorized payment from trust account, and because its agents and employees had acted in grossly negligent manner in processing alleged fraudulent pay affidavit.

Under Indiana law, corporation which had entered into trust indenture agreement governing issuance and redemption of municipal bonds to fund renovation of building through trust failed to adequately allege injury distinct from injury resulting from indenture trustee’s alleged breach of agreement, and thus, under economic loss doctrine, corporation failed to state negligence or gross negligence claims against indenture trustee based on its alleged processing of fraudulent pay affidavit; only injury alleged by corporation was that resulting from alleged processing of fraudulent pay affidavit, a process governed by trust indenture agreement.

Under Indiana law, the economic loss doctrine does not include the relationship involving an indenture trustee as one that falls outside the scope of the economic loss doctrine.

EMINENT DOMAIN - MICHIGAN

Lumbard v. City of Ann Arbor

United States Court of Appeals, Sixth Circuit - January 10, 2019 - F.3d - 2019 WL 150856

Homeowners filed § 1983 action against city alleging that ordinance requiring them undergo structural renovations to their homes to alleviate storm water drainage problems amounted to taking without just compensation.

The United States District Court dismissed complaint, and homeowners appealed.

The Court of Appeals held that:

- Homeowners waived prudential requirement of exhaustion of state remedies, and
- Final judgments entered in homeowners’ prior state court actions precluded them from asserting federal takings claims.

Homeowners waived prudential requirement of exhaustion of state remedies for ripeness in federal court with regard to their claim that city ordinance requiring them undergo structural renovations to their homes to alleviate storm water drainage problems amounted to taking without just compensation by obtaining remand to state court after city removed homeowners’ state court action to federal court on ground that federal claims were unripe.

Under Michigan law, final judgments in homeowners’ prior state court actions adjudicating their takings claims under state law precluded them from asserting federal takings claims in their § 1983 action against city; if Takings Clauses in Michigan and federal constitutions were coextensive, then issue preclusion barred subsequent litigation of federal takings claim after litigation of state takings claim on merits, and if Takings Clauses were not coextensive, then claim preclusion barred subsequent litigation of federal takings claim because it should have been brought in first instance in state court.

EMINENT DOMAIN - MISSISSIPPI

Alford v. United States

United States Court of Federal Claims - January 10, 2019 - Fed.Cl. - 2019 WL 171560

Owners of property on an oxbow lake brought action against United States Army Corps of Engineers for allegedly effecting a Fifth Amendment taking of their property by raising the water levels in the lake, in order to preserve a nearby levee along the Mississippi River.

The Court of Federal Claims held that:

- Doctrine of necessity did not apply to preclude compensating property owners;
- Doctrine of relative benefits did not apply to preclude compensating property owners;
- General benefit that came from the levee did not offset compensation owed by the government to property owners;
- Just compensation would be calculated based on value of the property immediately before the flooding of the lake;
- Property owners could not recover their business's lost profits as just compensation for the taking;
- Loss and enjoyment of owner's property was not compensable; and
- Owner could not recover for cost of having to evacuate her home pursuant to evacuation orders issued by county.

Doctrine of necessity did not apply to preclude compensating owners of property on an oxbow lake for the taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses, where the Corps considered its options carefully and deliberately over a period of more than a year, it chose the most effective and cost-efficient way of dealing with the problem of sand boils undercutting the levee, and the flooding of the lake served as a temporary stay of the danger while a more permanent solution at a cost of $2.7 million occurred after the Mississippi River's flood stage abated.

Doctrine of relative benefits did not apply to preclude compensating owners of property on an oxbow lake for taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses; although in the hypothetical world in which a levee breach occurred, the property owners would have been far worse off, along with 10,000 other citizens whose properties would have been flooded, in the real world, all 10,000 other citizens were unaffected, while the owners' properties were significantly damaged, after the Corps determined that flooding their land was an efficient way to solve the problem of sand boils undercutting the levee.

The general benefit that came from either the federal government's building of the levee system along the Mississippi River or the operation of bayou control structure did not offset compensation owed by the government to owners of property on an oxbow lake for taking their land when United States Army Corps of Engineers raised water levels in the lake, in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses; although the levee and control structure benefited the owners, as well as most of the Mississippi Delta population and the region's economy, if the benefits citizens got from federal government were to be put on the scale in a taking case, the citizen would always lose, particularly anywhere along the several thousand miles of the Mississippi River system.

Under the before-and-after method for calculating just compensation to owners of property on an oxbow lake for the taking of their land by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, and thereby flooded and destroyed owners' property, docks, piers, and boathouses, the "before" calculation should not rely on the hypothetical expectation that the levee would have breached, but, instead, the "before" calculation was the value of the property immediately before the flooding of the lake.

The $36,404 in lost profits that property owners' business allegedly sustained from the flooding of their lakeshore property by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, fell under the purview of consequential damages, and thus, the owners could not recover lost profits as just compensation for the taking.

The $19,350 property owner sought from the government, which represented the valuation of the loss and enjoyment of his lakeshore property as a result of the flooding of the property by United States Army Corps of Engineers, which raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, were consequential damages, and thus, the owner could not recover that amount as just compensation for the taking.

The owner of property on an oxbow lake could not recover from the federal government for the cost of having to evacuate her home, as just compensation for the taking of her property that resulted when United States Army Corps of Engineers raised water levels in the lake in order to preserve a nearby levee along the Mississippi River, where the county, and not the federal government, issued evacuation orders.

ZONING & PLANNING - NEW YORK

Stengel v. Town of Poughkeepsie Zoning Board of Appeals

Supreme Court, Appellate Division, Second Department, New York - December 12, 2018 - N.Y.S.3d - 167 A.D.3d 754 - 2018 WL 6519204 - 2018 N.Y. Slip Op. 08489

Residential neighbors of site of proposed motor vehicle service facility brought article 78 action seeking to annual determinations of town zoning board of appeals granting area variances and special use permit to site's owner.

The Supreme Court, Dutchess County, denied petition. Neighbors appealed.

The Supreme Court, Appellate Division, held that board's decision to grant area variances had a rational basis and was not arbitrary and capricious.

Town zoning board of appeals' decision to grant application for area variances in connection with proposed motor vehicle service facility had a rational basis and was not arbitrary and capricious, even though the proposed variances were substantial and the applicant's alleged difficulty was self-created; evidence supported board's findings that proposed construction would not produce undesirable change in character of neighborhood, have adverse impact on physical or environmental conditions, or otherwise result in detriment to health, safety, and welfare of neighborhood or community, and board rationally concluded that benefit sought by applicant could not be achieved by feasible alternative method.

IMMUNITY - PENNSYLVANIA

Brewington v. City of Philadelphia

Supreme Court of Pennsylvania - December 28, 2018 - A.3d - 2018 WL 6815459

Parent, as guardian for her son, brought action against school district alleging negligence arising out of injuries to son when he hit his head on a concrete wall during a relay race in gym class.

The Court of Common Pleas granted school district's motion for summary judgment. Parent appealed. The Commonwealth Court reversed. District appealed.

The Supreme Court of Pennsylvania held that school was not entitled to governmental immunity, disapproving *Rieger v. Altoona Area School District*, 768 A.2d 912.

Under real property exception to governmental immunity, public school was not immune from negligence claim arising from injury that student suffered when he ran into unpadded wall during gym class; student's mother alleged that school negligently failed to apply padding, and concrete walls constituted real property.

Personalty alone may not serve as the basis to trigger the real property exception to governmental immunity; disapproving *Rieger v. Altoona Area School District*, 768 A.2d 912.

PUBLIC UTILITIES - RHODE ISLAND

In re A&R Marine Corp.

Supreme Court of Rhode Island - January 16, 2019 - A.3d - 2019 WL 209648

Town petitioned for a writ of certiorari for review of an order from Public Utilities Commission (PUC) which denied town's request for discounted rate for ferry service.

The Supreme Court of Rhode Island held that PUC was not legally authorized to act upon town's request.

Public utilities statute does not give the Public Utilities Commission (PUC) the power to impose a discounted rate on a public utility; rather, it grants a public utility the power to propose a discounted rate for a town if the public utility chooses to make such a proposal.

LIABILITY - TEXAS

Jefferson County, Texas v. Farris

Court of Appeals of Texas, Houston (1st Dist.) - December 28, 2018 - S.W.3d - 2018 WL 6844046

Widow of retired county judge brought wrongful death and survival action against county in its capacity as premises owner and employer, claiming judge was exposed to asbestos while working in county courthouse and annex and then died from mesothelioma.

The 11th District Court denied county's plea to the jurisdiction. County filed interlocutory appeal.

The Court of Appeals held that:

- Cancer diagnosis, or manifestation of symptoms, was an incident giving rise to cause of action, thus triggering provision of the Texas Tort Claims Act (TTCA) requiring notice of the claim against a governmental entity within six months of the day that the incident giving rise to the claim occurred;
- Widow adequately pleaded a premises liability claim under TTCA; and
- Action was not barred by exclusive-remedy provision of the Texas Workers' Compensation Act (TWCA).

Retired county judge's cancer diagnosis, or manifestation of symptoms, was an incident giving rise to cause of action for his injury and death brought by judge's widow, arising from judge's alleged exposure to asbestos while working in county courthouse and his subsequent diagnosis of mesothelioma, thus triggering provision of the Texas Tort Claims Act (TTCA) requiring notice of the claim against a governmental entity within six months of the day that the incident giving rise to the claim occurred.

Retired county judge's widow adequately pleaded a premises liability claim against county in connection with judge's death from mesothelioma under provision of the Texas Tort Claims Act (TTCA) waiving governmental entity's immunity for personal injury and death caused by a condition or use of tangible personal or real property if governmental unit would, were it a private person, be liable to the claimant according to Texas law; petition alleged that judge had worked around asbestos-containing materials for many years, that county exposed judge to asbestos-containing materials that were disturbed or installed during courthouse renovations, and that county knew that asbestos products used in proximity of judge contained dangerous and harmful substances but that county failed to warn him, instruct him in proper safety precautions, or adopt or enforce a safety plan.

Wrongful death and survival action against county brought by retired county judge's widow, alleging that judge was exposed to asbestos while working in county courthouse and annex and then died from mesothelioma, was not barred by the exclusive-remedy provision of the Texas Workers' Compensation Act (TWCA), absent any evidence of last date of judge's injurious exposure to asbestos and whether county's election to provide workers' compensation coverage to elected officials continued during time judge was exposed to asbestos.

CONSTITUTIONAL LAW - VIRGINIA

Davison v. Randall

United States Court of Appeals, Fourth Circuit - January 7, 2019 - F.3d - 2019 WL 114012

County resident brought § 1983 action against official who served as chair of county board of supervisors, alleging that the chair violated his First Amendment and due process rights by blocking him from chair's social media page.

Resident sought injunctive and declaratory relief. The United States District Court for the Eastern District of Virginia dismissed resident's procedural due process claims and granted county's motion for summary judgment on claims asserted against it, but entered judgment in resident's favor on his free speech claims against the board chair, and parties cross-appealed.

The Court of Appeals held that:

- Chair of county board of supervisors acted under color of state law in maintaining government official webpage on social networking website, and in banning county resident from page;
- Government official webpage on social networking website qualified as public forum, for First Amendment purposes;
- Chair of county board of supervisors engaged in viewpoint discrimination in violation of the First Amendment by banning county resident from posting on webpage;
- County could not be liable under § 1983 for a one-off, unilateral decision by chair of the county board; and
- District court did not abuse its discretion in denying, on grounds of prejudice, the resident's motion for leave to amend his complaint.

Chair of county board of supervisors acted under color of state law in maintaining government official webpage on social networking website, and in banning county resident from page based on his past criticisms of the chair and other board members, such that the chair's actions were subject to constitutional restraints under § 1983; while the chair's enumerated duties did not include maintenance of webpage was used as a tool of governance, was categorized as government official webpage, and the specific actions giving rise to county resident's claim, the banning of resident from webpage, were linked to events which arose out of the chair's official status.

Government official webpage on social networking website, which the chair of county board of supervisors established and clothed with the trappings of her office by choosing to list her official contact information on webpage, and which she used to post public announcements and messages and to solicit comments thereon by any resident of county on any issues, qualified as public forum, for First Amendment purposes, whether a traditional public forum or only a limited or designated public forum.

POLITICAL SUBDIVISIONS - WYOMING

[Wyoming Jet Center, LLC v. Jackson Hole Airport Board]()

Supreme Court of Wyoming - January 15, 2019 - P.3d - 2019 WL 192338 - 2019 WY 6

Requestor filed petition for access to records held by airport board.

The District Court entered summary judgment for the board, and requestor appealed.

The Supreme Court of Wyoming held that:

- Special District Act did not operate to limit the records airport board was required to retain or make available for public inspection, but rather, required that certain documents be made readily accessible for public review, and
- Airport board was a political subdivision subject to the Wyoming Public Records Act (WPRA).

Special District Act did not operate to limit the records airport board was required to retain or make available for public inspection, but rather, required that certain documents be made readily accessible for public review, providing options for ensuring that such review was possible; record retention was governed by a separate set of statutes that defined what constituted a public record for retention purposes, and the Special District Act directed that the Wyoming Public Records Act (WPRA) would control the obligations of disclosure of listed documents, incorporated the WPRA, and declared its requirements controlled in the event of a conflict.

Airport board was a political subdivision subject to the Wyoming Public Records Act (WPRA); the board was created to perform a single public function under statutory authority of municipalities and counties to operate a local airport, which made it a special district over which the WPRA controlled.

FINRA Bond Facts.

How much do you really know about buying and selling bonds? Although “bond” seems like a simple word, trading bonds is anything but simple, and vastly different from trading stocks. Wouldn’t it be nice if there were a tool that could give you the most important facts about a particular bond in an easy-to-digest package? FINRA has you covered.

To educate investors about their bond investments, FINRA recently introduced a new investor tool: FINRA Bond Facts. The tool helps investors understand common bond terminology and provides bond-specific information about corporate and agency bonds, including recent trade data. Bond Facts also provides sample questions that can help investors start a conversation with their brokers so they are in a position to make informed investment decisions.

What Bond Facts Will Tell Me

Bond Facts lays out the essential facts to know about any corporate or agency bond you are considering purchasing (or have already purchased) in a section called “This Bond at a Glance.” For example, who is issuing the bond? What is the maturity date? What are the coupon rate and yield? What is the credit rating? Is the bond callable-and when?

However, these essential facts don’t mean much to an investor who doesn’t have a basic understanding of what these key terms mean. To some bond investors, these terms might be new or unfamiliar. So, Bond Facts provides straightforward explanations to help educate investors to make informed decisions.

For example, investors might wonder what a 4.122% yield to worst means for their investment. Bond Facts provides a brief definition of the term yield (total return on the money you invested) and describes the differences between three common types of yield as shown below.

Talk To Your Broker

Bond Facts also creates an important action step for investors who use the tool. All of the key bond term explanations are followed by sample questions to ask your broker. In the yield example, Bond Facts provides three questions an investor can pose to their broker, such as “what is the yield for this bond and what type of yield is it?” You can use these questions to start a conversation with your broker and make sure you understand important information about your investment. You should never hesitate to ask questions about investments a broker is recommending to you.

Getting To Bond Facts

FINRA rules require that brokers include a link to Bond Facts on the trade confirmation you receive following a corporate or agency bond transaction. This means you can click on a link to the Bond Facts site on an electronic trade confirmation or type in the URL from a paper confirmation. If you are accessing Bond Facts from your trade confirmation, the link will take you directly to information about the specific bond involved in your transaction.

If you want to research bonds before making a trade, you can use the bond’s 9-digit CUSIP on the

Bond Facts search page to pull up information about a particular bond. If you type in a CUSIP for a municipal security, Bond Facts will redirect you to the Municipal Securities Rulemaking Board's EMMA website, which provides investors with similar information to that available in Bond Facts.

For investors who want more information, Bond Facts provides a link to FINRA's Market Data Center where you can find additional information about a bond, including an extended trade history. Bond Facts also directs investors to more detailed investor education resources on FINRA's website for each of the key concepts covered.

January 25, 2019, 03:45:00 PM EDT By FINRA Staff (FINRAInvestorEducation@finra.org)

FINRA is dedicated to investor protection and market integrity. It regulates one critical part of the securities industry – brokerage firms doing business with the public in the United States. FINRA, overseen by the SEC, writes rules, examines for and enforces compliance with FINRA rules and federal securities laws, registers broker-dealer personnel and offers them education and training, and informs the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA also administers a dispute resolution forum for investors and brokerage firms and their registered employees. For more information, visit www.finra.org .

Save the Date: Upcoming BDA Infrastructure Events

As the 116th Congress kicks off in early 2019, attention will turn to major policy initiatives that were unfinished in the previous session and at the top of this priority list will be infrastructure.

The BDA is planning events in the coming months to further its position as a thought leader on infrastructure finance – from a Main Street perspective. As key details continue to emerge, the BDA will provide updates.

Background
The House Transportation and Infrastructure Committee released a discussion draft this summer, outlining at a very high-level, priorities for a future package. A focus of the draft was innovative financing mechanisms, including public-private partnerships. The BDA views this as an opportunity to advance member priorities: PAB's, advance refundings and continued protection of tax-exempt municipal bonds.

These events will not only help drive the narrative for the need of a sweeping infrastructure overhaul but allow the BDA to position itself as a policy expert for this discussion.

Continue reading.

Bond Dealers of America

January 24, 2019

S&P U.S. Public Power And Electric Cooperative Utilities 2019 Sector

Outlook: Ratings Stability Persists In A Difficult Era

S&P Global Ratings expects that public power and electric cooperative utilities will continue facing significant uncertainties in 2019. Nevertheless, we believe that these utilities will maintain sound credit quality, as they have in recent years.

Continue Reading

Jan. 22, 2019

Adviser: EPA Letter to IRS on Opportunity Zones Merits Attention

The Tax Cuts and Jobs Act of 2017 introduced the concept of Opportunity Zones (OZs) to promote long-term investment in qualifying areas. Since the law was passed, the IRS has designated some 8,700 Qualified Opportunity Zones (QOZs) across the United States, including many in key parts of the city of Cleveland.

The OZ program has garnered significant attention in the real estate community, both locally and nationwide, as it essentially allows for a) deferral of capital gains, upon reinvestment of gains in QOZ areas, until the earlier of the sale of the asset or Dec. 31, 2026; b) a partial exclusion (up to 15%) of original capital gains deferred, based on the term of ownership of the asset through 2026; and c) a 100% exclusion of capital gains through 2047 on further appreciation of qualified assets held for at least 10 years — sometimes referred to in the industry as the "juice." The juice provides enormous potential for tax savings of appreciated property.

The Treasury Department issued initial OZ program regulations on Oct. 19, 2018. The regulations provide a variety of parameters to qualify for favored tax treatment under the law, including deadlines for reinvestment of capital gains and deployment of funds. Among other things, the regulations and accompanying revenue ruling state, in effect, that as to real estate investments, either a) the investor must "substantially improve" the real estate, which may be done by doubling the tax basis of the building only, without regard to the value of the land; or b) the "original use" of the subject property must "commence" with the applicable investment.

In the context of "substantial improvements" to property, the land value is not counted. Based on the foregoing, the cost of environmental remediation of land would likely not be taken into account and the funds applied to remediation would not qualify for special treatment under the OZ program.

The "substantial improvement test and the "original use" test have garnered much comment and attention from industry and lobbying groups, as well as from inside the administration, in order to allow investors more direction and leeway in qualifying under the program.

Of perhaps greater interest, on Dec. 18, 2018, the U.S. EPA, through its Office of Brownfields and Land Revitalization (OBLR), issued a letter to the IRS asking for clarification of the above tests, primarily in the context of brownfields remediation. The purpose of the OBLR request is to spur redevelopment of brownfield and other underutilized sites by expanding the breadth and impact of the OZ program.

Specifically, the EPA submitted the following requests:

1. Allow remediation costs to be counted toward substantial improvements. The OBLR recommended

that final IRS guidance should clarify that funds applied to environmental remediation (including assessment, cleanup and other site preparation costs) should qualify under the program and should be considered when evaluating the “substantial improvement” test under the regulations.

2. Allow deployment of funds over time. The OBLR asked the IRS to take into account the extended time period necessary for remediation projects and to allow for deployment of funds during the entire period of cleanup. Specifically, the EPA suggested the “stacking” of a 30-month window for cleanup, in addition to the 30-month window for vertical construction in the existing regulations.

3. Allow carryover of gains. The OBLR asked the IRS to enable gains realized from the sale of remediated property to be carried over into other QOZ property. This would allow an investor to complete remediation, sell the remediated property to a vertical developer and reap the ongoing benefits of the OZ program.

4. Allow brownfields cleanup to constitute “original use.” The OBLR also asked that the term “original use” be defined so it automatically applies to properties that are characterized as brownfield sites under the CERCLA. This would go a long way toward simplifying the analysis for investors as to whether the OZ program applies to a project.

5. Allow reuse of vacant, underutilized or land bank property to constitute “original use.” Beyond brownfields, the OBLR also recommended that the definition of “original use” should include property that is underutilized or vacant for a period of one year or more and property foreclosed upon and held by a local government or land bank. OBLR further suggested that the underutilized test may apply to the entire property or to “a portion thereof … which is used only at irregular periods or intermittently.” This would provide flexibility as to qualified redevelopment of partially shutdown facilities.

These recommendations, if adopted, would have important implications for real estate investors. For example, an investor could qualify under the program, under the original-use test, based on “underutilization” of the asset for at least one year. Also, an investor who purchases impacted properties and performs remediation and site preparation could take advantage of the program without conducting their own vertical or other redevelopment. Rather, the investor could complete sufficient remediation activities, sell the remediated property and reinvest the proceeds in other QOZ property, with a carryover of tax advantages. In addition, a redeveloper who performs both remediation and vertical development could count the remediation costs toward satisfying the “substantial improvement” test.

At this time, the real estate community awaits further IRS guidance, which has been delayed by the partial government shutdown. Many other important issues concerning the regulations persist. The final regulations will significantly alter the financial analysis of investment in sites located within OZ areas.

Crain’s Cleveland Business

Thomas J. Coyne

January 19, 2019 04:00 AM

Coyne is practice group leader of the National Real Estate Practice Group of Thompson Hine LLP.

S&P Global Not-For-Profit Higher Education 2019 Sector Outlook: Credit Pressures Proliferate

S&P Global Ratings' outlook for the U.S. not-for-profit higher education sector in 2019 is negative. Supporting the negative outlook is rating performance over 2018 that showed a significantly higher level of downgrades (20) and ratings placed on negative outlook than upgrades (three) versus prior years.

Continue Reading

Jan. 24, 2019

S&P Health Care Credit Beat: It's Looking Like Another Down Year For Ratings

Happy New Year! We hope everyone had a good holiday season. The past year, 2018, was an active one for corporate health care ratings in terms of ratings activity. Following two years in which health care rating downgrades outnumbered upgrades (3 to 2 in 2018 and 5 to 1 in 2017), 2019 is already looking like another year of credit quality deterioration in the sector.

Continue Reading

Jan. 18, 2019

Skadden's 2019 Insights: Political Law: What to Consider When Providing Investment Fund Services to US State and Local Government Entities.

With heightened attention to investment and depository rules as well as increased enforcement of federal and state pay-to-play rules, registered investment advisers (RIAs) and broker-dealers should address the unique legal considerations that may arise when a firm provides or seeks to provide services to U.S. state and local government entities.

Investment Rules

Jurisdiction- and government entity-specific rules apply to firms that manage, hold or invest money for the government. A government entity with significant funds will often adopt a policy specifying how the funds may be invested or what securities may be purchased — delineating the types of investments that are permissible (e.g., prohibitions on swaps, equities, or investments in certain countries and industries), how the government entity views risk, how a portfolio must be diversified and the standard of care required for managers. Agreements with investment advisers or broker-dealers may even incorporate these policies by reference. Additionally, similar restrictions contained in a jurisdiction's statutes or ordinances may apply to the investments of a particular government entity or to all government funds in the jurisdiction.

> Similar restrictions contained in a jurisdiction's statutes or ordinances may apply to the investments of a particular government entity or to all government funds in the jurisdiction.

How restrictive they are often depends on whether the money is designated for investment, held by a retirement system or dedicated for some other particular purpose. Although government entities are less diligent about alerting investment advisers and broker-dealers to these restrictions, they can in some cases impose direct liability on the firm if it invests government funds in a manner that is not permitted by the applicable rules.

Depository Rules

The laws of many jurisdictions specify custodial requirements, such as that all government funds be maintained with approved depositories. In some jurisdictions, this means all funds must be held in banks rather than brokerage accounts. Moreover, firms typically need to go through a formal application and review process to become approved depositories.

Federal Pay-to-Play Rules

Under these rules, political contributions made by a company or its covered donors prohibit a covered company from engaging in, or receiving compensation for, certain business with state or local government entities. Importantly, federal pay-to-play rules are strict liability in nature, meaning criminal intent is not needed to trigger their prohibitions. Current federal pay-to-play rules are:

- The Municipal Securities Rulemaking Board's Rule G-37, which covers broker-dealers that underwrite municipal securities and municipal advisers who solicit investment advisory business for third parties, or provide advice to or on behalf of a government entity or obligated person with respect to municipal financial products or the issuance of municipal securities.
- The Securities and Exchange Commission's (SEC) Rule 206(4)-5, which covers registered investment advisers and exempt reporting advisers that provide investment advisory services to state or local government entities either directly (e.g., via a separate managed account) or through a covered investment pool. Covered investment pools include unregistered investment funds in which a government entity invests directly, as well as registered mutual funds that are selected as an option for a participant-directed plan sponsored by a government entity.
- The Commodity Futures Trading Commission's Rule 23.451, which covers swap dealers that offer or engage in commodities-based swaps with state or local governmental counterparties.
- The Financial Industry Regulatory Authority's (FINRA) Rule 2030, which covers FINRA members engaged in soliciting investment advisory services covered by the SEC rule from state or local government entities.

State and Local Pay-to-Play Rules

Certain states and localities have laws that automatically prohibit a company from having government contracts if a covered donor makes a political contribution or solicits one for a covered official or political committee. Common categories of covered donors include:

- the firm itself;
- any affiliate or the affiliate's political action committee;
- senior officers of the firm (e.g., management committee);
- members of the firm's board of directors;

- employees who solicit or manage state or local contracts; and
- in some cases, the spouses and dependent children of the individuals listed above.

These bans on business can, in some cases, last for more than five years. These laws also may impose disclosure requirements regarding political contributions. It is very common for government contracts and requests for proposals (RFP) in these jurisdictions to require a company to certify its compliance with these laws.

Lobby Laws, Placement Agent Policies and Contingent Fee Restrictions

What Triggers Lobbyist Registration

In 31 states and many localities, attempting to obtain the award of government business meets the definition of lobbying and may give rise to an obligation to register as a lobbyist. These laws vary, and many contain useful exemptions, such as for formally responding to an RFP or for in-house employees of the company who act as salespersons. In addition, some lobby laws have a threshold for triggering registration that may be based on the amount of time spent lobbying in the jurisdiction (*e.g.,* North Carolina's threshold is 5 percent of one's working time in a month), the compensation received for lobbying in the jurisdiction (*e.g.*, Indiana's threshold for executive branch lobbying is $1,000 per year) or number of contacts with covered officials (*e.g.,* San Francisco's threshold is five lobbying contacts in a month). In some jurisdictions, registration may be triggered when gifts and entertainment are provided to public officials and employees. Importantly, some jurisdictions aggregate all firm activity for these thresholds, so while a single action may not give rise to an obligation to register, it could when combined with other activities at the firm.

Requirements Once Registration Is Triggered

If registration is triggered, the individual lobbyist and/or company will need to register and report on a periodic basis. These reports typically require the disclosure of gifts and entertainment provided to public officials in the jurisdiction, compensation for lobbying and the issues lobbied. Some jurisdictions impose training requirements and special gift and political contribution restrictions on lobbyists.

Placement Agent Policies

Separate from lobby laws, government entities (particularly public pension funds) have increasingly adopted policies with respect to the use of placement agents by external investment managers. The policies range from requiring investment managers to disclose who is soliciting business to imposing outright prohibitions on investment managers' use of third-party solicitors. The rules may apply even when a firm is using in-house marketing employees to solicit business.

Contingent Fee Prohibitions

Some lobby laws prohibit the payment of contingent fees — any payment (such as a commission or formulaic bonus) that is in whole or in part attributable to a government decision (such as the decision to engage the firm). In addition, some jurisdictions (e.g., Illinois, South Carolina) prohibit contingent fees paid for soliciting certain government business, even if the solicitor does not trigger lobbyist registration. Placement agent policies also can prohibit contingent fees.

Gift Laws

When providing a thing of personal value to an official or employee of a government entity, one must consider the gift rules of that jurisdiction. These restrictions apply to personal benefits such as meals, entertainment, travel and gift items as opposed to political contributions, which may be subject to pay-to-play restrictions as described above. Most jurisdictions have some restriction on gifts and entertainment for public officials, whether it be an absolute ban regardless of value, a fixed dollar limit per occasion or per month or year, or a prohibition on providing gifts that might reasonably tend to influence an official. These gift laws often extend to things of value provided to the official's spouse or dependent children. In some instances, state and local gift laws, such as those in the state of New York, can include gifts given to a third party, such as a charity, at the request or behest of a public official. As noted above, lobbyists and companies employing lobbyists often need to report the gifts or entertainment they provide. Government entities also may have policies requiring vendors or contractors to disclose gifts they provide to their officials.

Legal liability for a violation of these laws can attach to the donor, donee or both, depending on the law. This is especially important to keep in mind in light of the fact that government entities increasingly require certifications of compliance with applicable gift laws. For example, the New York City comptroller requires firms managing city pension fund money to certify they have not given anything of value to employees of the comptroller's office.

Conflicts of Interest

Dual-Hatted Situations

To the extent employees also hold positions with a government entity (such as serving on an unpaid government board), government conflict-of-interest restrictions may apply. Conflict rules frequently prohibit a government official from participating in a decision (such as that to award a contract) involving his or her private employer. In some rare cases, prohibitions can apply to contracts with that government entity even if the official fully recuses. Although legal liability for violations of these laws is typically limited to the official or former official, contracts that are entered into in violation of these conflict laws may be void or voidable by the government entity.

Post-Employment Rules

State and local laws typically restrict former public officials from appearing before their former agency for a period of time (often one or two years) after leaving government office and permanently restrict someone from working on a particular matter (such as a contract or procurement) that he or she personally worked on while in government. Thus, when vetting a prospective or new hire who is a former government official, a firm may want to consider whether the firm does or may seek to do government business in the jurisdiction where the official serves or served.

Takeaways

In addition to the ever-increasing risk of an enforcement action, potential legal violations can bring negative media attention. As such, broker-dealers and RIAs must continue to develop and refine compliance programs to address laws regulating government procurement activities. Common elements among these programs include implementing tailored policies, preclearing certain activities, providing protocols to ensure that registration and ongoing reporting requirements are met, offering training programs for certain officers and employees, and establishing procedures for keeping abreast of the latest developments in this area of law.

by Ki Hong and Tyler Rosen

January 23, 2019

Skadden, Arps, Slate, Meagher & Flom LLP

Chapter 9 Bankruptcy: An Overview

As investors familiarize themselves with their respective issuer's credit profile, they are essentially looking to ensure that the debtor is financially strong enough to pay back its obligations in a timely manner. Now, what happens when a municipality is unable to meet its financial obligations? The simple answer is the reorganization of municipalities, which includes cities, towns, counties, taxing districts, municipals utilities and school districts, under Chapter 9 of the Bankruptcy Codes.

Although Chapter 9 cases are rare and the restructuring laws can be very different for every state, recent local government's bankruptcies like Detroit, Michigan (2013); Jefferson County, Alabama (2011); Stockton, California (2012); and San Bernardino, California (2012), were few of the major examples in recent times that served as a rude awakening for many municipal debt investors who originally thought that municipal debt was the safest investment option out there and showed full faith in the taxing power of each local government.

In this article, we will take a closer look at the purpose of municipal bankruptcy, the eligibility requirements for municipalities, plan of adjustment and, finally, how it impacts the bondholders.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jan 23, 2019

Hawkins Advisory: Final TEFRA Hearing & Approval Regulations

The Internal Revenue Service has issued final regulations amending and modernizing the so-called TEFRA public notice, hearing and approval requirements applicable to tax-exempt private activity bonds.

The attached Hawkins Advisory discusses these final regulations.

Brookings Institution Seeks Wide Range of Muni Research.

WASHINGTON — The organizers of The Municipal Finance Conference are seeking research papers on a broad variety of topics related to state and local fiscal policy and finance in advance of the conference this summer, they announced Wednesday.

The 8th annual Municipal Finance Conference is slated to take place July 15-16 at the Brookings Institution in the nation's capital. It is a joint venture of Brookings, Brandeis University, Washington University in St. Louis, and The University of Chicago. The conference "aims to bring together academics, practitioners, and state and local government officials to discuss recent research on municipal finance," and frequently draws prominent members of the muni research community.

The deadline for proposals is March 1, and papers that have been presented elsewhere are eligible. Last year's conference featured, among many works, a paper examining municipal advisors in the wake of the Dodd-Frank Act by Brandeis Professor Dan Bergstresser and another examining life without advance refundings by Andrew Kalotay of Kalotay Analytics.

Papers will be chosen for inclusion by April 5, and drafts of the selected papers will be due by June 7, the organizers announced.

The conference agenda has not been announced. Registration will open in April.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 01/24/19 07:02 PM EST

New House Budget Chair Champions Bond Proposals.

WASHINGTON – The new Democratic chairman of the House Budget Committee wants Congress to consider two proposals that would have a significant impact on the municipal bond industry.

Rep. John Yarmuth of Kentucky wants to end automatic across-the-board budget cuts that include a reduction in the subsidy for direct-pay Build America Bonds, he told The Bond Buyer this week.

He also favors creating a new category of 40-year Treasury bonds to capitalize a new national infrastructure bank with an infusion of $300 billion.

Both proposals are big lifts politically. But Yarmuth – a former Republican turned Democrat – thinks they are worth consideration.

"Nobody likes sequestration," Yarmuth said in an interview, referring to the automatic spending cuts that are part of the Budget Control Act of 2011. This forced austerity on federal spending is disliked by members of both major political parties.

The Bipartisan Budget Act of 2018 suspended many of the automatic spending cuts for fiscal 2018 and 2019, but not the BABs cuts which are 6.2% in fiscal 2019.

"The absolute elimination of the risk of sequestration of direct pay bonds would be a step in the right direction," said Emily Brock, director of the federal liaison center for the Government Finance Officers Association. "I think his statement goes a long way to show that lawmakers understand the next iteration, if successful, should fully address the risks that accompanied Build America Bonds for issuers as a result of sequestration."

Yarmuth also plans to introduce legislation next month to fund a national infrastructure bank with a new category of bonds he is calling Rebuild America Bonds.The $300 billion in 40-year bonds would be sold by the federal government at a two percentage point premium over Treasuries for purchase by only pension funds to help them reduce their underfunding problems. The bonds would have to be held a minimum of 10 years.

The idea for Rebuild America Bonds came out of a discussion Yarmuth said he had with a businesswoman in his hometown of Louisville about infrastructure and the crisis faced by state pension funds. Kentucky's state pension plan is among the 10 most underfunded in the nation.

The biggest problem in creating the bonds, according to Yarmuth, will be the cost. “Legislatively the one big problem we face is that in our initial talks with CBO Congressional Budget Office they would score it as a huge cost,” he said.

Build America Mutual released a one-page commentary on Jan. 7 saying that the attractiveness of Rebuild America Bonds will vary based on the status of each pension fund.

“While the option to invest in higher-yielding risk-free securities could improve the average risk profile of public pension funds nationwide, it would not be a universal benefit,” wrote Les Richmond, BAM’s vice president and actuary. BAM would still view the holding of the new RABs “in the context of an individual plan’s investment risk and liquidity needs,” he wrote.

How much support it will get among lawmakers in Congress is unknown. Much of the initial attention on infrastructure financing has been on House Transportation and Infrastructure Committee Chairman Peter DeFazio’s attempt to build political support for an increase in the federal gasoline tax.

Mayor Steve Benjamin, of Columbia, S.C., who is president of the U.S. Conference of Mayors and the Municipal Bonds for America Coalition, said he wants to learn more about Yarmuth’s proposal.

“We encourage innovation, but not to the detriment of tax exempt municipals,” Benjamin said, adding that he “would be happy to provide advice and counsel” to Yarmuth on his proposal.

The House Budget Committee will begin work in the coming weeks on a fiscal 2020 budget resolution which Yarmuth hopes will include an end to sequestration and also will include fiscal 2021.

Yarmuth earlier this month told the newspaper Roll Call the budget resolution will call for raising the corporate tax rate to 28% from 21% to claw back some of the tax revenue lost under the 2017 Tax Cuts and Jobs Act.

Yarmuth said he expects his fellow Kentuckian Mitch McConnell, the Senate Republican Majority Leader, to support a two-year budget resolution. But Senate Republicans are virtually certain to oppose a budget resolution calling for partial repeal of their tax cuts.

A spokesman for Senate Budget Committee Chairman Mike Enzi, R-Wyo., declined comment on the sequestration issue.

Budget resolutions are a blueprint for spending that are used by the appropriations committees in the House and Senate to set budgets for each department and agency.

The last round of negotiations over a joint congressional budget resolution involving both the House and Senate began in 2017 didn’t end until early 2018.

His proposal is under the jurisdiction of the Ways and Means Committee and is expected to compete with other proposals for improving the nation’s infrastructure.

Yarmuth said he wants to pattern the infrastructure bank component of his Rebuild America Bonds bill after a bill authored by Rep. Rosa DeLauro, D-Conn., which had 87 cosponsors in the previous legislative session. All of the sponsors were Democrats and the Republican-controlled House did not consider it.

DeLaurore introduced her bill earlier this month. It’s modeled after the European Investment Bank and would leverage private sector investment from institutional investors and pension funds. The infrastructure bank would issue Public Benefit Bonds to fund projects, and make payments to help states and localities cover their bond interest payments.

Earlier bipartisan discussions about capitalizing a national infrastructure bank centered on using the revenue from the repatriation of overseas profits made by U.S. companies. But that possibility was eliminated when Republicans used the repatriation revenue to help pay for the 2017 tax cut.

Yarmuth hopes his Rebuild America Bonds will be considered as an alternative financing option.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/24/19 07:02 PM EST

MSRB to Discuss SEC's Concerns on Disclosure at Quarterly Meeting.

WASHINGTON — The Municipal Securities Rulemaking Board will begin preliminary conversations to address Securities and Exchange Commission Chair Jay Clayton's comments about improving the timeliness of issuer disclosures at the board's quarterly meeting next week.

The MSRB announced the meeting's agenda Thursday in advance of the meeting, which will be held Jan. 29-31 at the board's Washington headquarters.

The impetus for the discussion comes at least in part from Clayton's statement at a December 2018 SEC conference that the SEC may be interested in taking additional regulatory action to improve municipal market disclosure.

Clayton said in prepared remarks that he has asked the commission's Office of Municipal Securities to work with the MSRB to improve transparency and improve the timeliness of the filing of issuer financial information under continuing disclosure agreements.

The SEC does not have the authority to force issuers to file annual financial information or other continuing disclosure documents more quickly, but Clayton has said he believes there are steps the SEC can take to at least make investors aware that information filed on EMMA might be stale.

"The first step in improving it is to make sure that investors understand that the financial statements they are looking at in some cases are 18 months old," Clayton told a Senate panel last month.

The quarterly meeting will be the first time the board will have met with the SEC since December.

"There's a lot of conversation around the best way to bring more transparency to this issue," said Lynnette Kelly, MSRB CEO and president. "There's certainly a lot of very interested constituencies in the municipal market who care a lot about this issue, so very preliminary discussions at this point."

At the meeting, Kelly said MSRB staff will present data to the board illustrating the difference between when issuers promise to file their financial statements on EMMA to when they're actually filed.

The board will also discuss next steps on the issue of pennying. Pennying occurs when a dealer places a retail client's bid-wanted out to the market and determines the winning bid, but rather than executing the trade with the winning bidder marginally outbids the high bid and buys the bonds for its own account.

The board has expressed concern that widespread pennying could disincentive participating in the bid-wanted process, discourage bidders from giving their best price in a bid-wanted and “may impact the efficiency of the market.” The board last year requested comment on interpretive guidance that stated that using the bid-wanted process solely for the purposes of price discovery, whether via a brokers’ broker or an alternative trading system, could be a violation of the board’s Rule G-17 on fair dealing.

The board could decide not to take next steps or could direct staff to get more information, do more economic analysis or decide to move and issue guidance, Kelly said.

As for Rule G-17, the board will address comment letters received earlier this month regarding proposed amendments to the 2012 interpretive guidance of the rule.

That 2012 guidance established obligations for underwriters to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. But those disclosures have in many cases become too lengthy and boilerplate to be as useful as intended, according to many in the market.

The MSRB has proposed amending the guidance to among other things require dealers to disclose only actual rather than potential conflicts of interest. Dealers said in comment letters to the board that they supported that idea. But the MSRB hasn’t had much time to mull all the comments, as market groups submitted them fewer than two weeks ago.

“We’ve not had the sufficient time to do an in-depth analysis of the comment letters, we’ve had no time to go back to the commentators so that we really understand what their concerns are,” Kelly said.

She added more outreach needs to happen and afterwards expects to go back to the board in the next three to four months with a firmer recommendation on next steps.

At the meeting, the board will meet with members of the Securities Industry and Financial Markets Association, National Association of Municipal Advisors and Government Finance Officers Association to discuss engagement and future outreach events in 2019. This is part of a new initiative to expand the board’s stakeholder engagement efforts.

Other items on the agenda include the board’s ongoing retrospective review of its existing rules, an update on the MSRB’s data plan, and a discussion of the MSRB’s financial management.

Also this week, the board released its Series 54 Examination Guide for municipal advisor principals, who must eventually pass the exam to be qualified. The 13-page guide has sample multiple choice questions and a “road map” with links to rules and concepts.

The permanent exam will be available in the fall, and at that time municipal advisor principals will have a one-year grace period to become qualified. Municipal advisor principals can take a voluntary Series 54 pilot, offered from March to July 2019.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 01/24/19 07:02 PM EST

Potential Flaws of Opportunity Zones Loom, as Do Risks of Large-Scale Tax Avoidance.

The 2017 tax law created a new tax break to encourage investment in low-income areas ("opportunity zones") but, as high-profile Wall Street, Silicon Valley, and real estate investors rush to profit from it, critics are raising sensible concerns about the policy:

- The law enabled state policymakers to designate relatively affluent areas as opportunity zones, which could divert investment from truly disadvantaged communities.
- While the new tax break enables investors to accumulate more wealth, it includes no requirements to ensure that local residents benefit from investments receiving the tax break. Thus, this tax break could amount to a "subsidy for gentrification" in many areas instead of, as intended, for providing housing and jobs for low-income communities.[1]
- Potential loopholes in the law and an initial set of proposed Treasury regulations — which investors are now lobbying to re-shape — could enable investors to secure the tax benefits while generating little real economic activity in the opportunity zones. The scope of potential tax avoidance — an issue that hasn't received enough attention to date — will become clearer as Treasury finalizes its first set of regulations and releases additional guidance on how to comply with the law.
- The new tax break will cost an estimated $1.6 billion in lost federal revenue over ten years, according to Congress' Joint Committee on Taxation,[2] but the costs could be significantly higher after the first decade because, as explained below, some of the most generous tax benefits extend far into the future.[3] Moreover, the extent to which the $1.6 billion figure accounts for large-scale tax avoidance isn't clear.

Continue reading.

CENTER ON BUDGET AND POLICY PRIORITIES

BY SAMANTHA JACOBY

JANUARY 11, 2019

Guide to Understanding an Official Statement for Municipal Debt.

Prior to structuring or issuing any form of debt, the municipal issuer (local government) typically forms a team of experts to assist them with complying with all the legal requirements and structuring the issuance. While each issuance can be unique, this team typically includes an underwriting firm, bond counsel, financial adviser, rating agency, an insurer, etc.

One of the important tasks of the issuance process is preparing an Official Statement – which is prepared by or on behalf of a state or local government in connection with a new issue of municipal securities. This statement is quite comparable to a fund prospectus that is often used in the sale of equities of mutual fund sales.

In this article, we will take a closer look at the use of an Official Statement in debt issuances and how investors can use this information in their investment decisions.

Continue reading.

municipalbonds.com

Jayden Sangha

Jan 09, 2019

[Fitch Ratings: Teacher Labor Actions Hamper Spending Flexibility]

Fitch Ratings-New York-24 January 2019: Recent and ongoing labor actions by teachers in California, Colorado and Illinois highlight the challenges facing school districts in maintaining flexibility over their most significant expenditure, says Fitch Ratings. Material erosion of spending flexibility caused by protracted labor disputes can affect a school district's credit profile.

A six-day strike by teachers in the Los Angeles Unified School District (LAUSD) ended on Tuesday with an agreement that appears to be a compromise between the district's offer and the union's demands. The terms of the contract have yet to be clarified but once they are, we will evaluate whether they have a meaningful negative impact on the district's already limited expenditure flexibility. Fitch's Issuer Default Rating (IDR) on LAUSD is 'A' with a Negative Rating Outlook.

Oakland Unified School District's teachers' union has also been gearing up for a potential strike. The district and its teachers are in a fact-finding stage that is expected to conclude at the end of the month. Teachers are then expected to vote on whether to authorize a strike rather than accept the recommendations of a neutral fact-finding panel, as did teachers in Los Angeles.

Recent 'sick outs' by teachers in Oakland highlight a trend for labor, with or without the backing of unions, to challenge management. The sick outs, in which a subset of teachers participated, were not sanctioned by the union. As in Los Angeles, teachers in Oakland are demanding both increased pay and additional personnel to reduce class sizes and increase support services. This is despite the district's announcement that it intends to cut $30 million in the fiscal 2020 budget. The district's 'BBB+'/Stable IDR reflects solid spending flexibility but only adequate gap-closing capacity owing to a lack of control of revenues and limited financial reserves.

Teachers at Denver School District No. 1, known as Denver Public Schools (DPS), have voted to strike after negotiating with the district for over a year. DPS' teachers are seeking pay hikes above the amount the district is offering and changes to the district's incentive compensation system. The district and union leaders are reportedly seeking the state's intervention in resolving the strike. While state intervention could help resolve the impasse, we believe it would reduce the district's control over the outcome. Fitch's IDR of 'AA'/Stable reflects the district's very strong gap-closing capacity, including solid expenditure flexibility and sound reserves.

Unionized teachers at four Chicago charter schools affiliated with Chicago International Charter School and managed by Civitas Education Partners announced last week that they plan to strike on Feb. 5 if no agreement with management is reached. This would follow the first-ever charter school teacher strike, a four-day strike by teachers at the Acero charter school network in December that resulted in increased pay and smaller class sizes. Fitch does not rate any of the schools threatening to strike.

Unionized charter school teachers are unusual. A study by the National Alliance of Public Charter Schools indicates that 11% of charter school teachers were bound by collective bargaining agreements in the 2016-2017 school year.

Contact:

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

Jose Acosta
Senior Director, USPF
+1 512 215-3726
111 Congress Avenue Suite 2010
Austin, TX 78701

Karen Ribble
Senior Director, USPF
+1 415 732-5611
1 Post Street Suite 900
San Francisco, CA 94104

Justin Patrie, CFA
Senior Director, Fitch Wire
+1 646 582-4964

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

Additional information is available on www.fitchratings.com

$400 Billion Is Looking For A New Home In Muni Land (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, on PG&E and muni flows. Hosted by Abramowicz and Paul Sweeney.

Listen to Audio.

January 25, 2019

Citi Announces Inaugural Green Bond Issuance.

NEW YORK–(BUSINESS WIRE)–Citi today announced the issuance of the firm's first green bond, further enhancing its commitment to environmental and climate finance. The bond will fund renewable energy, sustainable transportation, water quality and conservation, energy efficiency and green building projects financed as part of Citi's $100 billion Environmental Finance Goal.

In the deal, which priced on 22nd January 2019, Citi issued €1 billion 3-year fixed rate notes. The transaction marks the first green bond offering from Citigroup Inc.

“We are proud to start the year with the launch of our inaugural green bond,” said Jamie Forese, President of Citigroup and Head of the Institutional Clients Group. “This transaction represents an important next step in expanding Citi’s commitment to sustainable growth. This bond also further enhances our green bond expertise, strengthens our partnerships with clients around the world and responds to increasing investor interest in sustainable finance.”

In 2015, Citi announced a $100 Billion Environmental Finance Goal to finance and facilitate $100 billion within 10 years to support environmental solutions and accelerate the global transition to a low-carbon economy. Citi also recently announced that it will source renewable power for 100 percent of its global energy needs by 2020. Both initiatives are part of [Citi’s contribution to advancing the United Nations Sustainable Development Goals](#) (SDGs). They are also key goals of Citi’s Sustainable Progress Strategy, which sets out Citi’s guiding principles, priorities and ambitions in environmental finance, environmental and social risk management, and the firm’s own operations and supply chain.

“Since we co-founded the Green Bond Principles in 2014, Citi has played a leading role in the development of the green bond market, and we look forward to maintaining our commitment as this market continues to grow,” said Michael Verdeschi, Treasurer of Citi.

Under [Citi’s Green Bond Framework](#) environmentally eligible criteria have been defined as renewable energy, energy efficiency, sustainable transportation, water quality and conservation, and green buildings. The consultancy Sustainalytics has reviewed Citi’s Green Bond Framework and has confirmed in their [Second Party Opinion](#) that it is aligned with the overall sustainability objectives of Citi and with the ICMA Green Bond Principles.

Citi

Citi, the leading global bank, has approximately 200 million customer accounts and does business in more than 160 countries and jurisdictions. Citi provides consumers, corporations, governments and institutions with a broad range of financial products and services, including consumer banking and credit, corporate and investment banking, securities brokerage, transaction services, and wealth management.

January 22, 2019

[Another Study Blames Uber and Lyft for Public Transit’s Decline.](#)

Ride-hailing services drive down bus and rail ridership in urban markets, a new University of Kentucky paper claims.

When Uber and Lyft arrived on the urban scene a decade ago, they claimed to pair well with buses and trains. By shuttling riders to train stations, guaranteeing late-night returns, and plugging in as paratransit, on-demand transportation could encourage travelers to abandon private cars and use public modes, they said. A lot of people believed them.

But now, transit systems are in crisis. Some 31 of 35 major metropolitan areas in the United States lost passengers in 2017, including the cities with largest ridership bases. There are numerous factors at play, but a small mountain of research singles out the rise of Uber and Lyft. A new [paper](#) by University of Kentucky scholars piles on: For every year after ride-hailing companies enter an urban market, rail ridership can be expected to fall by 1.3 percent, and bus ridership by 1.7 percent, it shows.

“We are starting to piece together multiple parts to the story,” said Gregory Erhardt, a University of Kentucky civil engineering professor and the lead author of the study. “For a long time it’s been about ride-hailing complementing transit in different ways. That is true to a degree. But it’s a question of whether it’s happening enough.”

Continue reading.

CITYLAB

LAURA BLISS JAN 24, 2019

BlackRock Can Blame One Investor for Record Muni ETF Outflow.

- **After-hours trade yanked $163 million from biggest muni ETF**
- **Outflow contrasts with mutual funds, which have seen big gains**

BlackRock Inc. can blame one investor for a record outflow from the largest municipal-bond exchange-traded fund.

The company’s $11.5 billion iShares National Muni Bond ETF, which trades off the ticker MUB, saw an outflow of $163.6 million on Wednesday, the most since the fund launched in 2007.

The culprit? One investor who sold 1.5 million shares worth about $163 million in after-hours trading yesterday, accounting for all but a tiny fraction of the big pullback from the fund.

This year hasn’t been off to a good start for the BlackRock fund. It has recorded $393 million in outflows so far in 2019, more than any other municipal-bond ETF tracked by Bloomberg.

The identity of the investor hasn’t been disclosed. At least 11 firms held more than 1.5 million of the ETFs shares by the end of September, according to regulatory filings compiled by Bloomberg.

The pullback is curious, given that state and local debt is headed for a positive monthly return, and may be more about routine portfolio adjustments than a judgment call about the fund. There are no signs of a larger investor exodus from the $3.8 trillion municipal-bond market, with mutual funds reporting the biggest weekly inflow in a year, according to the Investment Company Institute.

Bloomberg Markets

By Amanda Albright

January 24, 2019, 7:24 AM MST Updated on January 24, 2019, 8:26 AM MST

— With assistance by Carolina Wilson

California Sues Huntington Beach for Snubbing Affordable Housing.

- **Governor alleges Huntington Beach isn’t following state law**

- **Former GOP stronghold opposed immigrant sanctuary policy**

California's leaders sued the seaside city of Huntington Beach over claims that it worsened the state's housing shortage by refusing to cooperate with a plan for more affordable units.

The unusual legal action by the most populous U.S. state against of one of its own municipalities — a historically red-voting place dubbed Surf City, USA, for the breaking waves along its 9.5-mile (15.3-kilometer) stretch of sandy Pacific Ocean beach — was brought Friday by Attorney General Xavier Becerra at the behest of new Governor Gavin Newsom.

The case is being touted as the first test of a law that allows California officials to revoke a city's housing plan that's out of compliance with state standards. The suit was filed in Orange County Superior Court but couldn't immediately be verified in electronic records.

"Cities and counties are important partners in addressing this housing crisis, and many cities are making herculean efforts to meet this crisis head on," Newsom said in an emailed statement. "But some cities are refusing to do their part to address this crisis and willfully stand in violation of California law. Those cities will be held to account."

No other state faces a housing shortage as deep and wide as California. Fees, regulations and delays have pushed building costs to among the highest in the nation, and the state adds far fewer new units than it needs each year to meet demand. As a result, median home prices have about doubled since the end of the Great Recession, to $558,000. Two in five households in the state are considered "cost-burdened," paying more than 30 percent of their income on housing. Homelessness has reached crisis proportions.

Huntington Beach is in Orange County, once a Republican stronghold that has seen its edge slip after the 2018 elections. The Republican congressman representing the city, Dana Rohrabacher, lost to a Democrat. Becerra and Newsom are Democrats.

In Friday's complaint, the state's housing agency said the Huntington Beach city council voted unanimously in March 2016 to defeat a proposal that would have committed the city to more affordable housing. When the state told the city in November 2018 that it still wasn't in compliance, city officials said they wanted to first resolve a 2015 lawsuit brought by affordable housing advocates.

"The time for empty promises has come to an end," according to the complaint. "The city should not be allowed to avoid its statutory obligations any longer."

Huntington Beach officials didn't immediately respond to a request for comment on the suit.

This isn't Becerra's first court showdown with Huntington Beach. The city sued the attorney general and Newsom's predecessor, Jerry Brown, last April over a 2017 law that bars local police from telling federal officials when immigrants subject to deportation are about to be released from custody.

Huntington Beach supported a legal challenge by then-U.S. Attorney General Jeff Sessions to California's immigrant sanctuary laws that was largely rejected by a federal judge in Sacramento.

The case is California Department of Housing and Community Development v. City of Huntington Beach, California Superior Court, Orange County.

Bloomberg Politics

By Peter Blumberg and Romy Varghese

January 25, 2019, 1:18 PM MST Updated on January 25, 2019, 2:00 PM MST

— *With assistance by Noah Buhayar, and Edvard Pettersson*

[Fourth District Rejects CEQA Challenge To San Diego's Use of Existing Facilities Categorical Exemption For Mission Beach Amusement Park Lease Amendment and Extension.]

In an opinion filed December 27, 2018, and later ordered published on January 15, 2019, the Fourth District Court of Appeal (Div. 1) affirmed the trial court's judgment rejecting CEQA and other challenges to the City of San Diego's (City) approval of an amended and restated lease of City-owned land containing an oceanfront amusement park in its Mission Beach neighborhood (Belmont Park), which restated lease potentially extends the prior lease term for a significant period. *San Diegans For Open Government v. City of San Diego (Symphony Asset Pool XVI, LLC, Real Party in Interest)* (2019) ___ Cal.App.5th ___.

Relevant Factual Background

Belmont Park, developed in 1925, contains original amusement attractions including the Plunge (an indoor swimming pool) and the Giant Dipper roller coaster. Upon its developer's death, it was granted to the City, which thereafter in the early 1970's dedicated it along with adjacent land (collectively named Mission Beach Park) for public park and recreational purposes. In 1987, to renovate and revitalize the aging Belmont Park, the City entered into a 50-year Lease and Development Plan for Belmont Park (excluding the Roller Coaster) providing for the demolition and construction of various facilities, including restaurants, shops, and parking, for recreational and visitor-serving commercial uses. The 1987 Lease gave the lessee/operator (Belmont Park Associates) the right of first refusal to enter into a new lease upon terms within City's sole discretion upon City's finding of a continuation of the property's uses to be in the public's best interest.

A few months after execution of the 1987 Lease, City's electorate passed Proposition G limiting commercial development of Mission Beach Park to preserve its recreational and visitor-serving parkland uses and its amusement park's historical remnants. Proposition G provided exemptions for certain development and redevelopment projects or proposals which had obtained vested rights under its standards as determined by the City Council after an application and noticed public hearing. The City subsequently determined the Roller Coaster and Belmont Park Associates Project had vested rights to continue operation and complete development. In 1989, the Mission Bay Precise Plan was amended to recognize Mission Beach Park development would be guided by the Council-approved Lease and Development Plan until the lease expired on March 31, 2037, but recommended that future development thereafter be limited to public and recreational uses with commercial uses restricted to the Plunge building.

City's Resolution Approving The Restated Lease And The Litigation Challenging It

Following a number of lease assignments, in late 2012 Symphony became the lessee under the 1987 Lease and also acquired the entity that was lessee/operator of the Roller Coaster lease. In 2015, the City approved and entered into an amended and restated lease with Symphony encompassing both Belmont Park and the Roller Coaster. That Restated Lease recognized Symphony had already invested $18 million in capital improvements and upgrades to the property (and planned to additionally invest $5.9 in Plunge pool refurbishment); required Symphony to maintain and operate the Plunge and Roller Coaster and pay City annual rent; and provided it an opportunity for an extended lease term (of from 40 to 50 additional years) if it completed the contemplated improvements, made additional City-approved capital improvements, and paid the City a lump sum of $500,000. The Restated Lease specified numerous allowed uses of the premises and provided City could approve additional uses in its sole discretion, subject to all applicable laws.

City determined its approval of the Restated Lease was categorically exempt from CEQA under Guidelines § 15301's exemption for existing facilities. Petitioner SDOG challenged City's resolution approving the Restated Lease, alleging it violated Proposition G, CEQA, and a City Charter provision requiring actions authorizing "contract[s], agreement[s], or obligation[s] extending for a period of more than five years" be taken by ordinance with notice published in City's official newspaper. The trial court rejected all three arguments, and the Court of Appeal affirmed.

The Court Of Appeal's Decision On the Non-CEQA Issues

Reviewing the matter as challenging legislative action and thus subject to ordinary mandamus review (Code Civ. Proc., § 1085), the Court of Appeal held (with respect to the non-CEQA arguments) that: (1) the Restated Lease fell within the vested rights determined by the City Council in 1988, and that the broad language of the 1987 Lease encompassed all the uses specifically set forth in the Restated Lease (e.g., restaurant, full service and fast foods, and recreational); (2) the Restated Lease's extension provision was permissible because the 1987 Lease contemplated possible extensions and did not mandate a fixed inflexible term, and the Mission Beach Precise Plan did not address vested rights (which were not limited in time) and its recommendations regarding future development were not legally binding; and (3) the City Charter provision was ambiguous when considered in context with surrounding provisions, but was properly construed (consistent with City's long-standing interpretation, the legislative history, and established rules of construing charters) only to restrict City's authority to enter into long-term contracts and projects that would require it to expend funds, not agreements (like the Restated Lease) under which it received revenues.

The Court Of Appeal's Holdings On The CEQA "Existing Facilities" Exemption Issues

With respect to the CEQA claim, the Court reviewed it under Public Resources Code § 21168.5, which provides the standard of review in CEQA challenges where no evidentiary hearing is required, and under which a prejudicial abuse of discretion is established where the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. Guidelines § 15301's existing facilities exemption from environmental review under CEQA applies to the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing *at the time of the lead agency's determination*." (Emph. added.) SDOG's argument that Symphony's willingness to pay over $25 million in construction costs proved the Restated Lease exceeded the exemption's "negligible or no expansion of [existing] use" provision failed because, as reflected by the Restated Lease, "the $18 million in improvements… had already been completed and, accordingly, were existing facilities" at the time of City's exemption determination; SDOG did not argue that the contemplated $5.9 million for future Plunge refurbishment fell outside the exemption. The Court also rejected SDOG's attempt to rely on case law addressing whether *CEQA litigation* becomes moot when a challenged project is completed during that litigation; here, per the Court, "the existing facilities exemption applied from the time that the Restated Lease was approved, and the City made its CEQA determination because all the structures at issue were already completed."

Finally, the Court rejected SDOG's argument that Guidelines § 15300.2(c)'s "unusual circumstances exception" to the exemption applied. It noted that the party challenging the exemption has the burden of producing evidence supporting an exception. Per the Court: "SDOG has not identified any unusual circumstances due to which there may be a significant effect on the environment." While SDOG argued "that the single unusual circumstance present here is that the electorate passed Proposition G to govern the development of Mission Beach Park," and that a "fair argument" existed that the Restated Lease would result in increased environmental impacts (i.e., significant noise and traffic) that Proposition G sought to avoid, this "undeveloped and conclusory argument" failed for two reasons. First, the Court found it "entirely speculative" that the "sole fact cited by SDOG" – over $100 million in City revenues over the course of the lease – would result in significant visitor increases and increased traffic and noise.

Second, it held that "even if there was evidence to support SDOG's contention that the Restated Lease will result in increased traffic and noise, SDOG has made no attempt to show that the increased traffic and noise would be due to the unusual circumstances it cites, namely the existence of Proposition G." The Court observed: "In order for the unusual circumstances exception to apply, the significant environmental effect must be *due to* the unusual circumstance. [citations.] No such causal connection has been identified." (Emph. Court's, citing Guidelines § 15300.2(c) and *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.)

by Arthur F. Coon

January 23, 2019

Miller Starr Regalia

[Fitch Ratings: California Municipalities Brace for Next Downturn]

Fitch Ratings-San Francisco-23 January 2019: California credits, specifically the state, counties and cities and school districts, are all better prepared to manage through the next economic downturn; however, some school districts throughout the state may feel its effects more acutely, according to a new Fitch Ratings report.

California school districts face a challenging budget environment during the next recession due to what Fitch Senior Director Karen Ribble describes as "scheduled teacher pension contribution increases, limited to no control over revenues, relatively low reserves compared to elevated revenue volatility due to reliance on volatile state funding."

School district reserves are higher than in fiscal 2008, which will help to some extent. Also important to consider is that California school districts have essentially no ability to raise revenue without voter approval.

Conversely, most Fitch-rated California counties appear to be the most well-positioned out of the three local governments to weather cyclical declines while maintaining financial flexibility. For one, counties have the least volatile revenues. Much of it comes from relatively stable property tax revenues and counter-cyclical intergovernmental revenues instead of more cyclical revenue streams like sales taxes and transient occupancy taxes. However, cities are also well-positioned. "California cities and counties will likely trim service levels, negotiate labor concessions and temporarily curtail discretionary spending so its expenditures are more closely better aligned with temporary lower revenues," said Ribble.

The state as a whole is very susceptible to revenue volatility since it is reliant on two economically sensitive revenues (personal income taxes and sales and use taxes). Additional risk exists because California contains some of the more overvalued housing markets in the nation. On the positive side, California has paid back the debt it borrowed during the last two recessions and has a rainy day fund that will equal 10% of revenues by the end of fiscal 2019. These excess funds will help mitigate revenue volatility.

Drilling down into the ratings themselves, Fitch expects the vast majority of them to remain stable throughout a moderate downturn since the expected stresses have been factored into the ratings. Only unforeseen policy decisions or an unusually long and/or severe economic downturn would result in rating changes.

"How Prepared Are California Credits for the Next Recession?" is available at www.fitchratings.com.

Contact:

Karen Ribble
Senior Director
+1-415-732-5611
Fitch Ratings, Inc., 650 California Street
San Francisco, CA 94108

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

Additional information is available on www.fitchratings.com

New Data Suggests Regulated Water Companies Deliver Higher Quality Water Than Publicly-Run Systems.

An expanded analysis of the largest and most comprehensive study conducted on Safe Drinking Water Act (SDWA) compliance suggests that community water systems owned by regulated water companies are less likely to violate the SDWA than water systems owned and run by local governments. The new analysis was funded by the National Association of Water Companies (NAWC), which represents regulated water companies.

The original study, published in the Proceedings of the National Academy of Sciences in February 2018, reviewed U.S. Environmental Protection Agency (EPA) data from 1982 to 2015 and found that "private ownership" of a water system was "significantly associated with higher compliance." The dataset included the compliance records of 17,900 community water systems from across the continental United States. The full study is available here.

A further analysis of the dataset was conducted by Dr. Justin Adams of Encina Advisors, an economics research and statistical analysis consultancy based in California. The finding that water companies have higher rates of SDWA compliance was evident both nationally and in each of the four states analyzed: California, Texas, Pennsylvania and New Jersey.

This marks the first time a state-level analysis comparing drinking water compliance records of regulated water companies and local governments has been conducted using this dataset.

“We wanted see how the ownership of water systems impacted drinking water compliance rates in different states,” said Adams. “The data show very clearly that water systems owned by regulated companies strongly outperform water systems owned and run by local governments on Safe Drinking Water Act compliance.”

“Flint provides an unfortunate example of how a government-run system was unable to ensure the delivery of safe water to its citizens. As a former state utility regulator, I have seen firsthand the harsh realities of what happens when communities are unable to properly manage their water systems, jeopardizing public health and safety,” said Robert Powelson, CEO and president of the National Association of Water Companies. “The results of this study further confirm that regulated water companies nationwide are doing a better job than their municipal counterparts in delivering the highest quality water possible.

“Local governments across America face urgent water system infrastructure and operations challenges,” continued Powelson. “That is, no doubt, one of the key contributors to what we see in this study as some small and midsized municipalities struggle to provide safe water to residents. NAWC member companies are well-positioned to bring the expertise and investment troubled systems need to ensure Americans can count on safe and reliable water service.”

The initial study published in the Proceedings of the National Academy of Sciences was authored by Dr. Maura Allaire, University of California Irvine; Haowei Wu, Columbia University; and Dr. Upmanu Lall, Columbia University. The state-level analysis of EPA data conducted by Encina Advisors was funded by the National Association of Water Companies.

The National Association of Water Companies (NAWC) represents regulated water and wastewater companies, as well as ones engaging in partnerships with municipal utilities. NAWC members provide 73 million Americans with safe and reliable water service every day and have an exceptional record of compliance with federal and state health and environmental regulations. Ensuring this high standard of quality requires extraordinary amounts of capital investment. NAWC estimates that its six largest members alone are collectively investing $2.7 billion each year in their water and wastewater systems. For more information about NAWC, please visit NAWC.org or follow on Twitter, Facebook and YouTube.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

JANUARY 16, 2019

Mayors Express Support for Incentives.

Menino Survey of Mayors asked 110 US mayors for their opinions on economic development, recruitment competition and financial incentives.

- 84% stated that “recruiting economic investments with financial incentives is good policy.”
- 44% believe that incentives are unpopular with constituents but are good for the city.
- 40% believe that incentives are popular with constituents and are good for the city
- Yet 61% believe other cities offer too many incentives, and 62% believe it would be good for cities to refrain from offering incentives.

> “Essentially, most mayors see their own cities’ use of incentives as measured and effective, while also seeing others’ use as excessive.”

- 55% agree that cities see net benefits in the long run when they recruit a company or facility; 23% disagree.
- Cities promote workforce skills and perceived quality of life when recruiting new investment; only 16% mayors primarily emphasize incentives.
- 59% would prefer a new employer within the city’s borders even if it employs people who live outside the city (prioritizing tax base), while 41% would prefer a new employer outside the city that employs people who live in the city (prioritizing jobs).

While we are not surprised that most mayors see incentives as a good policy, it is interesting that so many perceive incentives as unpopular. Many surveys have shown high levels of popular support for incentives, including a recent poll in Virginia indicating 68% of registered voters support the announced Amazon HQ2 deal.

It is also not surprising that incentives play a secondary role in recruitment strategies. All good efforts focus first on location-specific factors that support company operations and strategy, with incentives playing a valuable but supporting role.

The most intriguing finding is that 84% consider financial incentives to be good policy, yet only 55% believe cities see “clear net benefits” from recruitment. Given the question’s wording, city leaders may believe it is the other cities that fail to see clear net benefits. It may also point up the political disconnect between the immediate gains perceived from a successful recruitment versus the difficulties of documenting actual longer-term economic benefits when new investment occurs.

The Menino Survey of Mayors is conducted by the Boston University Initiative on Cities with support from Citi Community Development and the Rockefeller Foundation. You can download the Summary of Findings or access the full report here.

SMART INCENTIVES

by Ellen D. Harpel | Jan 22, 2019

The MSRB Adds New BondWave AA Yield Curve to EMMA®

Learn more.

Mayors Eye Two-Pronged Attack on FCC’s Preemptive 5G Order.

The latest effort is a new bill in Congress that would overturn the agency on its rule that strictly limits how much local governments can charge providers and how long officials can take to process applications.

WASHINGTON — Mayors expressed optimism Thursday a new House bill could provide an alternative path to overturning a Federal Communications Commission order preempting local authority over fifth-generation wireless deployments.

H.R. 530, authored by U.S. Rep. Anna Eshoo, a California Democrat, would undo rules that went into partial effect on Jan. 14 requiring cities to move on wireless providers' small cell applications within set timeframes while capping fees to access public rights of way.

FCC restrictions on the aesthetic limits cities can impose on providers take effect April 15, unless Congress acts or cities led by Portland, Oregon, are successful in their lawsuit against the commission pending in the 9th U.S. Circuit Court of Appeals asserting irreparable harm.

Portland Mayor Ted Wheeler told his U.S. Conference of Mayors colleagues at their winter meeting in D.C. that the city's right of way—access to which is at the heart of its lawsuit—was its largest asset, costing taxpayers millions of dollars to establish and millions more to maintain and manage. Companies shouldn't just be able to take advantage of this public property without paying their fair share, he said.

"[Digital equity] can't be achieved without reliable, high-speed broadband to access essential services like education, employment opportunities and health care," Wheeler said. "But I will never ask Portland residents to subsidize multi-billion-dollar companies, who currently have no obligation whatsoever to serve low-income communities."

While the suing cities' attempt to stay the FCC order failed in the 10th Circuit, their cases were shifted to the 9th Circuit. The move should give cities "home-field advantage" because the FCC order overturned two long-standing rulings by that court, said Gerry Lederer, partner at the law firm Best Best & Krieger.

If the order is overturned, the FCC would be back to square one, said Alex Hoehn-Saric, chief counsel with the House Subcommittee on Communications and Technology.

U.S. Rep. Frank Pallone, a New Jersey Democrat, is the newly appointed chairman of the House Energy and Commerce Committee and believes in swift 5G deployment in collaboration with state and local officials, Hoehn-Saric said.

"Congress did not authorize or empower the FCC to trample on localities and effectively usurp our property rights, yet this is what they've done," said Piscataway, New Jersey Mayor Brian Wahler, whose city is in Pallone's district.

The FCC commissioners who backed the order, all Republicans, argued it would save $2 billion in the U.S.'s race to deploy 5G, the faster wireless service expected to boost economic opportunity, before other countries—thereby dictating the technology's applications.

Route Fifty

By Dave Nyczepir,
News Editor

JANUARY 24, 2019

States See a Slip in Tax Collections That's Not Totally Unexpected.

The federal tax overhaul and stock market volatility help to explain some recent income tax revenue trends.

Income tax collections in December were short of expectations and prior year levels in New York, California and other states, Moody’s Investors Service noted in a brief last week.

The trend is not entirely surprising and underscores the uncertainty state revenue forecasters face as taxpayer behavior changes in response to the 2017 federal tax overhaul, and recent stock market volatility potentially shakes up collections tied to capital gains.

“We expected to get a lower number in December,” John Hicks, executive director of the National Association of State Budget Officers, said by phone on Friday as he discussed income tax collections. “As to whether it’s so low that it’s a problem: Don’t know yet.”

“Revenue estimators will say, particularly with personal income tax, there’s a lot of uncertainty around taxpayer behavior,” he added.

States in December 2017 saw personal income tax revenues swell. The uptick has been widely attributed to high-income taxpayers making early payments so they could claim tax breaks that would be curtailed under the changes to federal tax law enacted that year.

So, in other words, because income tax revenues in December 2017 were unusually high, it makes sense that December 2018 collections would be lower by comparison.

At the same time, how the 2017 federal tax overhaul will affect state income tax revenues in the long run is still coming into focus.

In New York gross personal income tax collections were not only $2.8 billion less than a year earlier, according to the Moody’s brief, but also $500 million shy of the state’s revenue forecast. Total gross personal income tax revenues in New York through December were down about 1.6 percent for the same period during the prior year.

State income tax collections around December are generally seen as a barometer of how income tax receipts will stack up when they’re totaled up in April, Moody’s points out.

NASBO has said previously that in fiscal 2018 states funded on average nearly 46 percent of their budgets with income taxes.

California, Massachusetts and New Jersey were among the other states that reported lower than anticipated income tax collections in December, according to Moody’s. In California, for instance, receipts for the month were down $4.7 billion from the prior year.

Hicks said that running up to December, personal income tax growth was generally strong across the country. “It’s not to say that people aren’t watching closely,” he added.

A key factor affecting state income tax revenues in the December-January timeframe are what’s known as “estimated payments,” which are typically made by taxpayers with sizable income from sources other than wages—like stock market gains.

Moody’s says January collections could make up for the slide in December income tax revenue in some states, but also highlighted that New York reduced its personal income tax forecast for its current budget cycle and future years.

“We expect continued uncertainty to cloud state revenue forecasts in fiscal 2020,” the brief from the ratings agency says. Analysts there added: “It will take the passage of time and more missed revenue forecasts for state revenue analysts to capture new trends.”

Route Fifty

By Bill Lucia,
Senior Reporter

JANUARY 27, 2019

Disputes Over State Taxes on Railroad Fuel Simmer Before Supreme Court.

The court on Monday asked for the U.S. government to submit views on an Alabama case.

Alabama for about a decade now has been battling in court over whether a tax the state levies on the diesel fuel that railroads purchase to power their locomotives discriminates against the industry and is therefore in violation of federal law.

In the latest chapter of this long-running dispute, two linked petitions concerning the same case are pending before the U.S. Supreme Court. So far, the high court hasn't decided to hear the matter. But on Monday justices asked for the Trump administration to submit views on it.

Alabama's lawyers describe the case as the "de facto bellwether" for other related disputes.

They add that state and federal courts across the federal 11th Circuit, which covers Alabama and Georgia, have stayed over 30 actions in the two states for tax refunds and injunctions while awaiting resolution in the case, which pits Alabama against CSX Transportation, Inc.

The Alabama legal fight hinges on claims by CSX, one of the nation's largest rail carriers, that the state discriminates against it by requiring railroads to pay a 4 percent sales and use tax on diesel purchases. In contrast, trucks and interstate water carriers are exempt from the tax.

Alabama says eight railroads have sued seeking refunds for tax payments on fuel totaling about $24 million, not including interest, and that CSX stopped paying the state tax in 2011. Most of the state's sales and use tax revenue goes to fund public schools, the state adds.

It also notes that CSX is seeking to clawback similar taxes in Georgia totaling upwards of $34 million.

CSX agrees there are public dollars at stake.

But the company says the state "ignores the victim of its illegal taxing scheme" and that "the railroads have been in the past, and continue to be, beleaguered by what Congress determined was 'widespread, long-standing and deliberate' discriminatory state and local taxation."

Claims Under the '4-R Act'

The federal law at the center of the controversy is the Railroad Revitalization and Regulatory Reform Act, or "4-R Act."

Enacted in 1976, it prohibits three types of state tax practices related to property taxes. The law also contains a clause that blocks states from imposing other types of taxes that discriminate against rail carriers under the jurisdiction of the federal government.

On two other occasions, Alabama's fuel tax feud with CSX has reached to the Supreme Court—most recently in late 2014.

That time around, the court sent the case back to the 11th U.S. Circuit Court of Appeals to determine whether Alabama could justify the tax exemptions for trucks and water carriers, like barges.

In the wake of the ruling, Alabama now says the Supreme Court should hear the case to "definitively" clarify whether and when sales and use tax exemptions violate the 4-R Act.

The state's petition asking the court to take up the case describes how railroads, citing the federal law, began bringing litigation in the 1990s against state taxes on diesel fuel. These claims began in Alabama in 2008, with seven rail carriers filing four lawsuits.

"States have been waiting for an answer for more than 20 years; years we have spent litigating cases that have cost taxpayers millions of dollars," the state's filing with the Supreme Court says.

"Granting review to answer the decades-old question thus provides the opportunity to resolve multiple pending cases and prevent new ones."

The railroad says it's inaccurate to characterize the case as the culmination of two decades of litigation because there has not been a string of prior cases with unsettled questions about when tax exemptions for water carriers are justified.

CSX, in a linked "cross-petition," is asking the Supreme Court to review the portion of the 11th Circuit decision related to trucks if it green-lights the state's petition focused on water carriers.

While truckers don't pay the sales and use tax on fuel in Alabama, they do pay a 19 cent per gallon state excise tax on diesel, along with a roughly 24 cent per gallon federal tax. Cargo vessels traveling in and out of the state on waterways don't pay a state fuel tax in Alabama, but do pay a per gallon federal tax of about 29-cents.

Fuel for CSX trains is not subject to any of those taxes, the state court filing notes. Alabama says that between 2007 and 2016 its state and local taxes for train fuel totaled about 23-cents per-gallon.

The company counters that while water carriers pay no Alabama state fuel taxes, CSX in Birmingham and Montgomery, where it buys most of its fuel in the state, faces a combined state and local tax rate of 10 percent, and statewide owes about $5 million in the tax costs annually.

The state's tax exemption for fuel used by water carriers dates back to 1939 and the state says that, while it's not entirely clear, it was likely enacted to comply with federal laws and court decisions.

"Alabama did not exempt water carriers to disadvantage trains," its court petition says.

The state also makes a case that the federal government has jurisdiction over waters used for interstate shipping, and because vessel operators pay federal fuel tax to support projects and policing on those waters, states should be able to forego taxing fuel for ships.

CSX argues that the federal taxes are "irrelevant" and points out that the 11th Circuit rejected arguments tied to the fact that shipping on interstate waters is within the federal domain.

The company says in the 1970s, when lawmakers passed the 4-R Act, many railroads were on the brink of financial collapse, partly due to state and local tax burdens, and that the federal law was meant to help boost competition between freight trains and other types of haulers.

“The Eleventh Circuit’s water carrier ruling does just that,” the company says. “A state should not be heard to complain of ‘lost tax revenue’ from its own discriminatory tax.”

The 11th Circuit ruling, which preceded the current petition and cross-petition before the Supreme Court, gave Alabama two options to fix the discrimination it found: stop collecting sales and use taxes on fuel from the railroad, or revoke the water carrier exemption.

Under the first option, CSX would pay zero taxes on fuel in the state, Alabama says. With the second, it would face a total tax burden in the state for diesel of about 23 cents per gallon, while for trucks the figure would be around 47 cents, and for barges about 52 cents.

Use of Tax Proceeds

Another company, Illinois Central Railroad Co., on Jan. 2, filed a petition asking the Supreme Court to hear a similar but separate case dealing with a Tennessee tax law.

In the Illinois Central case, the company is asking the court to consider whether a state fuel tax on diesel for trains, that truckers are exempt from, discriminates against railroads under the 4-R Act. The 6th U.S. Circuit Court of Appeals upheld the tax, deeming it “roughly equivalent” to the fuel taxes that motor carriers do pay in the state.

Illinois Central zeros in on the idea that the way tax revenues are spent can factor into whether a tax is discriminatory. Sure, truckers pay fuel taxes in the state, the railroad says, but that money helps pay for highway construction and maintenance, which they benefit from.

Railroads on the other hand, according to Illinois Central, receive “minimal direct benefit” from the fuel taxes they pay and must pony up for their own infrastructure, like tracks and bridges.

This gives an advantage to trucking firms, the company claims. Illinois Central says the case presents the court with a chance to resolve whether the way a state uses tax revenue is relevant when it comes to determining if a tax is allowable under the 4-R Act.

CSX’s cross-petition, urging the Supreme Court to weigh in on the 11th Circuit’s blessing of Alabama’s diesel sales and use tax exclusion for trucks, features similar arguments.

Alabama’s lawyers say the court should grant the railroad’s cross-petition to resolve questions about the “truck issue” as well.

They also say the Illinois Central case does not present the same issues surrounding the justification for the water carrier exemption and that the court should take its case instead. “The one it knows best,” the state adds, “and thanks to Alabama’s acquiescence to CSX’s cross-petition, the only one that tees up all necessary issues.”

Route Fifty

By Bill Lucia,
Senior Reporter

JANUARY 14, 2019

States are Betting on Revenue from Sports Betting This Year.

Bill Bradley did not like sports betting. The former New York Knicks star forward felt it sent the wrong message to young athletes and undermined the integrity of the game. So when Bradley transitioned from the basketball court to the U.S. Senate, he championed a nationwide ban on sports betting.

It was not, perhaps, the most likely of causes for a Senator from New Jersey, home of Atlantic City, and then-Rep. Bob Torricelli was chagrined. To Sen. Bradley's dismay, Torricelli engineered a carveout for New Jersey, with a grandfather clause that allowed continuing sports book operations in a handful of states that already allowed them, including Nevada.

However, a stalemate in the state legislature prevented New Jersey from legalizing sports betting in the narrow window granted them by the new federal law, the Professional and Amateur Sports Protection Act (PAPSA) of 1992. And so it came to pass that, two and a half decades later, a new generation of New Jersey politicians would unmake Bradley's legacy, winning a victory in the Supreme Court to strike down PAPSA and open the door to state legalization—and of course taxation—of sports betting.

Continue reading.

The Tax Foundation

by Jared Walczak

January 25, 2019

S&P Webcast Replay: 2019 U.S. Municipal Water Utilities Outlook

Our US Public Finance utility and infrastructure team held a live, interactive webcast on Wednesday, January 23, 2019 at 2:00 p.m. Eastern Standard Time (11:00 a.m. Pacific Standard Time) where our analysts provided their views on the challenges and opportunities municipal water and sewer utilities will face in 2019. Will there be a federal infrastructure package? Any new environmental rulemaking? What about WIFIA, affordability and climate change.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Transportation Infrastructure Outlook

S&P Global Ratings analysts from the U.S. Public Finance Transportation team held a live interactive webcast on Thursday, January 24 at 2:00 p.m. Eastern Standard Time, where they provided their views on the 2019 Transportation Infrastructure Outlook credit outlook.

View The Event Materials

S&P Webcast Replay: 2019 U.S.Not-for-Profit Charter School Outlook

S&P Global Ratings U.S Public Finance held a live, interactive webcast on Tuesday, January 22nd at 2:00 pm Eastern Standard Time, for a discussion on the U.S Not-for-Profit Charter School sector Outlook. We introduced our new Charter School Sector Leader, Jessica Wood.

View The Webcast Replay

S&P Webcast Replay: 2019 U.S. Not-for-Profit Health Care Outlook

S&P Global Ratings analysts from the Not-For-Profit Health Care team held a live interactive webcast on Thursday, January 17, 2019 at 2:00 p.m. Eastern Standard Time, 11:00 a.m. San Francisco, where they provided their views on the latest industry credit outlook for the U.S. Not-Fo--Profit Health Care Sector.

View The Webcast Replay

NASBO 2019 Spring Meeting.

April 4-5 | Philadelphia, PA

Click here to view the agenda.

Click here to register.

National Association of State Budget Officers

Time May Be Running Out For Texas Property Tax Abatements.

The Texas state legislature must decide whether or not to extend the ad valorem property tax abatement program currently authorized under state law. The program is currently set to expire on September 1, 2019. Local tax abatements are not without their detractors, and the decision to extend the existing program could impact the viability of future renewable energy and other energy developments across the state.

Background: Chapter 312 Property Tax Abatement Program

Chapter 312 of the Texas Tax Code currently permits local taxing units to enter into agreements with property owners providing for the abatement of ad valorem property taxes, provided that the property owner makes specified improvements or repairs to the property. These agreements are entered into between a property owner and a local county, city, special taxing district or other authority such as a water district or a hospital district. The state law authorizes and establishes certain guidelines for the abatement agreements, with the precise terms of the abatements negotiated and agreed to by the local taxing authority and the taxpayer. Any agreement must be approved by a vote of the members of the governing body of the local taxing unit.

Currently, the Chapter 312 abatement program is set to expire on September 1, 2019. The expiration of the program would not impact abatement agreements that have already been executed, but would prohibit local taxing units from entering into any new agreements after the expiration date. The term of an abatement agreement is limited to a maximum of 10 years by the statute, so property owners who have executed agreements prior to the potential expiration of the program could potentially still benefit from the abatement program for a number of years past this expiration date.

School districts, whose ad valorem property tax rates are typically greater than those of the other local taxing units, are prohibited from entering into abatement agreements under Chapter 312. However, Chapter 313 of the Texas Tax Code provides for a similar incentive with respect to ad valorem taxes levied by local school districts. Unlike Chapter 312, which provides for the abatement of property taxes, Chapter 313 allows school districts and property owners to enter agreements to limit the appraised value of property for ad valorem property tax purposes. Chapter 313 is currently set to expire on December 31, 2022, barring any legislative action to extend the expiration date.

Texas Legislative Session and Proposals

The Texas legislature began its session on January 8, 2019, and the session is scheduled to end on May 27. Pre-filing of bills for the 2019 session opened on November 12, 2018. Three pre-filed bills addressing the pending expiration of the Chapter 312 abatement program would extend the program for an additional term of 10 years. The bills introduced to date include Texas H.B. 360 and Texas H.B. 499, filed by Republican State Representatives Jim Murphy and Angie Button, respectively, as well as Texas S.B. 118, filed by Democratic State Senator Royce West. As currently drafted, the bills do not contain any provisions creating any additional limitations or carve-outs from the abatement program.

> **Eversheds Sutherland Observation:** Tax abatement agreements have been offered by local taxing jurisdictions across Texas to taxpayers in a wide range of industries and for diverse types of projects. Lobbyists and trade groups are currently presenting arguments on both sides of the debate regarding extension of the Chapter 312 abatement program. In particular, a number of groups have expressed opposition to granting tax abatements to renewable energy projects, including wind and solar farms. Taxpayers who are contemplating a project in Texas or who have already begun acquiring or developing such a project should be mindful of the pending expiration of this abatement program and seek to execute any abatement agreements in advance of September 1, 2019. Eversheds Sutherland will continue to monitor any developments regarding the extension or modification of the Chapter 312 abatement program and provide updates of any significant developments.

January 24, 2019

Eversheds Sutherland (US) LLP

BDA’s 116th Congress Policy Outlook.

In the first month following the end of a unified Republican Congress and presidency, the federal government continues in what is now the longest shutdown in U.S. history. A new Democratic majority in the House is trying to gain traction on major issues like infrastructure, GSE reform, healthcare and technical corrections to the 2017 tax reform bill, but as the shutdown grows longer, will hopes of bipartisan legislation dwindle?

Below is the BDA's 116th Congressional outlook, including information on committee leadership and new members of the committees of jurisdiction to BDA's interests – as well as a policy outlook.

You can find a combined House and Senate calendar for 2019 here.

Continue reading.

Bond Dealers of America

January 23, 2019

2018 BDA Regulatory and Legislative Accomplishments.

In the past few years of massive regulatory change, the BDA has remained focused on the highest priority issues impacting the U.S. fixed income markets and provided its members with valuable opportunities to engage directly with regulators. The BDA also provides its members with in-person access to key Capitol Hill policymakers on the Senate Finance Committee, the Senate Banking Committee, the House Financial Services Committee and the House Ways and Means Committee. The legislation developed by these committees directly impacts the fixed income markets.

Through a truly engaging partnership with hundreds of industry leaders at BDA member firms, below are the 2018 regulatory and legislative accomplishments of the BDA. Thank you for your ongoing support.

Continue reading.

Bond Dealers of America

January 24, 2019

MSRB Seeking Applications for Five Positions On Its 21-Member Governing Board.

Listen to what a current regulated representative enjoys about his tenure and how to apply.

- S&P Priority-Lien Criteria Updates.
- S&P List Of Rating Actions Due To Priority-Lien Revenue Debt Criteria.
- BDA Submits Comment Letter on Draft Amendments to 2012 Interpretive Notice on the

[Application of Rule G-17 to Underwriters of Municipal Securities.]

- [2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities: SIFMA Comment Letter]
- [CDFA – PFM Capital Markets Webinar Series.]
- [SEC, MSRB and FINRA Postpone February 7 Compliance Outreach Program for Municipal Advisors.]
- *[Indian River County, Florida v. Department of Transportation]* – District Court holds that State of Florida properly approved issuance of tax-exempt PABs for financing of railway in accordance with IRC provision establishing public approval requirements before bonds could be "qualified" to receive tax-exempt status, thereby obviating the need for approval by all counties through which the railway ran. Lot going on in this one.
- And finally, Great Moments in Ingrates is brought to us this week by *[Roberts v. Coeymans Hollow Volunteer Fire Company]*, in which an elderly woman in a wheelchair was rescued from her burning home by a group of volunteer firefighters. Their reward? So glad you asked. A lawsuit brought by the Elderly Ingrate against the volunteers for the lacerated toe she suffered in the extrication. But we do imagine that it's easier to negotiate the execution of a damage waiver when the counterparty is – you know – TRAPPED IN A BLEEPIN' BURNING BUILDING!

PARKING - CALIFORNIA

[Modacure v. B&B Vehicle Processing, Inc.]

Court of Appeal, First District, Division 5, California.December 21, 2018 - Cal.Rptr.3d - 2018 WL 6715870 - 18 Cal. Daily Op. Serv. 12, 008 - 2018 Daily Journal D.A.R. 12, 238

Vehicle owner brought action against city and towing and storage businesses for conspiracy and denial of due process regarding the seizure and subsequent sale of owner's impounded vehicle.

The Superior Court sustained defendants' demurrers without leave to amend and dismissed the case. Owner appealed.

The Court of Appeal held that:

- Owner failed to state claim that city and businesses conspired to seize vehicle and keep surplus proceeds from sale instead of applying the proceeds to unpaid parking tickets, and
- Owner stated a claim under § 1983 by alleging city's and businesses' failure to apply sale proceeds to unpaid parking tickets.

Vehicle owner failed to state claim that city and towing and storage businesses conspired to seize and impound vehicles and keep surplus proceeds from subsequent vehicle sales instead of applying the proceeds to unpaid parking tickets, where complaint alleged that owner's vehicle was sold before alleged conspiratorial meetings occurred.

Vehicle owner stated a claim under § 1983 by alleging city's and towing and storage businesses' failure to apply impounded vehicle sale proceeds to unpaid parking tickets, which allegedly resulted in misallocation of sale proceeds, was violation of right to due process.

COLLECTIVE BARGAINING - COLORADO

School District No. 1 in County of Denver v. Denver Classroom Teachers Association

Supreme Court of Colorado - January 14, 2019 - P.3d - 2019 WL 179170 - 2019 CO 5

Teachers' union brought action against school district for breach of collective bargaining agreements.

After a jury trial, the District Court found the district liable. District appealed and union cross-appealed. The Court of Appeals affirmed. A petition for certiorari was granted.

The Supreme Court of Colorado held that collective bargaining agreements were ambiguous, and thus interpretation was properly submitted to jury.

Provisions in collective bargaining agreements between school district and teachers union, which required extra payment for "In-Service Education," were fairly susceptible of being interpreted to include English learning acquisition training, and thus interpretation of agreements was factual question properly submitted to jury on union's breach of contract claim against district for failing to compensate teachers; even though agreements had management rights clause, English learning acquisition training could be understood as training or education given to employed teachers, and such training could reasonably be deemed program of instruction or training intended to increase skills and competence of teachers who work with English language learners.

PRIVATE ACTIVITY BONDS - FLORIDA

Indian River County, Florida v. Department of Transportation

United States District Court, District of Columbia - December 24, 2018 - F.Supp.3d - 2018 WL 6736036 - 122 A.F.T.R.2d 2018-7081

County and its emergency services district brought action against Department of Transportation (DOT) and related defendants for claims arising from extension of express passenger railway connecting Orlando and Miami, Florida.

Parties cross-moved for summary judgment.

The District Court held that:

- County could challenge DOT's decision to authorize tax-exempt private activity bonds (PAB) to finance project, on basis that decision violated Internal Revenue Code (IRC) provisions;
- Phase of project developing express passenger railway between Orlando and Miami, Florida constituted a "surface transportation project" under IRC provision, as required for Secretary of Transportation's allocation of PABs to qualify for tax-exempt status;
- State of Florida properly approved issuance of tax-exempt PABs for financing of railway in accordance with IRC provision establishing public approval requirements before bonds could be "qualified" to receive tax-exempt status, thereby obviating the need for approval by all counties through which the railway ran;
- Federal Railway Administration (FRA) did not act arbitrarily, capriciously, abuse its discretion or otherwise not in accordance with law by purportedly failing to adequately analyze, in final environmental impact statement (FEIS), the public safety consequences of more and faster trains traveling along rail line upon completion of railway extension until after NEPA process was complete;

- FRA did not act arbitrarily, capriciously, abuse its discretion or otherwise not in accordance with law by purportedly failing to adequately analyze in FEIS the effects of vessels waiting or queuing to cross through draw bridges at navigable rivers over which train track would run upon completion of railway extension; and
- FRA did not act arbitrarily, capriciously, abuse its discretion or otherwise not in accordance with law by purportedly failing to adequately follow, in FEIS, applicable guidance on evaluating noise impacts of rail project when approving extension of railway until after NEPA process was complete.

County through which express passenger railway connecting Orlando and Miami was to be constructed was within zone of interests protected or regulated by provisions of Internal Revenue Code that allowed for tax-exempt bonds to be issued when their proceeds are used to fund certain types of projects and, thus, county could challenge, under Administrative Procedure Act (APA), the decision of Department of Transportation (DOT) to authorize tax-exempt private activity bonds (PAB) to finance railway construction project, on basis that decision violated Internal Revenue Code provisions; the provisions enumerated types of facilities that benefited the public enough to qualify for tax-exempt status, and created a mechanism of democratic accountability by which public could confirm that particular project did indeed confer public benefit.

Phase of project developing express passenger railway between Orlando and Miami, Florida constituted a “surface transportation project” under Internal Revenue Code provision defining “qualified highway or surface freight transfer facilities,” as required for Secretary of Transportation’s allocation of private activity bonds (PAB) to qualify for tax-exempt status; dictionary definition of “surface transport” was movement of people or goods by road, train, or ship, rather than by plane, and Surface Transportation Board’s charge included jurisdiction over rail issues.

Phase of project developing express passenger railway between Orlando and Miami, Florida received funding under Title of United States Code governing federal highway funding, as required for Secretary of Transportation’s allocation of private activity bonds (PAB) to qualify for tax-exempt status; although funding went to owner of railway rather than project developer and owner, in addition to developer, benefited from funding, disproportionate amount of funding was disbursed only after project began.

State of Florida properly approved issuance of tax-exempt private activity bonds (PAB) for financing of express passenger railway connecting Orlando and Miami in accordance with Internal Revenue Code provision which established public approval requirements before bonds could be “qualified” to receive tax-exempt status, thereby obviating the need for approval by all counties through which the railway ran; Florida Development Finance Corporation (FDFC) issued bonds after noting public hearing was held in Tallahassee, followed by approval by State official who was designee of Governor, and applicable elected representative to approve bond issuance, and although term “governmental unit” was ambiguous insofar as to which entities were required to approve issuance, State’s approval alone was sufficient to support approval of bond issuance.

LIABILITY - ILLINOIS

Lapre v. City of Chicago

United States Court of Appeals, Seventh Circuit - December 17, 2018 - 911 F.3d 424

Pretrial detainee’s mother filed § 1983 action alleging that city was deliberately indifferent to risk of suicide for detainees held in city lockups.

The United States District Court entered summary judgment in city's favor, and plaintiff appealed.

The Court of Appeals held that:

- City's continued use of jail cells with horizontal bars did not amount to deliberate indifference to detainees' safety;
- City was not subject to liability as result of its purported failure to train lockup personnel on how to provide first aid to hanging victims or to install suicide kits;
- City's alleged policy of not reassessing detainees who were returning to lockup after absence did not amount to deliberate indifference to detainees' safety;
- Plaintiff failed to establish issue of fact as to whether city was deliberately indifferent to risk of detainee suicide through its policy of not personally inspecting detainees; and
- City was not subject to liability for failing to properly train personnel on identifying mental health issues or suicide risk.

EMINENT DOMAIN - KANSAS

Nauheim v. City of Topeka

Supreme Court of Kansas - January 11, 2019 - P.3d - 2019 WL 165983

Former commercial tenants brought action against city for relocation benefits, after tenants were forced to relocate in connection with city purchasing property leased by tenants from landlord.

The District Court granted summary judgment to the city. Tenants appealed, and the Court of Appeals reversed and remanded. Tenants petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- Showing that real property was acquired "through negotiation in advance of a condemnation action," warranting payment of displaced person benefits, does not require a specific evidentiary showing that the condemning authority either threatened condemnation or took affirmative action towards a condemnation action, and
- Genuine issue of material fact as to whether city's negotiations to acquire property were in advance of a condemnation action precluded summary judgment on claim for relocation benefits.

A showing that real property was acquired "through negotiation in advance of a condemnation action," warranting payment of displaced person benefits, does not require a specific evidentiary showing that the condemning authority either threatened or took affirmative action towards a condemnation action, as, while that evidence would be relevant, it is not the only evidence that could cause a fact-finder to conclude a condemning authority would have resorted to eminent domain after unsuccessful negotiation.

WATER LAW - NEBRASKA

Prokop v. Lower Loup Natural Resources District

Supreme Court of Nebraska - January 11, 2019 - N.W.2d - 302 Neb. 10 - 2019 WL 168546

Landowner sought judicial review of natural resources district board's issuance of a cease and desist order suspending landowner's access to ground water based on his failure to submit annual reporting related to water quality.

The District Court affirmed, but modified the penalty. Landowner appealed, and district and board cross-appealed.

The Supreme Court of Nebraska held that:

- District properly interpreted its rule governing annual reports to require actual crop yield data;
- District was not required to promulgate rule restating possibility of ground water restrictions;
- District's notice of proceeding against landowner comported with due process;
- Landowner was not deprived of competent judicial review:
- Issuance of cease and desist order was not a taking without just compensation;
- Trial court properly declined to supplement the record with exhibits offered by landowner; and
- Trial court properly reduced the duration of the suspension conditioned on landowner's future compliance.

Natural resources district properly interpreted the phrase "other field operations," as used in its rule requiring certain land operators to submit annual reports concerning water quality, to include actual crop yield data; district's agronomy technician testified at an administrative proceeding before district's board that requiring actual crop yield data was important to district's adopted goals of water quality and pollution control and district's obligations under the Ground Water Management and Protection Act to implement such goals, and technician further testified that the data were used as part of developing a plan to reduce nitrate contamination, because the data helped in determining how many pounds of nitrogen were removed from a field.

Natural resources district was not required to promulgate rules and regulations restating the potential for district to restrict ground water access for violations of the Ground Water Management and Protection Act or rules and regulations of the district; while the Act authorized the adoption and promulgation of rules necessary to discharge a district's administrative duties under the Act, the Act further established that the penalties for violations of the Act or district's rules and regulations included reducing a violator's ground water access in whole or in part.

Natural resources district's notice of proceeding to impose penalties based on landowner's failure to submit annual reporting related to water quality was sufficient to inform landowner of district's claims and supporting factual allegations and, thus, did not violate due process, where district's notice alleged that landowner failed to submit timely and complete annual reports, thereby informing landowner that his reports for the specified years were deficient and incomplete, and the deficiencies of missing annual yield data, nitrogen application, water applied, and landowner's signatures were apparent on the face of the reports listed in the notice.

Natural resources district's notice of proceeding to impose penalties based on landowner's failure to submit annual reporting related to water quality was sufficient to provide landowner a reasonable opportunity to confront and cross-examine adverse witnesses and present evidence and, thus, did not violate due process; notice was given 23 days before hearing and informed landowner of the time and location of the hearing, the potential penalties, and that he would have an opportunity to address the charges and present evidence, notice sufficiently informed him of the charges and factual allegations supporting the charges, and all the evidence provided by district was either a source of district's authority referenced in the notice or factual confirmation of specific allegations.

Landowner was not deprived of competent judicial review of a cease and desist order suspending access to ground water issued by natural resources district's board as result of any failure of the board to provide adequate notice of claims against landowner, in proceeding to impose penalties based on landowner's failure to submit annual reporting related to water quality; landowner was provided adequate notice of claims against him, was not entitled to notice of the specific evidence district intended to present, and was given opportunity to present his own evidence and call his own witnesses.

Natural resources district's issuance of a cease and desist order suspending landowner's access to ground water based on his failure to submit annual reporting related to water quality was an appropriate exercise of police power and did not amount to a taking without just compensation; district's reporting requirements were implemented, in part, to address the goals under the Ground Water Management and Protection Act of water quality and pollution control, district's rules and regulations and the Act required various data from operators, and, by failing to comply with reporting requirements, landowner prevented district from receiving information necessary to perform its duties under the Act.

Trial court properly declined to supplement the record with exhibits under exception to general prohibition of extra-record evidence for evidence of alleged procedural irregularities, on appeal from natural resources district's issuance of a cease and desist order suspending landowner's access to ground water based on his failure to submit annual reporting related to water quality, where landowner's exhibits were not relevant to whether there were procedural irregularities, but instead landowner claimed that the exhibits demonstrated what evidence he could have presented if the irregularities had not been present.

Trial court properly declined to remand to natural resources district's board for further proceedings to allow landowner to present additional evidence in the interest of justice, on appeal from board's issuance of a cease and desist order suspending landowner's access to ground water based on his failure to submit annual reporting related to water quality; contrary to landowner's argument, district's notice of proceeding against landowner was sufficient to inform landowner of the claims against him, and landowner was not entitled to notice of the evidence district planned to present.

Trial court properly modified a four-year suspension of landowner's ground water rights to a one-year suspension with possibility of three additional years if landowner continued to violate natural resources district's reporting requirements, on appeal from district's issuance of a cease and desist order suspending landowner's access to ground water based on his failure to submit annual reporting related to water quality; Ground Water Management and Protection Act did not limit the possibility of judicial review of the determination of penalties, trial court was required to make independent factual determinations and conclusions in reviewing an administrative order, and landowner's penalty was a matter at issue before the district's board.

EMINENT DOMAIN - NEW YORK

TKGSM-NY, LLC v. New York State Urban Development Corporation

Supreme Court, Kings County, New York - December 4, 2018 - N.Y.S.3d - 2018 WL 6557879 - 2018 N.Y. Slip Op. 28394

Condemnee sought additional allowances for attorney fees, expert fees, and disbursements pursuant to the Eminent Domain Procedure Law.

The Supreme Court, Kings County, held that the requested award of additional allowances was not necessary for condemnee to achieve just and adequate compensation.

An award of additional allowances for attorney fees, expert fees, and disbursements was not necessary for condemnee to achieve just and adequate compensation, and thus condemnee was not entitled to such additional allowances pursuant to the Eminent Domain Procedure Law; trial court had awarded condemnee $28,372,000 for the taking of the subject property, the difference between the award and condemnor's pre-vesting offer of $25,275,000 was $3,097,000, which was an increase of 12.2%, both sides had resolved before trial their disagreement as to what remained of property's Industrial and Commercial Incentive Program (ICIP) tax benefits, condemnee's valuation was not a basis for that part of increased award resulting from an increase in net operating income (NOI), which had been another point of disagreement, and neither condemnor's appraisal report nor appraiser's testimony were the basis for the minor adjustment to the cap rate used by condemnor.

Eminent Domain Procedure Law's requirement that an award of fees be necessary to achieve just and adequate compensation limits additional compensation to those portions of the attorneys' and other professionals' work that provided a basis for the higher award.

IMMUNITY - NEW YORK

Roberts v. Coeymans Hollow Volunteer Fire Company

Supreme Court, Appellate Division, Third Department, New York - January 3, 2019 - N.Y.S.3d - 2019 WL 80643 - 2019 N.Y. Slip Op. 00006

House-fire victim brought action against volunteer fire company. Fire company moved for summary judgment dismissing the complaint, and victim cross-moved to, among other things, amend the complaint to add fire district as defendant.

The Supreme Court, Albany County, entered summary judgment in favor of fire department. Victim appealed. She died, and her executor was substituted as plaintiff.

The Supreme Court, Appellate Division held that:

- Volunteer fire company was not liable for any injuries caused to house-fire victim while she was being evacuated from her house;
- Victim was not entitled to add fire district as a defendant; and
- House-fire victim's failure to serve notice of tort claim upon fire district was not excused under savings provision.

EMINENT DOMAIN - TEXAS

San Jacinto River Authority v. Burney

Court of Appeals of Texas, Houston (1st Dist.) - December 4, 2018 - S.W.3d - 2018 WL 6318506

Homeowners whose homes flooded during Hurricane Harvey brought inverse condemnation and statutory takings claims against river authority, alleging that river authority released water from lake into river during hurricane, causing or exacerbating downstream flooding of their homes.

The District Court denied river authority's motions to dismiss. River authority appealed.

The Court of Appeals held that:

- Language in rule governing dismissal of baseless causes of action prevented Court of Appeals from taking judicial notice of public record data;
- Homeowners' pleadings were sufficient to allege that river authority's release of water was intended to, or was known to be substantially certain to, result in flooding of homeowners' properties;
- Pleadings were sufficient to allege a taking; and
- Pleadings were sufficient to allege that release of water was done for public use.

Statutory exception to county civil court of law's exclusive jurisdiction over eminent domain proceedings, which gave district court concurrent jurisdiction when amount in controversy in statutory proceeding exceeded $200,000, did not apply to inverse condemnation action brought by owners of flooded homes against river authority, where river authority did not make bona fide offer exceeding $200,000 to homeowners.

Although county civil court at law had exclusive subject-matter jurisdiction over homeowners' inverse condemnation claims brought against river authority, district court had subject-matter jurisdiction over homeowners' takings claims, which were brought under Private Real Property Rights Preservation Act.

Language in rule governing dismissal of baseless causes of action that court "may not consider evidence in ruling on the motion" prevented the Court of Appeals from taking judicial notice of public record data concerning circumstances of hurricane in takings action brought by owners of flooded homes against river authority.

Homeowners' pleadings were sufficient to allege that river authority's release of water from lake into river was intended to, or was known to be substantially certain to, result in flooding of homeowners' properties, as necessary to establish constitutional taking and taking under Private Real Property Preservation Act in action brought against river authority; homeowners specifically alleged that authority "intentionally, knowingly, affirmatively, and consciously flooded" their particular properties, identified by street addresses, that authority was aware that previous water releases from lake caused or exacerbated downstream flooding, and that it knew which downstream properties had flooded as result of previous releases.

Homeowners' pleadings were sufficient to allege a taking, as necessary to support claims for constitutional taking and statutory taking brought under the Private Real Property Preservation Act in action against river authority after authority released lake water into river, and homeowners' homes were subsequently flooded; homeowners alleged that property was damaged when flooding reached their property, and that it would not have flooded under natural conditions, or that flooding was far worse than it would have been under natural conditions, and that authority's actions caused flooding to arrive more quickly and with less warning than otherwise would have occurred.

Homeowners' pleadings were sufficient to allege that river authority's release of water from lake into river was done for public use, as necessary to support claims for constitutional taking and statutory taking under the Private Real Property Rights Preservation Act brought by homeowners against river authority; homeowners alleged that river authority knowingly flooded their properties in order to avoid risks of rising water levels in lake, and that its water release was done to protect stability and integrity of river's infrastructure, to ensure that lake would remain available for use as reservoir of freshwater storage and for recreational uses, and to minimize danger to public by keeping docks, islands, and other structures unsubmerged for as long as possible.

Homeowners' factual allegations were sufficient to establish that river authority's actions in releasing lake water into river affected homeowners' private real property by limiting their rights to property, and that such actions were producing cause of reduction of at least 25% in market value of affected homes in action brought against river authority by homeowners whose homes were flooded by released water, as required to assert statutory takings claim under the Private Real Property Rights Preservation Act.

ZONING & LAND USE - VIRGINIA

Board of Supervisors of Fairfax County v. Cohn

Supreme Court of Virginia - December 13, 2018 - 821 S.E.2d 693

Property owners appealed decision of county board of zoning appeals that upheld zoning administrator's decision concluding that property owners violated zoning ordinance because there were three separate dwellings on their residential property, which was in a zoning district that prohibited more than one dwelling unit per lot, and requiring property owners to remedy the zoning violation.

The Circuit Court reversed the board of zoning appeals' decision. County board of supervisors appealed.

The Supreme Court of Virginia held that:

- Property owners' use of garage and garden house as dwellings was not a nonconforming use, and
- Zoning statute prohibiting local governments from declaring an existing building or structure illegal after taxes had been paid for 15 years or more did not protect property owners' use of garage and garden house as dwelling units.

Property owners' use of garage and garden house on their residential property as dwellings, in violation of zoning ordinance that prohibited more than one dwelling unit on a lot in the zoning district, was not a nonconforming use, and thus property owners had no vested right to use the structures as dwellings under statute concerning nonconforming uses, where garage and garden house were built after effective date of zoning restriction, building permits noted that no kitchens or bathrooms were approved for the structures, and kitchens and bathrooms were added to the structures in violation of zoning ordinance.

Zoning statute prohibiting local governments from declaring an existing building or structure illegal after taxes had been paid for 15 years or more did not protect property owners' use of garage and garden house as dwelling units, in violation of zoning restriction requiring only one dwelling unit per lot, and thus did not prevent county from requiring property owners to cease their illegal use of the structures as dwelling units and to remove kitchens and other features that allowed the structures to be used as dwellings, even though property owners had paid taxes on the property for more than 15 years; statute protected the structures themselves from removal, but did not protect the uses of the structures.

REFERENDA - WASHINGTON

American Hotel & Lodging Association v. City of Seattle

Court of Appeals of Washington, Division 1 - December 24, 2018 - 432 P.3d 434

Hotel associations brought action against city, asserting that city ballot initiative, which concerned health, safety, and labor standards for hotel employees, violated single-subject rule.

On cross-motions for summary judgment, the Superior Court upheld validity of initiative. Associations appealed.

The Court of Appeals held that:

- State constitutional provision barring a bill from embracing more than one subject did not apply; Ballot title was general, not restrictive; but
- No rational unity existed between provisions of initiative, and thus initiative violated statutory single-subject rule and city charter's single-subject rule.

State constitutional provision barring a bill from embracing more than one subject did not apply to city ballot initiative concerning health, safety, and labor standards for hotel employees; provision applied only to state legislation.

Ballot title of city initiative concerning health, safety, and labor standards for hotel employees was general, not restrictive, for purposes of statutory single-subject rule and city charter's single-subject rule, although title's language about protecting employees against assault, sexual harassment, and injury by retaining lists of accused guests carved out for regulation a specific risk that hotel workers confronted; balance of the title broadened its scope to cover more general working conditions, such as improving access to healthcare, limiting workloads, and providing limited job security.

No rational unity existed between provisions of city ballot initiative concerning health, safety, and labor standards for hotel employees, and thus initiative violated statutory single-subject rule and city charter's single-subject rule; initiative identified at least four distinct and separate purposes, which were protecting certain hotel employees from violent assault and sexual harassment, protecting hotel employees from on-the-job injuries arising out of heavy lifting, repetitive tasks, and chemical exposure, improving hotel workers' access to affordable medical care, and providing job security to low-income hotel workers when there was change in hotel ownership.

IMMUNITY - WISCONSIN

Engelhardt v. City of New Berlin

Supreme Court of Wisconsin - January 4, 2019 - N.W.2d - 2019 WL 101069 - 2019 WI 2

Child's parents brought action against city and others to recover for drowning at aquatics center during summer camp field trip.

The Circuit Court denied city's summary judgment motion based on governmental immunity. City appealed. The Court of Appeals reversed. Parents' petition for review was granted.

The Supreme Court of Wisconsin holds that known danger exception to governmental immunity applied.

Danger that eight-year-old child who could not swim would drown at busy summer camp was immediate, compelling, and self-evident and gave rise to ministerial duty in playground coordinator and summer camp staff to give swimming test to child before allowing her near pool, and, thus, known danger exception to governmental immunity applied in suit against city whose parks and recreation department ran camp and operated aquatics center; drowning was a known danger, and coordinator knew child could not swim, but told no other staff member and did not test swimming ability.

[S&P Priority-Lien Criteria Updates.]

In this location we will provide links to reports that we publish as we implement our Priority-Lien Tax Revenue Debt criteria, published Oct. 22, 2018.

Continue Reading

Jan. 15, 2019

S&P Expected Completion Dates For U.S. Local Government Ratings Within Priority-Lien Criteria Scope.

BOSTON (S&P Global Ratings) Jan. 14, 2019–On Oct. 22, 2018, S&P Global Ratings published its revised criteria for Priority-Lien Tax Revenue Debt (Priority-Lien, on Oct. 22, 2018, on RatingsDirect). In accordance with our stated policies, we assess the rating impact of the revised criteria for credits within its scope within a reasonable period…

Continue Reading

Jan. 14, 2019

S&P List Of Rating Actions Due To Priority-Lien Revenue Debt Criteria.

DALLAS (S&P Global Ratings) Jan. 15, 2019–S&P Global Ratings has published a list of credit rating actions taken through Dec. 31, 2018, following the application of our Priority-Lien Tax Revenue Debt criteria. We expect to update this list monthly.

Continue Reading

Fitch Ratings Updates U.S. Public Housing Authority Capital Fund Revenue Bonds Rating Criteria.

Fitch Ratings-New York-18 January 2019: Fitch Ratings has published an updated criteria report titled ‘U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Rating Criteria.’ The report replaces Fitch’s ‘U.S. Public Housing Authority Capital Fund Housing Revenue Bonds Bespoke Rating Criteria’ dated Jan. 29, 2018. No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

The full report is available at www.fitchratings.com.

Contact
Mikiyon Alexander
Director
+1-646-582-4796
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Kasia Reed
Analytical Consultant
+1-646-582-4864

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

Additional information is available on www.fitchratings.com

S&P U.S. Transportation Infrastructure 2019 Sector Outlook: Mostly Stable, Despite Expected Slower Growth And Unlikely Investment Package

S&P Global Ratings' 2019 outlook for business conditions and credit quality across most U.S. public transportation infrastructure sectors, including airports, ports, federal grant-secured, and parking, is stable. We are maintaining our positive outlook for the toll road and bridge sector and revising our outlook for the mass transit sector to negative from stable.

Continue Reading

Jan. 17, 2019

S&P U.S. Municipal Water And Sewer Utilities 2019 Sector Outlook: Stable, Although Potential Disruptions Are Not Making Planning Easy

As the calendar flipped to 2019, many market participants did not use the word "happy" to precede "new year." January unfolded with a federal government shutdown, the uncertainty related to a new Congress, and a potential debt ceiling due date by August. This comes on the heels of a rising interest rates (which S&P Global Ratings believes will continue in 2019).

Continue Reading

Jan. 15, 2019

S&P: Five U.S. State And Local Government Pension And OPEB Trends To Watch For In 2019 And Beyond

In this economic recovery period since the Great Recession a decade ago, many state and local governments faced rising costs and risk further increases related to funding long-term pension and other postemployment benefit (OPEB) obligations.

Continue Reading

Jan. 16, 2019

S&P U.S. Charter Schools 2019 Sector Outlook: Despite A Stable Outlook, Disruptions Could Leave Their Mark

For U.S. charter schools, rating performance in 2018 resulted in fewer upgrades and downgrades compared with both 2016 and 2017, and S&P Global Ratings believes the sector's outlook for 2019 will continue being stable.

Continue Reading

Jan. 16, 2019

More Than Half of the U.S.'s Largest Cities are Issuing Bonds to Protect Against Climate Change.

Less federal and state assistance could lead to more cities turning to debt issuance to fund climate change protection

A majority of the U.S.'s biggest cities are now selling debt specifically to mitigate the impact of climate change as flooding from rising sea levels, extreme heat and natural disasters threaten to hurt the credit ratings of municipalities.

In a survey of the U.S.'s largest cities based on total debt outstanding, 54% of the respondents said they would issue bonds for funding projects on building up resilience against climate change, according to Moody's Investors Services, in a Thursday report.

"Cities are increasingly adopting plans that detail specific projects designed to strengthen infrastructure and minimize economic disruption from natural disasters and long-term climate change. The increased focus on climate risks is a credit positive, particularly as climate change is forecast to increase the frequency and severity of extreme weather events," said Michael Wertz, senior analyst for Moody's.

Climate change bonds could benefit from the growing shift among money managers to include environmental, social and governance, known as ESG, criteria when making investment decisions, prompting more municipal bond issuers to label their debt as "green" to draw demand from socially conscious investors.

More participants in the municipal bond market have also called for credit ratings firms to acknowledge the growing risks from extreme weather events induced by climate change. They point to examples of S&P and Moody's slapping gold-plated credit ratings on flooding-afflicted municipalities like Charleston County, S.C., and Palm Beach, Fla.

Moreover, efforts to limit the impact from climate change have gained urgency after several natural disasters in recent years.

The vulnerabilities of low-lying areas to climate change were brutally exposed after Hurricane Harvey and Hurricane Florence devastated the Eastern coastline in 2017, inflicting around $175 billion of damage. The five most expensive hurricanes in U.S. history have all taken place since 2005, according to the National Hurricane Center.

As a result, most of the climate-mitigation efforts undertaken by cities were focused on flooding, with such measures accounting for nearly 60% of the efforts. The Fourth National Climate Assessment found that counties near the coastline held more than 40% of the U.S. population.

Last November, voters in Miami approved $400 million of bonds, with $192 million set to be diverted for spending on protection against rising sea levels and flooding.

Moody's recognized that climate change projects, though beneficial in the long term, were expensive and could present a strain on a city's spending. The surveyed cities reported that around $47 billion of projects were either in planning or in progress, with New York City contributing to the brunt of the amount.

The financial burden will be eased by assistance from federal and state governments, leaving only $21 billion of this total costs to be borne by city authorities. With less coming out of the pockets of city governments, many could avoid resorting to selling bonds for climate change projects.

"However, if the level of federal aid were to wane, cities would be more reliant upon state funds and their own money to finance substantial project costs and be more likely to turn to debt issuance to finance climate mitigation plans," the Moody's analysts wrote.

MarketWatch

by Sunny Oh

Published: Jan 18, 2019 1:04 p.m. ET

[Are High-Yield Municipal Bonds 'High Yield' Or 'Junk'?]

Summary

- High-yield municipal bonds typically offer higher yields than investment-grade munis, but carry additional risk.
- A small allocation to high-yield munis can make sense for more aggressive muni investors – but today's yields are low relative to alternatives.
- If you choose to venture into this part of the market, we suggest you do so via an exchange-traded fund (ETF), mutual fund, or separately managed account, to help with diversification and ongoing credit monitoring.

Continue reading.

Seeking Alpha

By Cooper J. Howard

Jan. 16, 2019

CUSIP Request Volume Dips in December.

NEW YORK, NY, January 10, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for December 2018. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found significant monthly volume decreases in requests for new corporate and municipal identifiers.

Read Report.

CUSIP: Monthly Decline in New Issuance Requests Drags Down Full Year 2018 Volumes.

"The second half of 2018 has been marked by a great deal of month-to-month volatility in CUSIP request volume, which is consistent with market uncertainty over the future of interest rates," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "On the whole for 2018, total CUSIP request volumes trended down from the previous year, consistent with new security issuance activity over the course of the year."

Read Press Release.

2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities: SIFMA Comment Letter

SUMMARY

SIFMA sent comments to the MSRB responding to Notice 2018-29 in which the MSRB seeks comment on draft amendments to the Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities. SIFMA supports the MSRB's retrospective review of the 2012 Guidance, and their comments seek to ensure that the purpose of the review is fully realized.

They appreciate that the MSRB has proposed adopting some of the suggestions made to the MSRB's Initial Request for Comment, including: 1) incorporating the practical considerations of MSRB Notice 2012-38 (July 18, 2012) (the "Implementation Guidance") and MSRB Notice 2013-08 (Mar. 25, 2013) (the "FAQs") into the Amended Guidance; 2) clarifying the applicability of MSRB Rule G-42's two-prong analysis to a recommendation for complex municipal financings; and 3) allowing for an automatic email return receipt as a means to evidence receipt of the underwriter disclosures.

Read the Comment Letter.

BDA Submits Comment Letter on Draft Amendments to 2012 Interpretive Notice on the Application of Rule G-17 to Underwriters of Municipal Securities.

After consultation with various Committees and members, the BDA drafted and submitted a comment letter on the MSRB's request for public comment on draft amendments to the interpretive guidance it issued in 2012 on the application of MSRB Rule G-17 on conduct of municipal securities and municipal advisory activities, to underwriters of municipal securities.

The comment letter can be viewed here.

Key issues highlighted in the comment letter are as follows:

- The BDA believes that the Draft Amendments contain several unnecessary inclusions, which can make compliance with the Draft Amendments more burdensome; and
- The BDA believes that the MSRB should re-phrase some new language; and
- The BDA does not believe that the MSRB's approach to disclosures by comanager will materially reduce the number of disclosures; and
- The BDA believes that the MSRB should clarify the timing of a syndicate manager's delivery of disclosures.

Bond Dealers of America

January 15, 2019

Fitch Ratings: PG&E Bankruptcy Not Likely to Affect US Public Finance Ratings

Fitch Ratings-New York-17 January 2019: PG&E Corporation's planned bankruptcy filing is not likely to adversely affect the credit quality of the state of California, its local governments or publicly owned utilities (POUs), according to Fitch Ratings.

PG&E Corporation announced on Monday that it intends to file a petition for Chapter 11 bankruptcy protection on or about Jan. 29. The utility provides power to about 16 million natural gas and electric customers over 70,000 square miles in northern and central California and is among the largest taxpayers in several cities and counties that Fitch rates. Following the announcement, Fitch downgraded PG&E's Long-Term Issuer Default Rating (IDR) to 'C' from 'BBB-'. In addition, the company failed to make a scheduled interest payment on senior notes on Tuesday.

The imminent bankruptcy filing reflects the impact of potential enormous wildfire-related liabilities related to the 2017 Tubbs and 2018 Camp Fires without a clear path to timely recovery of such costs under California law. California applies the doctrine of inverse condemnation to privately-owned utilities. Inverse condemnation typically holds governmental agencies responsible for compensating property owners for the damage to or taking of property by the government.

Purchased Power Agreements Affected
Fitch has downgraded to 'C' from 'BBB-' trust certificates issued by Genesis Solar LLC and Topaz Solar Farms, LLC's senior notes as a result of PG&E's erosion in credit quality and pending

bankruptcy filing. In addition to its own generating fleet, PG&E serves its load by purchasing power from numerous independent power producers (IPP) under power purchase agreements (PPAs), including Genesis and Topaz. Many of these IPPs are renewable generators – wind and solar projects – which depend on revenue from PG&E.

Project ratings are typically constrained by the rating of the revenue counterparty under fixed-price PPAs. PG&E's bankruptcy would not necessarily trigger a downgrade of the rated project debt if the projects are deemed critical vendors and PG&E continues to honor its revenue contract commitments. However, any attempt by PG&E to reject PPA commitments would be considered significant credit deterioration as prevailing power prices, either merchant or newly contracted solar PPAs, are lower than the current legacy prices and would lead to deterioration of project's coverage metrics.

Long-Term Concerns for POUs

California's POUs are not expected to see material erosion in credit quality as a result of PG&E's ongoing financial and legal challenges. That said, issues driving PG&E's current challenges, the state's wildfire risks and California's inverse condemnation rules remain a long-term risk for the state's POUs. A potential PG&E bankruptcy should be manageable for POUs in the short to medium term due to the nature of the relationship between most POUs and PG&E, POUs' generally healthy liquidity levels, and the market and operational constructs within the state.

Fitch-rated POUs have many connections to PG&E ranging from physical interconnections between systems, joint projects, operational agreements, and others. However, POUs have few direct contracts with PG&E for power supply and generally are not reliant on PG&E-owned generation to meet their system loads. Potential slowdowns in PG&E projects, some of which are joint projects with POUs, could result in delays and additional costs. However, Fitch views them as unlikely to significantly impact POU credit ratings. Indirect effects from a potential PG&E bankruptcy include market volatility that could increase the cost of purchased power for some POUs and, longer term, potential changes in market tariffs or operational rules and financial requirements that could increase the cost of operations. At this point, Fitch does not expect potential rule changes to materially affect POU cost of operations.

Minimal Impact to State and Local Government Revenue and Operations

Fitch's analysis of the potential impact on the state and local governments indicate minimal threat to revenues and financial operations. If the utility were unable to emerge from a bankruptcy, the state would likely step in in some fashion to ensure service continues without interruption. Fitch expects that either rates (if PG&E emerges from bankruptcy) or taxes (if the state steps in and the utility assets become non-taxable, which Fitch understands would likely take several years) would have to increase to fund legal liabilities. In either scenario, the increased cost of running the utility would not be enough to affect either the state's ability to remain economically competitive or its credit quality. Fitch also does not foresee a meaningful impact on employment or earnings as the utility would continue to function in some form.

Fitch assumes that as a regulated utility, PG&E will continue to provide service and be required to pay property taxes throughout a Chapter 11 bankruptcy as it did during its 2001-2004 bankruptcy. According to the company website, PG&E paid $461 million in property taxes and another $137 million in franchise fees in the tax year ended June 30, 2018 to the 50 counties and 247 cities in which it owns and operates infrastructure throughout the state.

A handful of Fitch-rated local governments have PG&E as a major taxpayer. The largest are San Luis Obispo County (AAA IDR), in which PG&E is the largest taxpayer at about 5% of assessed value (AV) in fiscal 2018 and Fresno County (A+ IDR), in which PG&E (also the largest taxpayer) makes up about 3% of AV in fiscal 2017 (latest data available).

San Luis Obispo County reports it received about $10 million in property taxes from PG&E in fiscal 2018 (about 2% of governmental revenues). Even if PG&E failed to pay any property taxes going forward or the assets in the county eventually became non-taxable, Fitch does not believe such a loss would affect San Luis Obispo County's credit quality. The county retains solid expenditure flexibility and the highest gap-closing capacity with approximately $260 million in unrestricted fund balance (52.5% of spending) as of the end of fiscal 2018. PG&E AV in San Luis Obispo County is comprised mainly of the Diablo Canyon Nuclear Power Plant. PG&E plans to close the plant by 2025. In September 2018, the Governor of California signed legislation directing the PUC to fully fund a community mitigation settlement meant to soften the decrease in taxes.

If PG&E failed to pay property taxes to Fresno County or the assets became non-taxable, Fitch estimates the impact would be even smaller at about 0.5% of governmental revenues based on 3% of the $255 million (roughly 17% of governmental revenues) in property taxes the county received in fiscal 2017. The county retains solid expenditure flexibility and adequate gap-closing capacity to address a moderate revenue decline. The county had about $157 million in unrestricted fund balance at the end of fiscal 2017, equal to almost 12% of spending.

Total fiscal 2017 license, permit and franchise fee revenues from all payers in San Luis Obispo County were $11 million, or 2% of governmental revenues; franchise fee revenues were $17 million or 1% of governmental revenues in Fresno County.

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Andrew Joynt
Director
+1-212-908-0594

Kathryn Masterson
Senior Director
+1-512-215-3730

Matthew Reilly
Director
+1-415-732-7572

Karen Ribble
Senior Director
+1-415-732-5611

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

Additional information is available on www.fitchratings.com

Fitch Ratings: L.A. Teachers Strike Will Not Trigger Downgrade; Highlights Pressures

Fitch Ratings-San Francisco-14 January 2019: Fitch Ratings does not expect to take further rating action on the Los Angeles Unified School District's issuer rating based on the teacher union's decision to strike on Jan. 14th. The strike was postponed from Jan. 10th due to disputes about the notification period and concern about a possible court injunction.

Fitch downgraded LAUSD's Issuer Default Rating (IDR) to 'A' from 'A+' in September 2018 and assigned a Negative Outlook to the rating at that time. This action considered the ongoing labor dispute and the expectation that the issues raised in the negotiations (regardless of whether a strike occurred) would likely result in some erosion of the district's practical ability to control spending.

Fitch expects management to work to maintain financial flexibility that is consistent with the current rating, and will incorporate the eventual agreement and other implications of the labor impasse into its analysis. Aside from the immediate implications of a teacher strike, there could be longer-term negative effects if the strike results in families choosing alternatives to LAUSD, including private and charter schools, or transferring out of the district. Declining enrollment is already a significant challenge for the district. Failure to maintain reserves that provide adequate gap closing capacity in a downturn and/or deferral or non-recurring support of required spending beyond current expectations would result in negative rating pressure.

Teachers at LAUSD, the nation's second largest public school district, are striking starting Monday Jan. 14th after almost two years of negotiations failed to secure a new contract for fiscal years 2018 – 2020. The last contract expired in June 2017. Representatives from United Teachers Los Angeles (UTLA) and the district met again last week after completing the fact-finding stage to avert a strike but have still not come to agreement.

Although the district has increased its offer to include 6% raises over two years starting in fiscal 2018 plus $105 million for additional staffing, the two sides still disagree. UTLA is requesting 6.5% raises all at once retroactive to fiscal 2017, but more importantly is demanding more funds than offered to increase staffing levels at schools. Specifically, UTLA wants schools to be "fully staffed" with more teachers for lower class sizes and more counsellors to reduce caseloads. The district has stated it cannot afford such increases with ongoing revenue, given the district's sharply declining enrollment and associated per-pupil revenues from the state. Declining enrollment is due to demographic changes and competition from charter schools, which have increased their enrollment over 1000% since fiscal 2003, and currently accounts for almost 20% of total district enrollment.

Based on its fiscal 2018 audit, the district began fiscal 2019 with $714.7 million unassigned/unappropriated fund balance (excluding its reserve for economic uncertainties). In its first interim financial report dated Dec. 11, 2018, the district factored in the 6% salary increase proposed to UTLA and estimated that its unassigned/unappropriated fund balance will decline to $353.4 million at the beginning of fiscal 2021 and then to negative $4.2 million at the beginning of fiscal 2022.

The district's projections are conservative, and management typically outperforms its projections. The 'A' IDR assumes that the district will act to reduce the rate of unassigned/unappropriated general fund balance drawdown laid out in these projections. The downward trajectory is pronounced and will be difficult to counteract meaningfully without significant changes to the district's expenditure profile. Moreover, as noted above, in current labor negotiations UTLA is seeking spending increases well above those assumed in the projections.

The state's final fiscal 2020 budget could include more funding than currently projected and alter the pace of reserve drawdowns.

The Los Angeles County Office of Education (LACOE) announced on Jan. 9th that, after the district's fiscal 2019 first interim report submitted Dec. 17th did not adequately address its structural imbalance, LACOE is assigning a team of fiscal experts to work with the district to eliminate the structural imbalance and restore the required level of financial reserves.

Fitch maintains 'AAA' ratings and Stable Outlook on the district's unlimited tax general obligation (GO) bonds, which are based on a dedicated tax analysis, without regard to the district's financial operations. The distinction between the 'AAA' ratings on the GO bonds and the 'A' IDR reflect Fitch's assessment that the pledged special revenues for repayment of the GO bonds meet the definition of "pledged special revenues" under the U.S. Bankruptcy Code and therefore bondholders are legally insulated from any operating risk of the district.

For more information on Fitch's analysis of the LAUSD, see "Fitch Downgrades Los Angeles USD, CA's IDR to 'A'; Outlook Negative" dated Sept. 12, 2018.

Contact:

Karen Ribble
Senior Director
+1415-732-5611
Fitch Ratings, Inc.
One Post Street, Suite 900
San Francisco, CA 94014

Alan Gibson
Director
+1-415-732-7577

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

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

Additional information is available on www.fitchratings.com

[How New Governors May Impact the Municipal Bond Market.]

Jamie Iselin, managing director of muni fixed income at Neuberger Berman, examines the municipal bond market in states with new governors. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

[Watch video.]

Bloomberg MarketsTV Shows

January 16th, 2019

[PG&E's Last Bust Offers Caution for California Bond Investors.]

- **State’s botched deregulation led to company’s 2001 insolvency**
- **Officials must balance customers, victims and climate goals**

When PG&E Corp. went bankrupt almost two decades ago, an energy crisis and the dot-com crash were hurling California toward a financial abyss of crippling budget deficits, soaring debts and escalating penalties in the municipal-bond market.

This time, California’s finances are buttressed by a surging economy and record reserves, while officials have shown little interest in bailing out the beleaguered utility, which said Monday it faces $30 billion in liabilities from deadly wildfires. And its plan to file for bankruptcy hasn’t triggered a pullback from state bonds by investors, who are eager to own them as a tax haven.

But the fallout from the company’s 2001 insolvency — triggered by botched deregulation of electricity markets — offers investors reasons for caution if the state must step in again to protect its residents. Then, California’s credit rating took a hit and it was forced to sell what was then a record amount of bonds to keep the lights on.

“I don’t anticipate the state at this point making any sort of a financial commitment,” said Paul Mansour, head of municipal research at Conning. “But it doesn’t preclude them from being creative in using the state’s stronger credit quality like they did in 2001 in some undetermined form to help keep costs down for California ratepayers.”

Governor Gavin Newsom and other state officials say they want to ensure that power service isn’t disrupted; that compensation flows to wildfire victims and ambitious climate-change targets remain on track amid intensifying fire seasons. Those are challenging goals in a state where utility customers already pay among the highest electric rates in the country.

“This is a real huge problem,” said Howard Cure, head of municipal research in New York at Evercore Wealth Management. “The state is under enough pressure already to keep businesses in state.”

Different Situation

State fire investigators have blamed PG&E’s equipment for starting 17 of the wildfires that tore through Northern California in 2017. The company’s electric lines are also suspected of sparking last year’s Camp Fire, the deadliest in California history, which killed 86 people and destroyed the Butte County town of Paradise.

The situation was markedly different last time around. After lawmakers partially deregulated the power market, wholesale prices, manipulated by companies such as Enron Corp., jumped more than tenfold in 2000 and 2001, and the utilities were barred from passing the cost on by raising rates. Rocked by rolling blackouts, the state agreed to buy power at above-market prices to prop up insolvent utilities and sold $11.2 billion of municipal bonds to finance the contracts.

The state suffered several credit-rating downgrades as it grappled not only with the power crisis, but the fallout from the dot-com bust. California's revenue, which is heavily dependent on the wealthy, is notoriously volatile and vulnerable to market gyrations.

"Those two things together were a big driver of what happened to the state's credit rating," said Matt Butler, an analyst at Moody's Investors Service.

All Options

Now, thanks to an economic boom and financial safeguards such as a voter-mandated rainy-day fund, California's ratings are at the highest since that era. While its tax revenue is still vulnerable to swings, investors and ratings analysts point to the progress state officials have made in paying off its obligations and boosting its savings.

For now, Newsom says he's considering all options. The state could decide to own a slimmed-down version of PG&E, said Bloomberg Intelligence analyst Jaimin Patel in a report. He called it a "more viable option" than directly supporting an investor-owned utility.

And California is likely to give PG&E more flexibility to raise customers' bills, said Jason Ware, head of trading at brokerage 280 CapMarkets. But that's still a negative for the state's credit, he said. California's cost of living is already high, something that was exacerbated by the federal limit on state and local tax deductions enacted last year, Ware said.

"There's very little wiggle room for California to go out and ask the taxpayer for more money," Ware said.

Bloomberg Business

By Romy Varghese and Amanda Albright

January 18, 2019, 6:09 AM MST

Banks Are on the Hook for $760 Million of Munis in PG&E Downfall.

- **Five banks have agreed to act as buyers of last resort**
- **That's left investors protected even if utility giant defaults**

The impending bankruptcy of PG&E Corp. is threatening to foist large liabilities on five banks that have agreed to act as buyers of last resort for more than $760 million of bonds that the teetering utility issued through California government agencies.

The company's announcement Monday that it plans to seek protection from creditors triggered an surge of selling by owners of the floating-rate securities, causing dealers to push up the yields to draw buyers. If the selling persists and new investors can't be lined up, the banks have committed to buy the bonds at full face value, leaving them potentially exposed to losses.

Sumitomo Mitsui Banking Corp., Mizuho Bank Ltd., Mitsubishi UFJ Financial Group Inc.'s Union Bank, the Toronto-Dominion Bank and the Canadian Imperial Bank of Commerce have provided such letters-of-credit for about $762 million of the $920 million of municipal debt issued on behalf of PG&E, according to securities filings. Such guarantees are widely used for floating-rate debt and banks typically have an "unconditional" commitment to pay principal and interest if the borrower defaults, according to the market's regulator.

Adjustable-rate PG&E backed municipal debt without a bank guarantee is trading for about 78 cents on the dollar, showing that investors are bracing for losses.

"Those letters of credit insulate muni holders," said Matt Fabian, a partner at Municipal Market Analytics. "There's no real risk for the muni holders. It's all about the banks."

The power company's financial strains have brought renewed attention to the floating-rate municipal market, where governments can issue debt that doesn't mature for decades at short-term rates because investors frequently have the option to sell the securities back at 100 cents on the dollar. That market — where businesses can raise money for projects with a public benefit — was roiled during the wave of selling amid the credit crisis of 2008, when the fallout helped push Jefferson County, Alabama, into a then-record bankruptcy.

There have been no disclosures showing that the banks had to buy any unwanted securities during this week's selling, and bondholders recovered their full investment after the company's last bankruptcy.

Spokespeople for TD Bank, MUFG, CIBC, Mizuho, and SMBC declined to comment. James Noonan, a PG&E spokesman, declined to comment specifically on the company's municipal debt.

The banks' guarantees have insulated the municipal market from the impact of PG&E's distress, which was brought on by deadly California wildfires that have left it facing as much as $30 billion of liabilities. The Vanguard Group, a major owner of PG&E's municipal bonds, said all but $2 million of its holdings are backed by banks. In a Jan. 11 report to clients this week, Barclays Plc analysts told bondholders that they face little risk of losses because of the letters-of-credit guarantees.

But the banks face more uncertainty if they wind up holding a large chunk of the debt. While bondholders remained whole after PG&E emerged from its 2001 bankruptcy, when Jefferson County went bankrupt, banks that had to purchase the variable-rate sewer bonds unloaded by investors had to take a haircut.

Union Bank's letters of credit on PG&E-backed municipals expire in June, while the others expire in 2020. If PG&E avoids bankruptcy for now, it's unlikely that another bank would be willing to step in after the current pacts expire, said Josh Perry, an analyst for Brown Advisory.

Bloomberg Business

By Amanda Albright and Martin Z Braun

January 17, 2019, 8:45 AM MST

PG&E's Bankruptcy Risk Spurs Trading Surge in Its Muni Bonds.

- **PG&E-backed munis are most actively-traded munis on Monday**
- **Utility says it plans to seek court protection this month**

PG&E Corp.'s plan to file for bankruptcy is trickling into the municipal-bond market, where the California utility has raised cash for power projects.

Some tax-exempt bonds the company issued through state and local conduits have slid as the fallout from California's devastating wildfires pushes the electric utility closer toward bankruptcy, raising the risk that even debt that was issued through government agencies may not be paid back in full.

The price of a bond issued through the California Infrastructure and Economic Development Bank that are backed by the utility's revenue have tumbled to an average of 80.1 cents on the dollar from 90.1 cents in mid-December, according to data compiled by Bloomberg. PG&E's securities were the most actively traded in the $3.8 trillion municipal-debt market Monday, when investors unloaded its floating-rate bonds that can be resold at face value before it seeks court protection from creditors.

Continue reading.

Bloomberg Markets

By Danielle Moran and Amanda Albright

January 14, 2019, 7:30 AM MST Updated on January 14, 2019, 12:47 PM MST

California Shouldn't Waste a PG&E Bankruptcy.

This is a chance a make its power system safe, efficient and sustainable.

It's rare for a utility to go bankrupt, especially twice. For PG&E Corp., which may enter Chapter 11 by the end of the month, there are compelling reasons to do it anyway — and not just for the utility itself.

PG&E, facing perhaps $30 billion or more of claims and penalties, has started the clock ticking even before the last of its cash runs out. One look at its stock — trading at a princely 0.17 times book value — tells you it has lost the confidence of public markets. That rather undercuts the whole point of being an investor-owned utility.

Clearing the uncertainty hanging over the company begins with consolidating the litany of claims against it into a known quantity and dealing with them expeditiously. As Luckey McDowell, a partner at Baker Botts LLP specializing in corporate restructurings, puts it, a bankruptcy court gets you to a point where "You can say, 'This is the number,' and then you can craft a solution around that number."

Continue reading.

Bloomberg Politics & Policy

By Liam Denning

January 17, 2019, 6:45 AM MST

Libor's Heir Hindered by Repo Volatility in Battle of Benchmarks.

- **Concern over SOFR's viability grows after year-end spike**

- **Yet some borrowers have been embracing it for new issuance**

The benchmark being eyed as a potential replacement for dollar Libor is facing renewed scrutiny after a year-end surge in the market underpinning the new rate. With more volatility possible, Wall Street is increasingly wondering if the nascent Secured Overnight Financing Rate will be up to the task.

Last month's jump in rates on overnight Treasury repurchase agreements — the market that supports SOFR — pushed the benchmark higher by almost 70 basis points over a two-day span. It has since retreated and was set at 2.43 percent for Wednesday. But given that both repo and SOFR are also susceptible to swings in Treasury-bill supply, which itself could become more erratic as the U.S. grapples with the reintroduction of the debt ceiling, some market veterans are forecasting further fluctuations ahead.

Concerns about SOFR range from a lack of term structure to tepid volumes in derivatives that are tied to it. And that has traders and strategists saying the new rate needs to make significant headway in 2019 if U.S. regulators expect it to eventually take the baton from Libor, which still underpins more than $200 trillion of dollar-denominated instruments.

[Continue reading.]

Bloomberg Markets

By Alex Harris

January 17, 2019, 4:00 AM MST Updated on January 17, 2019, 7:46 AM MST

[The Future of a Bankrupt PG&E May Be a Breakup.]

- **San Francisco to explore buying chunk of troubled utility**
- **Municipal takeovers could create service disparities**

PG&E Corp.'s looming bankruptcy could lead to an unprecedented spectacle — a major American power company being taken over by the state or broken up for city governments to run.

More often, it works the other way. Local governments have a long history of selling off municipal utilities, switching them from the public sector to the private. Witness the ongoing efforts to privatize Puerto Rico's troubled power authority.

But with PG&E planning to file for bankruptcy this month — the result of mounting wildfire liabilities that could reach $30 billion — a government takeover has become a real possibility. In fact, the future of the power giant that has long reigned over a broad swath of California could very well involve a complete dismantling of its system and a takeover by multiple municipalities.

[Continue reading.]

Bloomberg Markets

By David R Baker and Mark Chediak

January 16, 2019, 3:00 AM MST

Move to Invalidate Puerto Rico GO Debt Squeezes Bondholders.

CHICAGO, Jan 15 (Reuters) – Puerto Rico general obligation bond prices tumbled on Tuesday after the island's federally appointed oversight board put the squeeze on bondholders late on Monday by announcing a plan to invalidate about half of the U.S. commonwealth's full faith and credit-backed debt.

The board, along with an unsecured creditors committee, asked the U.S. District Court overseeing Puerto Rico's bankruptcy case to wipe out more than $6 billion of GO bonds sold by the island in 2012 and 2014 that were already in default.

The news pushed prices on bonds due in 2035 with an 8 percent coupon down into the 48 to 49 cents on the dollar range from 53.5 cents on Monday.

With one debt restructuring completed and others in the works, the board is taking aim at the island's roughly $13 billion of GO bonds and nearly $50 billion in unfunded pension liabilities. As a prelude to mediation, the board and creditors committee are seeking to declare some of the GO bonds null and void because their issuance exceeded a debt limit and violated a balanced budget requirement in Puerto Rico's constitution.

"It is clearly part of the kabuki theater of negotiations," said James Spiotto, managing director of Chapman Strategic Advisors and a municipal bankruptcy expert.

He said while the legitimacy of the debt could have been challenged years ago, "they chose now because it's leverage."

Last month, the board's lawyer told U.S. Judge Laura Taylor Swain, who is hearing the bankruptcy case, that mediation efforts would resume early this year on Puerto Rico's core government debt and that a plan of adjustment could be imposed on creditors if there is insufficient support. With roughly $120 billion in debt and pension liabilities, Puerto Rico and four of its public corporations commenced bankruptcy proceedings in May 2017, under Title III of the so-called PROMESA Act.

Wiping out bondholders' investments, a move President Donald Trump suggested for the island in 2017, would have expensive repercussions for Puerto Rico's return to the $3.8 trillion municipal bond market. here

"If that is the solution, all they're going to wind up doing is paying a lot more money to borrow money," Spiotto said.

Puerto Rico completed the restructuring of about $4 billion of Government Development Bank debt in November in the first consensual deal under the bankruptcy. This week the court will take up a deal to restructure debt issued by the island's Sales Tax Financing Corporation known as COFINA. A deal over Puerto Rico Electric Power Authority (PREPA) debt is pending.

By Karen Pierog

Reporting by Karen Pierog in Chicago, additional reporting by Luis Valentin Ortiz in San Juan Editing by Matthew Lewis

Puerto Rico’s $18 Billion Bond Restructuring Nears Completion.

U.S. territory’s oversight board favors sales-tax bonds in deal

Puerto Rico’s federal supervisors are making a final push to write down $18 billion in sales-tax bonds under a settlement that would mark their largest renegotiation yet of the U.S. territory’s crushing debts.

The restructuring proposal covers the revenue bonds known as Cofina s, which make up roughly 40% of Puerto Rico’s core government debt. First issued in 2007, the Cofina bonds are backed by sales taxes that provided investors a secure source of repayment and lowered Puerto Rico’s borrowing costs.

Sales-tax revenue has never fallen short of paying off the Cofina bonds. But a decade of economic contraction has pushed Puerto Rico’s authorities to seek concessions from those bondholders to avoid further cutbacks in public services.

The settlement pending before U.S. District Judge Laura Taylor Swain would eliminate $6 billion in Cofina debt and release to Puerto Rico roughly half of the future sales-tax revenue currently earmarked for bondholders.

Court approval would resolve one of the thorniest conflicts in Puerto Rico’s bankruptcy while clearing the way for resolutions with competing bondholder groups.

Judge Swain didn’t issue an immediate ruling after hearing arguments Wednesday and Thursday from Cofina creditors—most of whom support the restructuring proposal—and from the oversight board installed to rehabilitate Puerto Rico’s economy.

“People voted overwhelmingly with their ballots and their wallets to accept the deal on the table,” said Matthew Feldman, a lawyer representing the interests of Cofina holders.

Bondholder support for the plan has buoyed prices on benchmark Cofina bonds close to 80 cents on the dollar, while subordinated Cofina bonds were trading at just under 50 cents on Thursday, according to Electronic Municipal Market Access.

If approved, the settlement would pay off senior bondholders owed nearly $8 billion at 93 cents on the dollar. Junior bondholders including Goldman Sachs Group Inc. and Santander Securities LLC would receive 56 cents on the dollar.

Under the proposal, creditors would receive new sales-tax bonds, affirmed by a court order to be valid and binding. The original Cofina bond structure was vulnerable to attack by rival bondholders who insisted it was unconstitutional, saying the sales taxes should never have been transferred out of the government’s control and pledged as collateral.

Investors have long debated whether Cofina bonds or Puerto Rico’s general obligations would come out on top in a restructuring since each group asserted an ironclad claim on sales tax money. The oversight board on Tuesday attacked the general obligations, saying that $6 billion of those bonds are worthless because they layered more debt on Puerto Rico than its constitution allowed.

Doubts about who owned the sales taxes—the government or Cofina’s bondholders—have clouded Puerto Rico’s bankruptcy since it entered court protection in 2017. Forcing Judge Swain to decide the issue could have wiped out Cofina's bondholders completely—or guaranteed them a 100% recovery if the pledge was upheld.

Either outcome would have hamstrung the restructuring process and made it more difficult to buy peace with all creditors, said Luc Despins, a lawyer who negotiated the settlement.

The Cofina plan instead relinquishes more than 46% of the pledged sales taxes, supplying cash to correct the government's budget imbalance and ameliorate politically unpopular austerity measures.

Island residents would still be on the hook for repaying the newly issued sales-tax debt through 2058. Rolando Emmanuelli Jimenez, an attorney for Puerto Rico's public utility union, said the proposal didn't require enough sacrifice from Cofina bondholders given the territory's shrinking tax base.

Adriana Irizarry, a nonprofit worker and mother of three from San Juan, spoke in support of the proposal even though it will impair the Cofina bonds her family bought for retirement. She said she felt "betrayed and defrauded" by the government she had trusted to pay her back.

"I have already given the government half of my life savings. What are others willing to give?" she said. "They want to punish us for investing in our island."

The Wall Street Journal

By Andrew Scurria

Jan. 19, 2019 9:00 a.m. ET

Puerto Rico Board Says Debt Is $6 Billion Over Limit.

U.S. territory's oversight board says post-2012 bond issuances are void

Puerto Rico's financial supervisors attacked investors holding $6 billion of general obligations, saying the bonds are worthless because they layered more debt on the U.S. territory than its constitution allowed.

The Puerto Rico oversight board filed court papers on Monday seeking to nullify general obligation debt issued after 2012, based on constitutional restrictions on the amount of debt backed by the island government's full faith and credit.

The objection covers Puerto Rico's sale of $3.5 billion of high-yielding general obligations in 2014, the largest-ever deal for junk-rated municipal debt.

The oversight board, which is helming Puerto Rico's court-supervised bankruptcy, said the post-2012 general obligations "should be disallowed in their entirety" to ease the restructuring of tens of billions of dollars in bond and pension debts owed by the central government.

"Where a government transaction is found to have violated a clear public policy embodied in statutory or constitutional law, allowing any remedy to a private counterparty would undermine that public policy, which exists to protect the people of Puerto Rico," the filing said.

A spokesman for a group of general obligation bondholders including Aurelius Capital Management, LP, Monarch Alternative Capital LP and Autonomy Capital didn't immediately respond to a request for comment.

The objection concerns several provisions of the Puerto Rico constitution. One clause bars Puerto Rico from guaranteeing debt if the borrowing costs would exceed 15% of its revenues from the prior two years. Puerto Rico is also barred from issuing general obligations to cover budget deficits, according to the objection. It also contended that bonds backed by rent payments on government buildings are tantamount to general obligations and should have counted toward the debt limits.

The oversight board said general obligation sales under former governors from both of Puerto Rico's largest political parties breached these provisions.

The objection echoes a legal strategy employed by the formerly bankrupt city of Detroit, which argued that $1.5 billion in debt issued to finance pension obligations was invalid because it exceeded Michigan's limits on municipal borrowing. Those bonds were paid back at 14 cents on the dollar when Detroit emerged from bankruptcy.

A restructuring plan for Puerto Rico's general obligations isn't expected to materialize for months. The oversight board is currently vying with dissident bondholders to write down $18 billion in sales-tax bonds known as Cofinas and has proposed a debt adjustment plan that is scheduled to be heard on Wednesday by U.S. District Judge Laura Taylor Swain.

By driving down Puerto Rico's $125 billion debt load, the oversight board is hoping to free up money for investment in dilapidated infrastructure and entice private capital back to the island, which was devastated by two hurricanes in 2017.

The Wall Street Journal

By Andrew Scurria

Jan. 15, 2019 1:48 p.m. ET

Puerto Rico Tests the Trump Strategy to Wipe Out Debt.

A federal oversight board says more than $6 billion of bonds should be declared null and void. Trump spoke about erasing the island's debt in 2017.

It turns out that President Donald Trump's ad-lib about wiping out Puerto Rico's debt wasn't as far-fetched as it seemed.

Longtime followers of the bankrupt U.S. commonwealth, which is attracting renewed attention thanks to Lin-Manuel Miranda and Jimmy Fallon, may recall when Trump appeared on "The Sean Hannity Show" in October 2017 and said the following about Puerto Rico, just a couple of weeks removed from Hurricane Maria:

> "They owe a lot of money to your friends on Wall Street. We're going to have to wipe that out. That's going to have to be — you know, you can say goodbye to that."

Continue reading.

Bloomberg Markets

By Brian Chappatta

January 15, 2019, 10:12 AM MST

Real Estate Investors See Riches in a Tax Break Meant to Help the Poor.

Land deals in eligible tracts from Bronx to Oakland jump 62%.

In a former warehouse on a dimly lit street in the South Bronx, developers sipping Puerto Rican moonshine listened as a local official urged them to capture a new U.S. tax break by rebuilding the decaying neighborhood.

In Alabama, a young lawyer quit his job after seeing the same tax break's potential to help one of the nation's poorest states. He now spends his days driving his Hyundai from town to town, slideshow at the ready, hoping to connect investors with communities.

And on a conference call with potential clients, a prominent hedge fund executive pitched investments in a boutique hotel in Oakland, which he described as San Francisco's Brooklyn. The project is eligible for the same tax break, designed to help the poor.

Continue reading.

Bloomberg

By Noah Buhayar and Caleb Melby

January 15, 2019

TAX - ILLINOIS

Love v. Fulton County Board of Tax Assessors

United States Court of Appeals, Seventh Circuit - December 17, 2018 - 911 F.3d 424

Citizens, who own real property and pay ad valorem taxes in the county, filed petition for writ of mandamus and other relief against county board of tax assessors, individual tax board members, and board's chief appraiser, alleging the board failed to exercise its duty to diligently investigate and determine whether stadium lessee was subject to ad valorem property taxation, and seeking temporary and permanent injunctive relief, to enjoin defendants from recognizing stadium property as tax exempt, and a declaration that taxable leasehold interest had been transferred to lessee, rather than a non-taxable usufruct.

The trial court granted defendants' motion to dismiss for failure to state a claim, and then dismissed other pending motions as moot. Citizens appealed.

The Court of Appeals held that:

- Citizens failed to rebut the presumption that the trial court followed the law and limited its consideration to the amended petition and attached exhibits in ruling on defendants' motion to dismiss for failing to state a claim on which relief could be granted;

- Citizens failed to allege that county board of tax appraisers and other defendants failed entirely to conduct an investigation and reach a decision regarding the ad valorem tax status of stadium lessee's interest in new football stadium, as required to state a mandamus claim;
- Sovereign immunity clearly barred the plaintiffs' declaratory and injunctive relief claims against the board and other defendants in their official capacities; but
- The doctrine of official immunity did not operate to bar suits for declaratory or injunctive relief against county officers in their individual capacities.

TAX - NEW YORK

Sznajderman v. Tax Appeals Tribunal of State

Supreme Court, Appellate Division, Third Department, New York - January 3, 2019 - N.Y.S.3d - 2019 WL 80639 - 2019 N.Y. Slip Op. 00007

Article 78 was initiated to review Tax Appeals Tribunal determination sustaining a notice of deficiency.

The Supreme Court, Appellate Division, held that evidence was sufficient to support determination that investment in gas and oil partnership was an abusive tax avoidance transaction.

Evidence was sufficient to support Tax Appeals Tribunal's determination that overall financing structure of gas and oil partnership artificially inflated partners' actual capital contributions, allowing large tax deductions based upon intangible drilling costs derived through inflated turnkey contract, and thus that taxpayer's investment in partnership was an abusive tax avoidance transaction; collateral agreement had effect of satisfying the principal of taxpayer's subscription note by payment of only 15% of the face value, which was to be used to purchase bonds that were used to pay off the principal of the subscription note, taxpayer only paid interest paid sporadically, and turnkey contract's price bore no relationship to reasonably projected or actual drilling costs but instead was correlated with promised 250% tax deduction.

Risk Rises in Municipal Bonds.

Money has poured into high-yield munis even as investors have pulled money from the sector overall

When The Spires at Berry College sought to borrow money to build retirement homes recently, the Georgia-based senior-living center sold municipal bonds.

Even though investors typically consider retirement homes riskier borrowers, and these bonds came without a credit rating, there was enough investor demand that the project landed interest rates below officials' expectations.

There has been a surge in sales from the riskiest parts of the $3.9 trillion market for state and local debt. Retirement communities like The Spires, charter schools and student-housing projects were among sectors in 2018 that issued a greater share of municipal bonds than at any time since the financial crisis.

That increase came even as bond yields, which rise as bond prices fall, climbed for much of past year. Overall municipal-bond issuance fell about 25% in 2018 from the prior year to the lowest level since 2013, according to data from the Securities Industry and Financial Markets Association. Money flowing into municipal mutual- and exchange-traded funds also slowed.

The riskiest sectors in the municipal bond market—including junk and unrated borrowers in categories that tend to have the highest rates of default or impairment—made up about 20% of total bond sales in 2018, up from 17.4% the prior year, according to Municipal Market Analytics data. That was the most since 2008, when they made up 24% of issuance.

Municipal investors in December even welcomed Detroit's first stand-alone bond sale since the city's bankruptcy. Demand was so robust that yields on the junk-rated deal came in below city leaders' expectations, they said. They were still high enough to lure investors.

"The yields got pretty attractive," said Daniel Solender, director of municipal bonds at Lord Abbett & Co. "There was a good range of opportunity available."

State and local debt remains historically safe for investors, with few defaults, because bonds tend to be backed by issuers' taxing power or revenue from essential services like water or power. Many retirement communities, charter schools and hospitals can use the market to sell tax-exempt debt because they play important community roles, but they aren't government entities—and analysts said a downturn could cause financial difficulties for some.

About 4% of continuing-care retirement-community bonds were in default as of Jan. 1, compared with the 1.8% of the broader market, according to MMA. Excluding Puerto Rico, which is in restructuring talks with creditors, 0.3% of municipal bonds were in default.

Junk and unrated municipal issuers continued to borrow in December, traders say, even as market turmoil halted bond sales by junk-rated corporations for 40 days through Jan. 10—the longest stretch in more than two decades.

Still, there was enough demand for higher-yielding debt that Adam Heffernan, a consultant who works with The Spires, said the retirement community's final bonds priced with lower yields than expected, by at least a quarter of a percentage point for some bond maturities.

High-yield municipal bonds posted a 4.8% total return in 2018, counting price changes and interest payments, above the broader market's 1.3% return, according to Bloomberg Barclays data. Money poured into high-yield munis even as investors pulled money from the sector overall, Lipper data show.

Nicholos Venditti, a portfolio manager overseeing municipals at Thornburg Investment Management, said he had largely avoided lower-rated and riskier bonds. But at the end of 2018, as equity markets roiled and investors fled high-yield corporates, at least one deal looked attractive for him: a bond issuance linked to natural gas.

"It's not a sector that we held prior to late November or early December," Mr. Venditti said. "When we saw the market for those change, we did take on a little bit of a position."

Issuance of these bonds more than quintupled in 2018 from the year prior, hitting at least a nine-year high, the MMA data shows.

Some worry the riskiest bonds could be hardest hit if concerns about slowing economic growth, which have rattled markets lately, and stock turbulence rise.

Adding to some investors' worries is the concentration of the high-yield municipal market. Nuveen and Invesco Ltd., which recently acquired Oppenheimer Funds Inc., hold at least 40% of assets in municipal mutual and exchange-traded funds classified as high-yield by Morningstar Direct, according to a Wall Street Journal analysis of the data.

"Imagine a situation in which high yield hiccups….they're both selling the same things at the same time," said Mr. Venditti. "Where is that stuff going to go?"

The Wall Street Journal

by Gunjan Banerji

Jan. 21, 2019 11:00 a.m. ET

The State of Socially Responsible Investing.

In 2007, the European Investment Bank issued its first green bond, a EUR 600 million equity index-linked security, whose proceeds were used to fund renewable energy and energy efficiency projects. A year later, the World Bank followed suit, and by 2017, over $155 billion worth of public and corporate green bonds had been issued, paving the way for the Seychelles government to issue the first ever "blue bond" last year— a $15 million bond to fund marine protection and sustainable fisheries.

The success of these instruments reflects the fact that investors are increasingly conscious of the social and environmental consequences of the decisions that governments and companies make. They can be quick to punish companies for child labor practices, human rights abuses, negative environmental impact, poor governance, and a lack of gender equality. Pair this with an increase in regulatory drivers post-2008 crisis, and a deepening understanding of the impacts of climate change and associated risk to performance, and we begin to see more clearly the need for investment models that will better address investors' concerns.

The result has been an increasing demand for integrating Environmental, Social, and Governance (ESG) criteria into investment decisions. In the beginning of 2018, $11.6 trillion of all professionally managed assets—one $1 of every $4 invested in the United States—were under ESG investment strategies, a sharp increase from 2010, when the amount was close to just $3 trillion overall.

Inevitably, the financial services sector has responded with a host of innovative financial instruments, some like those mentioned above, others quite different. The through-line that ties together these new investing models and strategies is quite simple: While they have generated competitive returns, it so happens that they all positively benefit society as well. Essentially what investors want is the performance promise of financial engineering combined with the assurance of a better tomorrow.

Many of the innovations have been driven by a collaboration between public, private, and philanthropic institutions. At The Rockefeller Foundation, we recognize the value of engaging private capital markets for societal good and have stepped in to fund the research and development of new instruments that can bring capital to cause. We have increasingly seen, firsthand, how readily these instruments meet not just investor needs but also values, and how interrelated the two can be.

Let’s look at some particularly interesting examples.

Risk-sharing Impact Bonds

Continue reading.

Harvard Business Review

by Adam Connaker and Saadia Madsbjerg

JANUARY 17, 2019

Cuomo’s Budget Proposal Cuts Aid to Municipalities.

Governor surprises towns and villages with a proposed cut in their state aid, a move municipal officials say could spark layoffs or raised property taxes

Gov. Andrew Cuomo surprised towns and villages with a proposed cut in their state operating aid, a move that municipal officials say could lead to layoffs or increased property taxes.

Mr. Cuomo, a Democrat in his third term, reduced the state’s aid and incentives for municipalities program, or AIM, from $715 million to $656 million in the budget plan he released this week.

The reduction will not affect cities, the biggest recipients of AIM funding, but towns and villages for whom the state money is less than 2% of their budget. Funding for the AIM program has been flat for the last 10 years.

Gerry Geist, executive director of the New York state Association of Towns, said the move was shocking because towns already adopted their annual budgets in November and December, before Mr. Cuomo proposed the cuts. Ninety percent of towns are losing their AIM funding, including all the towns in Columbia, Dutchess, Greene, Rockland, Putnam, Nassau and Suffolk counties.

“You can’t look at it as these percentages,” Mr. Geist said, noting Hempstead in Nassau County is losing $3.85 million. “Those are real dollars. It’s letting go personnel.”

In budget documents, Mr. Cuomo said the loss wasn’t a significant source of revenue for the affected municipalities. The governor has included additional money in this year’s budget for municipalities that share services to improve efficiency as well as changes to force major online marketplaces, like Etsy , to collect sales tax on behalf of third-party sellers. Legislators rejected similar online marketplace taxes in the last two years.

“The median impacted AIM payment is only $14,000 while the budget includes $225 million to match local government savings through the shared-services program and $390 million in new local sales tax revenues by eliminating the internet tax advantage,” said Morris Peters, a spokesman for Mr. Cuomo’s budget division.

Mr. Cuomo also proposed making permanent a 2% cap on the annual increase in local property taxes, most of which are levied by school districts. Municipal officials have said the cap makes it difficult to provide services. The governor and business groups say the cap provides relief to taxpayers and has led to greater predictability.

Robert Kennedy, the mayor of Freeport in Nassau County, stands to lose $901,311, which is less than 1% of his 50,000-person village's 2017 expenditures. He has around $12 million in reserve funds, he said, but is loath to use them because he feared it would downgrade the village's bond rating.

"We're skin and bones right now the way we've been doing it, and they pull the rug out from under us," he said. "After recovering from superstorm Sandy, we have to deal with New York state."

The Wall Street Journal

By Jimmy Vielkind

Jan. 16, 2019 6:30 p.m. ET

[Five Trends to Watch in Community and Economic Development in 2019.]

With divided government in 2019, we shouldn't expect much new at the federal level in community development this year. But there are still several trends to watch for. We highlight five.

1. Opportunity Zones will take effect in force

No surprise here. Opportunity Zones were the big community development story in 2018 and will continue to be in 2019. Proposed regulations should be finalized this year, creating more confidence for investors. Opportunity Funds are already being set up, and investment volumes will grow rapidly.

But because of variation in the economic standing of Opportunity Zones, the incentive's effect will likely vary. Some weak-market Opportunity Zones can expect no or little new investment because of the incentive. In Opportunity Zones that are already attractive to investors, especially those likely to gentrify, investment levels will be appreciably higher. This is because one of the three benefits for investors from Opportunity Zones—the permanent exclusion of taxes on new gains when their investment is held for 10 years—is a generous subsidy but only where investments appreciate in value.

Disclosure requirements will also be worth watching. It is important for the Internal Revenue Service to require transaction-level reporting on Opportunity Fund investments and to make detailed data available to help local governments and stakeholders track the program's progress and find ways to improve it.

2. Geographic winners and losers continue to solidify

Amazon's process of opening a new headquarters got the most attention, but Google, Microsoft, Apple, and Salesforce also made recent decisions to move jobs to new metropolitan areas. Leaving the Bay Area might make it appear that tech profits will be more broadly distributed, but leading firms are actually reinforcing a broader trend of concentrating wealth in a dozen or more large metro areas, with many parts of the country falling behind.

Compare, for example, Amazon's decision to move into Long Island City, New York, and Arlington, Virginia, with General Motors' announcement that it would soon close a plant in Youngstown, Ohio, putting 1,500 people out of work in addition to the 3,000 autoworkers already laid off. Youngstown's population peaked in 1930 and has lost ground ever since, dropping 21 percent since 2000.

The concentration of jobs and wealth in a few metro areas is concerning for the strength of our nation's economy and democracy, as smaller communities may continue to dwindle in population, opportunity, and quality of life. Local efforts can help, but addressing these challenges will require federal commitments we have not seen in decades.

3. Alternative ownership structures raise opportunities

Alternative ownership structures are gaining prominence in policy circles, even if the enterprises themselves face challenges in growing. In an economy where business start-ups are at all-time lows and income inequality is at a modern high, co-op businesses offer alternatives to traditional shareholder- or proprietor-owned business structures. Expect more policy and philanthropic interest in co-ops in the year ahead, especially among worker cooperatives.

Co-ops are important in housing as well—including both high-end housing and affordable shared ownership, like what ROC USA does with mobile home parks. But other models of shared ownership are growing, too. Community land trusts (CLTs), like DC's new Douglass CLT, are getting attention in new ways.

For example, a recent survey of hospital CEOs shows respondents were interested in supporting CLTs. In a CLT, a nonprofit corporation buys or holds land and makes that land available for development that aims to improve the community while preserving access in communities undergoing rapid economic change. This model, among others, can help community anchor institutions like hospitals, churches, or universities take an even more active role in leveraging their land for community development in 2019.

4. Climate change will bring new disasters and the need for new funds

Natural disasters of increasing severity will continue to pose a threat in 2019, even while the recovery from 2018's hurricanes and wildfires remains unfinished. We anticipate that more states and localities will emphasize preparedness, and even the federal government will start to do better, rather than continuing to focus so heavily on recovery after disasters strike.

Yet, most federal disaster funds will still go toward recovery—for example, via the Community Development Block Grant program. There will be continued need to help communities build back in ways that are more resilient to future disasters and that take advantage of federal disaster funding—one of the few new, large federal supports available.

5. Reimagining public assets can boost safety and connectedness

Communities are also regaining an appreciation for public assets. Broadening from a purely economic lens, cities and counties will continue to rely on and repurpose their public assets—like parks, libraries, schools, and community organizations—to bring people together. "Creative placemaking" can build new economic bridges across communities while reducing the divisions that can jeopardize public safety.

These placemaking efforts also offer opportunities for residents to contribute to the reshaping of their community's places and spaces. In this way, placemaking activities are the connective tissue that brings together resources, capital, and actors to focus on revitalizing public assets.

The Urban Institute

by Brett Theodos & Erika C. Poethig

January 17, 2019

[Struggling Law Enforcement Museum Defaults on Its Bonds.]

• Just months after opening, museum fails to make debt payment
• Joins ranks of financially struggling museums in muni market

Not enough Americans are interested in what it's like to be a police officer to keep the National Law Enforcement Museum afloat.

The museum defaulted on a Jan. 1 payment due on some of the $103 million of bonds that financed its Washington, D.C., facilities near the Smithsonian, just months after it opened in October. It attributed the lapse to a failure to reach its fundraising goals and lower-than-anticipated revenue, according to a transcript of a conference call held with bondholders on Jan. 10.

The payment shortfall makes the museum — which bills itself as a place where people can "walk in the shoes" of law enforcement officers — one of the rare borrowers in the $3.8 trillion municipal-bond market to default on its debts. It joins other museums that have struggled financially, including one in Nebraska devoted to the pioneers and the American Folk Art Museum in New York.

The National Law Enforcement Officers Memorial Fund, which borrowed the money for the museum in 2016, slashed its attendance forecasts to just 300,000 visitors in the first year from the 420,000 initially expected, according to the call transcript. It also cut its staff by 12 percent and raised ticket prices for adult visitors by $1 to $21.95.

It opened in October, during what museum officials said is a tough quarter for tourism in the nation's capital. During the fourth quarter, the museum posted a total operating loss of $1.9 million and is expecting a net loss of $5.6 million in 2019.

This month's default affected subordinate taxable bonds, according to the filing. About $460,000 of interest on those bonds wasn't paid.

Bloomberg Markets

By Amanda Albright

January 14, 2019, 10:46 AM MST

What Did the Midterm Election Results Mean for Water?

This year's midterm elections had the highest turnout in a half century, with 49 percent of the population voting for candidates at the national, state and local level.

In the U.S. House of Representatives, control flipped with Democrats poised to pick up nearly 40 seats. In the U.S. Senate, Democrats lost the seats they needed to defend in North Dakota, Florida, Missouri, and Indiana, but they did flip seats in Nevada and Arizona. Although the race in Mississippi headed to a runoff into late November, Republicans retained control of that seat, finishing the cycle with a net gain of two seats.

At the state level, Democrats flipped seven governor's mansions, while the GOP flipped the governor's seat in Alaska. That change in Alaska means Republicans control the governorship, the state house, and state senate. Democrats gained control of both houses and the governorship in six states: Maine, New York, Colorado, New Mexico, Nevada and Illinois. These changes at different levels of government will affect infrastructure and water policy, but some of the most significant support of those issues was demonstrated through ballot measures. Statewide ballot measures supporting investment in water infrastructure projects passed in Rhode Island and Maine, and a measure in Florida passed to ban offshore drilling beneath all state waters.

At the local level, there were even more ballot measures in support of water infrastructure investment. In Los Angeles, voters enacted a parcel tax to fund stormwater projects; in Denver, voters raised property taxes to fund flood warning systems and waterway clean-up; and in Houston, an amendment passed to establish a fund for flooding and drainage projects. These examples, as well as others in Philadelphia, Baltimore, Austin, and San Francisco, reinforce polling data that shows strong public, and bipartisan, support for water infrastructure investment.

According to research from the polling firms FM3 and Public Opinion Strategies, rebuilding America's infrastructure is increasingly important to constituents. In a poll of 1,600 individuals across the country earlier this year, 89 percent of Americans see rebuilding the nation's infrastructure as very or extremely important, up from the 67 percent who said the same last year. There are many variables for why support is growing, but it is worth noting the overall composition of the electorate is changing, with younger, more diverse generations voting in larger numbers – and we know those demographics support investment in infrastructure.

Their polling research shows that voters of color are more likely to place importance on rebuilding infrastructure, with 94 percent of African-Americans and 92 percent of Latinos ranking the issue as extremely or very important, compared to 74 percent of white voters. It is important for elected officials to recognize that water infrastructure is widely supported across party lines.

For organizations working with incumbents or newly elected officials joining Congress in January, be mindful to frame water infrastructure in a way that illustrates the benefits of investment, and there are no political ramifications to supporting this issue. According to Lori Weigel of Public Opinion Strategies, people best understand the value of water through the lens of public health. By framing messages in terms of water quality's effect on health and safety, groups educating new Congressional members can help convey the urgency of rebuilding our aging infrastructure.

There are reasons to be optimistic for the chance of an infrastructure bill in the new Congress.

While politics may affect Democrats desire to work with Republicans and the President, many in the Democratic majority want to show that government can still be effective. Infrastructure would be a logical place to show the potential of bipartisanship.

Water Finance & Management

By Scott Berry

JANUARY 4, 2019

Opportunity Zones Shine Bright in Phoenix, AZ - but Need Off-Market Data.

Commercial real estate professionals will know there's no avoiding Opportunity Zones these days, especially in hot markets like Phoenix. The popular government program sets out to stimulate low-income and underdeveloped communities across the nation by offering generous incentives on capital gains to investors and developers. Of the 144 designated census tracts across the state of Arizona, 61 are located in the greater Phoenix area. Considering the rewards at stake, the local commercial real estate community is keen, with more sophisticated funds already capitalizing on market trends. But, resources are limited, and as more players enter Phoenix's Opportunity Zone market, competition is beginning to intensify. How can investors and developers successfully surpass others for valuable assets?

The advent of commercial real estate technology and democratization of off-market data has allowed the commercial real estate community to streamline and simplify their Opportunity Zone search experience. Access to the entire pool of property across the nation, including Phoenix's qualified census tracts, provides commercial real estate professionals an easier way to find potential investments. Then, when looking at Phoenix's hottest submarkets like industrial and multifamily, users can analyze individual asset data to empower stronger, smarter deal-making.

How Off-Market Data Helps

As investors and developers race to find valuable properties for investment in Phoenix Opportunity Zones, off-market data is now more beneficial than ever. In the age of digital disruption, it's no longer enough to rely solely on "on-market" listed properties. Instead, off-market data, which includes an area's total asset stock, can empower simpler, more strategic due diligence. Off-market data aggregation tools, like Reonomy, give users the advantage of finding high-demand properties faster, long before the less-sophisticated competition does.

More importantly, robust off-market platforms arm investors and developers with the information they need to make stronger decisions to usher in more flexible deals. For Opportunity Zone deal-making, specifically, granular building and transactional information can give users an edge on the competition. Ownership and portfolio information enable them to reach decision-makers directly, rather than getting stonewalled by gatekeepers and LLCs. In all, it's the comprehensive depth and breadth of off-market data that opens doors for investors interested in Opportunity Zone investments.

Uncovering Phoenix's Potential

Using off-market data, what particular Phoenix markets should commercial real estate professionals explore? Industrial and manufacturing had a strong 2018; the sector hit an all-time high since 2007 with approximately 6.9 million square feet under construction throughout the metro. Phoenix's positive economic growth lends itself to extremely low vacancy rates (7.3%) and an increase in rent prices, which have steadily increased to an average $7.2 per square foot.

According to Reonomy data, more than 6,800 commercial properties are located in Phoenix's designated Opportunity Zones. Nearly 3,000 of these properties are categorized as industrial and include a myriad of assets, spanning from aircraft hangars to sprawling warehouses. For those interested in capitalizing on Phoenix's industrial advancement, there's plenty of potential in the area's nominated census tracts. Users who utilize off-market data platforms, like Reonomy, can explore this information further, by customizing their search experience source the properties that best match their preferences and ensure the highest return on investment (ROI).

Additionally, Phoenix's strong job and population growth are attracting multifamily investments across the city. Globe Street reports the need for more multifamily units will likely attract land investment and development deals throughout the first few months of 2019. Big-name buyers have already begun investing in Phoenix's promising multifamily sector, with companies like LaSalle Investment Management and TruAmerica expanding their portfolios throughout the city. These high-yielding multifamily investments might prove lucrative in the years to come, especially in Phoenix's Opportunity Zones where ROI can be maximized.

Current Reonomy off-market data indicates that there are 1,280 multifamily assets located throughout Phoenix's Opportunity Zones, including duplexes, triplexes, and general multifamily communities. Reonomy data also indicates another 2,600 land parcels in qualified census tracts. While 953 of these are zoned for industrial properties, over 1,211 are zoned for residential purposes, giving developers a wide-ranging scope of property options for consideration.

These numbers provide a broad overview of the options in Phoenix's Opportunity Zones, but it's the depth of the off-market data that truly empowers smart investment decisions for stronger deal enablement. Commercial real estate technology like Reonomy allows users to dive deeper into individual asset details to explore physical, transactional and owner information. This granular intel ultimately enables investors and developers to strike more flexible, personal deals with decision-makers before the competition does.

There's no doubt Arizona's capital city will continue to garner attention from investors and developers. With Opportunity Zones in the picture now, off-market data is essential for simplified prospecting and stronger deal facilitation.

AZBIGMEDIA.COM

REAL ESTATE | 14 Jan | RICHARD SARKIS

Richard Sarkis is Co-Founder & CEO of Reonomy, a commercial real estate data and analytics platform. For a simpler approach to searching for Opportunity Zones in Phoenix, try the Reonomy platform for free, here.

CDFA - PFM Capital Markets Webinar Series.

November 28, January 10, February 7, March 14, April 16, May 7

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CDFA has partnered with Public Financial Management (PFM) to host a six-part webinar series on current events and latest trends in the capital markets. The CDFA – PFM Capital Markets Webinar Series will offer in-depth, market-driven discussions about bond financing in the United States and will provide insights about structuring techniques, regulatory matters, strategies for ongoing monitoring and continuing disclosure, and predictions for the future of the capital markets.

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[Click here](#) to learn more and to register.

[What Cities Are Getting Wrong About Public Transportation.](#)

Cities could get more people walking, biking, and riding transit, according to a new report, if they just know where to look for improvement.

Each year, the U.S. Census releases an update in "commuting mode shares" in its American Community Survey. This is an annual accounting of the share of people in every U.S. city who bike, walk, or ride public transit to their jobs, as well as drive. Mostly the latter: Nationally, about 75 percent of the country is sitting alone in their cars every morning. About 10 percent carpool, 5 percent ride transit, and the last 10 percent either walk, bike, or work from home.

If you peruse this data-dump every year, you'll probably notice something: Despite the tireless efforts of transit planners, bike-lane boosters, and other actors in the mobility arena, the mode-share percentages don't seem to budge much in the any given growing city as they add more people, despite massive investments in transit infrastructure. Take Dallas, Texas, for example: In 1996, that city opened the first stage of its light-rail network, which has since grown into the largest system in the U.S., at a total cost of something around $5 billion. But the share of commuters in the city who ride transit has remained below 6 percent since 1990.

[Continue reading.](#)

CITY LAB

by ANDREW SMALL

JAN 17, 2019

[New Jersey Appellate Court Rules Hoboken May Not Retroactively Apply Municipal Ordinances to Invalidate Prior Land Use Approval.](#)

The New Jersey Appellate Division has determined that the City of Hoboken cannot retroactively apply municipal land use ordinances to effectively revoke prior land use approvals.

The City of Hoboken (Hoboken) Planning Board granted Shipyard Associates, LP (Shipyard Associates) approval for a residential development consisting of high-rise residential buildings along the Hudson River along with several indoor tennis courts to be built on a pier extending into the Hudson River. Prior to completion of the development, Shipyard Associates proposed to build two additional high-rise buildings on the pier instead of the previously approved indoor tennis courts. As part of a multifaceted strategy by Hoboken and other intervenors to block the additional high-rise buildings, Hoboken convinced the Planning Board to refuse to schedule a hearing for the Shipyard Associates application. This refusal resulted in litigation heard by the Appellate Division. In *Shipyard Assocs., L.P. v Hoboken Planning Bd.,* Nos. A-4504-14, A-4637-14, A-4763-14 (App. Div. Aug. 2, 2017), *certif. denied*, 232 N.J. 106, 133, 148 (2018), the Appellate Division determined that the Planning Board's unlawful refusal to hear the application resulted in automatic approval of the preliminary and final subdivision application for the new high-rise buildings effective as of 2012, when the refusal occurred.

In late 2013, while the litigation regarding refusal to hear the Shipyard Associates application was pending, Hoboken enacted two municipal ordinances prohibiting construction of high-rise buildings on waterfront piers. The ordinances permitted only limited uses where residential construction was previously permitted and, if applied retroactively to the Shipyard Associates project, would effectively invalidate the automatic 2012 land use approval.

Shipyard Associates brought action to prevent Hoboken from enforcing the ordinances to prevent the Shipyard Associates project. In *Shipyard Associates, LP v. City of Hoboken and Fund for a Better Waterfront and Hudson Tea Buildings Condominium Association, Inc.,* Docket No. A-1085-17T3 (Decided January 7, 2019), Hoboken argued that state statute *N.J.S.A.* 40:55D-49(a) authorizes a municipality to retroactively apply municipal ordinances to land use approvals if done in the interest of public health and safety. *N.J.S.A.* 40:55D-49(a) provides that the general terms and conditions of a preliminary approval shall not be changed, "…except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety…." The Appellate Division disagreed with Hoboken's reliance on *N.J.S.A.* 40:55D-49(a), noting the use of the term "modifying" in *N.J.S.A.* 40:55D-49(a) indicates that a "change, revision or tweak" to the general terms of an approval may be permissible under certain circumstances for health and public safety purposes, but not a complete change of the permitted uses in a zone resulting in the revocation of a prior approval as a whole. With respect to the Shipyard Associates project, the Appellate Division held that the application of the two ordinances would effectively constitute a complete revocation of Shipyard Associates' 2012 approval. The Appellate Division reasoned this result would be in direct conflict with the plain wording of *N.J.S.A* 40:55D-52(a), which provides that the zoning requirements applicable to a preliminary approval shall not be changed for two years after the date on which the resolution of final approval is adopted.

This case has not been approved for publication; thus, its use in other cases is currently limited. However, the Appellate Division's ruling demonstrates recognition of the important protection against zoning changes afforded to developers under *N.J.S.A* 40:55D-52(a) and provides a degree of comfort that municipalities may not use the public health and safety exception in *N.J.S.A.* 40:55D-49(a) to erode such protection and retroactively apply land use ordinances to nullify a prior land use approval.

Should you have any questions concerning this decision or land use issues in general, please contact any of the attorneys listed in the sidebar.

Publisher: Day Pitney Alert

Day Pitney Author(s) Katharine A. Coffey Jennifer L. Solberg Peter J. Wolfson Brooke Luxenberg Kaplan

January 14, 2019

How Placemaking Can Empower Urban Communities, Not Tear Them Apart.

Late last month, *The Guardian* published a piece with the somewhat incendiary title "How placemaking is tearing apart social housing communities." The article tells a distressing story of a local east London council forcing the relocation of social housing residents so the estate could be refurbished, and how years later, hundreds of units remain empty as displaced residents have yet been able to return. The details as described are a little murky — or perhaps I just got lost in the British English — but the author, Nye Jones, was crystal clear on one point: placemaking was to blame.

Having just launched the new [Anne T. and Robert M. Bass Center for Transformative Placemaking](), I was understandably anxious about how Jones was defining placemaking, as by the article title alone I was confident he didn't get it quite right. More than that, I had the foreboding feeling that placemaking might now be on the same slippery linguistic slope as "gentrification" — a word that Jason Segedy, in a recent [City Observatory article](), suggested has become "useless," with no agreed upon meaning.

Upon opening The Guardian article, I was even more disheartened to see in the subtitle that Jones was actually conflating the two terms, referring to placemaking as "gentrification by any other name." Indeed, Jones goes on to say that "placemaking" reflects developers' quest for culture and luxury whereby social housing tenants are "shooed out of the way" to make room for the affluent. So if I understand correctly, it appears that "placemaking" is now being used — by Jones and others in the UK, anyway — to describe the phenomenon of displacement once connoted by the now meaningless term "gentrification." Yikes.

[Continue reading.]()

The Urban Institute

Jennifer S. Vey
Senior Fellow – Metropolitan Policy Program Director – Anne T. and Robert M. Bass Center for Transformative Placemaking

Wednesday, January 16, 2019

[To Save the Planet, the Green New Deal Needs to Improve Urban Land Use.]()

The [Fourth National Climate Assessment](), released in November 2018, pulls no punches. United States communities are already experiencing tangible harms from climate change, and without substantial changes in human behavior, the situation will get worse. Environmental legislation may get more attention in the current Congress: Rep. Alexandria Ocasio-Cortez (D-N.Y.) and other prominent progressives have called for a [Green New Deal]() (GND). Early [outlines]() for such a plan include a broad package of policies, such as transitioning to all renewable energy sources, restoring forests and wetlands, and upgrading infrastructure to be more resilient. However, the current plan does not address a major underlying cause of environmental harm—decades of poor urban land use decisions. Specifically, better urban land use would reduce greenhouse gas emissions (GHGs) from cars and limit the human and financial costs caused by developing environmentally risky land.

In developing an effective plan to address our climate challenges, proponents of the Green New Deal should consider the following tenets to improve urban land use.

[Continue reading.]()

The Brookings Institute

David M. Rubenstein
Fellow – Metropolitan Policy Program

January 15, 2019

PA Dept of Labor & Industry's Bidding Thresholds Increase For Municipality Bidding.

The Pennsylvania Department of Labor & Industry's municipal authority and municipality bidding thresholds will rise 2.3 percent in 2019.

The Department published its bidding thresholds for 2019 under Act 90 of 2011. Under Act 90, the bidding thresholds provide for an annual inflation adjustment based on the Consumer Price Index for All Urban Consumers.

Effective January 1, 2019, the bidding thresholds for Pennsylvania municipal authorities and municipalities are:

- Purchases and contracts below $11,100 require no formal bidding or written/telephonic quotations.
- Purchases and contracts between $11,100 and $20,600 require three written/telephonic quotations.
- Purchases and contracts over $20,600 require formal bidding.

Tucker Arensberg, P.C.

by Daniel Conlon

January 15, 2018

Munich Re Wins Arbitration It Initially Resisted, And Parties Agree To Dismiss Federal Lawsuit Against Munich Re As A Result.

Alabama Municipal Insurance Corporation (AMIC) has agreed to dismiss with prejudice its federal lawsuit against Munich Re after an arbitrator rendered judgment against AMIC in a case we previously wrote about here.

Munich Re had resisted arbitration, contending that AMIC's claim did not arise under a contract which contained an arbitration clause. The district court disagreed, finding that another contract applied to the claim and that contract provided for "final and binding" arbitration of disputes. Despite losing the initial round, Munich Re has emerged victorious from the arbitration it initially sought to avoid, and the court dismissed AMIC's lawsuit with prejudice on December 7, 2018, pursuant to the parties' joint request. *Alabama Municipal Insurance Corporation v. Munich Reinsurance America, Inc.*, Case No. 2:16-cv-00948-WHA-SRW (USDC M.D. Ala. Dec. 7, 2018) (final judgment); (Nov. 9, 2018 Joint Status Report Regarding Arbitration).

Carlton Fields

by Benjamin Stearns

January 16, 2019

Applicability of Nevada State-Action Immunity to Private Parties.

On January 7, 2019, in Green Sols. Recycling, LLC v. Reno Disposal Co., No. 3:16-cv-00334--MD-CBC, 2019 BL 4611 (D. Nev. Jan. 07, 2019), the District Court for the District of Nevada granted summary judgment on plaintiff's antitrust claim in favor of defendants Reno Disposal Company, Inc. ("Reno Disposal"), and Waste Management of Nevada, Inc. ("WMON"), on the basis of the doctrine of state-action immunity. The litigation arose out of the City of Reno's entry into an exclusive franchise agreement with Reno Disposal, which provided Reno Disposal with the exclusive right to collect and dispose of waste and certain recyclable materials. The plaintiff challenged the City of Reno's authority to grant a monopoly for the collection and disposal of garbage and recyclable materials as an unlawful restraint of trade in violation of Section 1 of the Sherman Act. The defendants argued that they were entitled to summary judgment under the doctrine of state-action immunity.

The doctrine of state-action immunity derives from *Parker v. Brown*. In *Parker*, the Supreme Court held that "because 'nothing in the language of the Sherman Act . . . or in its history' suggested that Congress intended to restrict the sovereign capacity of the States to regulate their economies, the Act should not be read to bar States from imposing market restraints 'as an act of government.'" *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 224, (2013) (quoting *Parker v. Brown*, 317 U.S. 341, 352 (1943)). Following Parker, the Court recognized that "under certain circumstances, immunity from the federal antitrust laws may [likewise] extend to nonstate actors carrying out the State's regulatory program." *Id.* at 225. Given our "fundamental national values of free enterprise and economic competition," however, state-action immunity is the exception rather than the rule, and the inquiry is even more exacting when a non-state actor invokes the protection of *Parker* immunity. *See id.*

In *Midcal*, the Supreme Court set forth a two-part test for determining whether the anticompetitive acts of private parties are entitled to state-action immunity. *Id.* (citing *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980)). First, "the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy.'" *Midcal*, 445 U.S. at 105. Second, the policy "must be 'actively supervised' by the State." *Id*.

Applying these principles, the District of Nevada found that this case presented one of those rare circumstances where private parties are entitled to state-action immunity. The court first concluded that the clear-articulation prong of the *Midcal* test was met, because the statute at issue expressly authorized anti-competitive conduct by allowing municipalities to displace or limit competition in collection and disposal of waste. Moreover, the court found it foreseeable that the statute would result in a monopoly over the collection and disposal of materials that arguably qualified as waste.

With respect to the second prong, the court emphasized that the active supervision requirement did not apply "when the 'challenged activity is within a traditional municipal function,'" or "when 'the actor is a municipality rather than a private party.'" *Green Sols. Recycling, LLC*, 2019 BL 4611, at *9 (citations omitted). The court reasoned that the "traditional municipal function" exception applied, because waste disposal is "'both typically and traditionally a local government function.'" *Id*. (citations omitted). The court likewise concluded that the second exception applied, because the true actor was the City of Reno, rather than Reno Disposal or WMON. The court explained that it was the City of Reno that was engaged in municipal regulation, and that Reno Disposal and WMON "have no authority to set pricing or in any way regulate the collection and disposal of garbage and other waste." *Id.* The court held that both exceptions applied and that, accordingly, the defendants did not need to establish active supervision.

While the court's decision thus makes clear that non-state actors are entitled to state-action immunity only in narrow circumstances, it also illustrates the vitality of this doctrine.

by Meghan Larywon and Robert LoBue

January 18, 2019

Patterson Belknap Webb & Tyler LLP

The NJ Local Property Tax Appeal Filing Deadline Remains Inviolate And Cannot Be Circumvented By Use Of The Intervention Tool.

In *Farmland Dairies, Inc. v. Borough of Wallington*, N.J. Super. App. Div. (per curiam) (unpublished decision) (35-2-7909), the Appellate Division upheld the decision of the Tax Court in denying an unrelated neighboring property owner's efforts at intervening in a pending local property tax appeal between the property owner and the Borough. The court concluded that the intervention application of the putative intervenor was out of time and barred by the statute of limitations. Although all residents of municipalities have standing and maintain the right to pursue tax appeals as "aggrieved" parties under the statute, including those related to their neighbor's properties, any such contests must nonetheless comply with the statutory filing deadline.

The New Jersey Supreme Court has consistently recognized the necessity of complying with filing deadlines in the area of taxation. The statutory scheme establishing the court's jurisdiction in this area is "one with which continuing strict and unerring compliance must be observed." See McMahon v. City of Newark, 195 N.J. 526, 546 (2008). Indeed, our Supreme Court has declared that the "failure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 425 (1985). The Supreme Court has also explained that strict adherence to statutory filing deadlines is of particular concern in tax matters, given "the exigencies of taxation and the administration of local government." F.M.C. Stores, 100 N.J. at 424. The Legislature "has attempted to set out a well-organized time-table for the purpose of enabling a municipality to ascertain the amount of taxable ratables within the jurisdiction in order that it might adopt a responsible and fairly accurate budget." Id. at 425. "By incorporating a strict deadline in [the statute], the Legislature intended to ensure that municipalities receive timely notice that a particular property's valuation is subject to challenge." Prime Accounting Dept. v. Township of Carney's Point, 2013 N.J. Lexis at *31.

After previously remanding the matter to the Tax Court for further proceedings concerning the timeliness and propriety of the putative intervenor's application for permissive intervention, the Appellate Division made it plain, mindful of the above-referenced well-settled jurisprudence, that any effort to intervene must, in the first instance, be timely pursued and that the annual tax appeal filing deadline will effectively wait for no one.

Although as demonstrated above, the inviolate nature of this statutory deadline is plain, the court's decision here may have been made easier by the attendant distasteful nature of a case involving an unrelated party's efforts at meddling with pending litigation between the real parties in interest (the actual owner of the property in question and the municipality).

by Carl Rizzo

January 17, 2019

Cole Schotz

SEC, MSRB and FINRA Postpone February 7 Compliance Outreach Program for Municipal Advisors.

Due to the federal government shutdown, the SEC, MSRB and FINRA have postponed the Compliance Outreach Program for Municipal Advisors on February 7 in San Francisco. A new date will be announced at a later time.

Realizing the Best of Both Worlds: An Engaged Workforce and More Satisfied Citizens - GFOA Webinar

GFOA has been researching ways to engage public finance employees in the workplace. With the release of our report, GFOA will host a webinar to share findings from our research so you can create a positive culture, build trust with employees, and provide meaningful growth opportunities.

Join us on **February 14**, to learn more.

Register Today!

- IRS Releases Final TEFRA Regulations: Orrick
- IRS Releases Proposed Regulations Consolidating Guidance on Reissuance of Tax-Exempt Bonds: Mintz, Levin
- Judge Rules on Constitutionality of Tax Credit Bonds.
- Public Charter Schools: Borrowing With Tax-Exempt Bonds (Third Edition) – Orrick
- MSRB Releases Education Resource for New SEC Rule 15c2-12.
- S&P U.S. Local Government 2019 Sector Outlook: Showers For Some, Downpours For Others
- S&P U.S. State Sector 2019 Outlook: Caution – Slower Speeds Ahead
- S&P U.S. Public Finance Sector Outlook Webcasts Scheduled. Please note that this link provides the topic and date for each of the eight scheduled webcasts. Additional details for each webcast, as well as registration information, is available by scrolling down to the "Events" section of the newsletter and/or website.
- Municipal Bonds: Great Expectations For 2019
- And finally, Just Not Your Day is brought to us this week by *Nair v. City of New York*, in which dude "experienced a tire blow-out, spun out of control, struck the center median, and came to rest facing eastbound in the left lane." He was almost immediately struck by a second vehicle. After

police and tow truck arrived, the tow truck was struck by yet another vehicle, propelling it into the dude. We now propose adding Just Not Your Day to the existing "stuff just happens" family of Act of God and Force Majeure. Welcome. And we're not quite sure why the "(collectively, "Mother")" reference that popped up in *Brewington v. City of Philadelphia* cracks us up so much. Just does.

S&P U.S. Public Finance Sector Outlook Webcasts Scheduled.

NEW YORK (S&P Global Ratings) Jan. 7, 2019 — S&P Global Ratings will host eight webcasts over the next month focusing on the outlooks for individual sectors. In advance of each event we plan to publish individual sector outlook reports.

To register for any of the webcasts, please go to www.spratings.com/events. Registration is free.

The schedule is:

- Jan. 15 – States and local governments
- Jan. 17 – Not-for-profit health care
- Jan. 22 – Not-for-profit charter schools
- Jan. 23 – Municipal water utilities
- Jan. 24 – Transportation infrastructure
- Jan. 30 – Public power and electric cooperatives
- Jan. 31 – Not-for-profit higher education
- Feb. 6 – Municipal housing.

This report does not constitute a rating action.

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

Jan. 15, 2019 | New York, NY

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

Register For This Webcast

S&P Live Webcast: 2019 U.S. Not-for-Profit Health Care Outlook

Jan. 17, 2019 | New York, NY

Please join our leading S&P Global Ratings analysts from the Not-For-Profit Health Care team for a live interactive webcast on **Thursday, January 17, 2019 at 2:00 p.m. Eastern Standard Time**, 11:00 a.m. San Francisco, where they will provide their views on the latest industry credit outlook for the U.S. Not-For-Profit Health Care Sector.

Register For This Webcast

S&P Live Webcast: 2019 U.S.Not-for-Profit Charter School Outlook

Jan. 22, 2019 | New York, NY

Please join S&P Global Ratings U.S Public Finance on **Tuesday, January 22nd at 2:00 pm Eastern Standard Time**, for a live webcast and Q&A discussion on the U.S Not-for-Profit Charter School sector Outlook. We will also be introducing our new Charter School Sector Leader, Jessica Wood.

Register For This Webcast

S&P Live Webcast: 2019 U.S. Municipal Water Utilities Outlook

Jan. 23, 2019 | New York, NY

Please join our US Public Finance utility and infrastructure team to for a live, interactive webcast on **Wednesday, January 23, 2019 at 2:00 p.m. Eastern Standard Time** (11:00 a.m. Pacific Standard Time) where our analysts will provide their views on the what challenges and opportunities municipal water and sewer utilities will face in 2019. Will there be a federal infrastructure package? Any new environmental rulemaking? What about WIFIA, affordability and climate change.

Register For This Webcast

S&P Live Webcast: 2019 U.S. Transportation Infrastructure Outlook

Jan. 24, 2019 | New York, NY

Please join our leading S&P Global Ratings analysts from the U.S. Public Finance Transportation team for a live interactive webcast on **Thursday, January 24 at 2:00 p.m. Eastern Standard Time**, where they will provide their views on the 2019 Transportation Infrastructure Outlook credit outlook.

Register For This Event

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

Jan. 30, 2019 | New York, NY

Please join S&P Global Ratings U.S. Public Finance on **Wednesday, January 30, 2019 at 2:00 p.m. Eastern Standard Time** for a live Webcast and Q&A discussion on the U.S. Public Power and Electric Cooperative sector outlooks.

Register For This Webcast

S&P Live Webcast: 2019 Global Not-for-Profit Higher Education Outlook

Jan. 31, 2019 | New York, NY

Please join S&P Global Ratings U.S Public Finance on T**hursday, January 31st at 2:00 pm Eastern Standard Time**, for a live webcast and Q&A discussion on the Global Not-for-Profit Higher Education sector Outlook, which will cover both the U.S. Not-for-Profit Higher Education sector as well as International Not-for-Profit Higher Education conditions.

Register For This Webcast

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

Feb. 6, 2019 | New York, NY

Please join S&P Global Ratings U.S. Public Finance on **Wednesday, February 6, 2019 at 2:00 p.m. Eastern Standard Time** for a live Webcast and Q&A discussion on the U.S. Municipal Housing sector outlook.

Register For This Webcast

PUBLIC EMPLOYMENT - CALIFORNIA

City of San Diego v. Superior Court of San Diego County

Court of Appeal, Fourth District, Division 1, California - December 19, 2018 - Cal.Rptr.3d - 2018 WL 6629322 - 2018 IER Cases 469, 877

In police officer’s action against city for harassment and retaliation, the Superior Court granted officer’s motion to disqualify city attorney’s office. City filed petition for writ of mandate.

The Court of Appeal held that:

- City’s questioning of officer during internal affairs investigation invaded officer’s attorney-client privilege;
- Such questioning also violated Rule of Professional Conduct; but
- There was no reasonable likelihood that violations would give city any unfair advantage, and thus disqualification of city attorney was not appropriate.

City’s questioning of police officer during internal affairs investigation, over officer’s objection, about content of officer’s phone conversation with her attorney invaded procedural protection of officer’s attorney-client privilege, where city did not bring matter to court’s attention but rather determined unilaterally that privilege did not apply, even though there was more than sufficient time for raising matter with court.

Even if group text message sent by attorney to third parties, discussing a sexual assault investigation by city, immediately preceded telephone call to attorney by client, who was a police officer, this did not per se remove attorney-client privilege from discussion in telephone call, where client initiated call to discuss something other than the sexual assault case.

City attorney’s direct questioning of police officer during interview, as part of internal affairs investigation of leak to media, violated Rule of Professional Conduct precluding direct communication with a party known to be represented by an attorney, where officer had pending harassment and retaliation suit against city, officer was represented by attorney in that suit, and city attorney made several inquiries during interview regarding scope of officer’s claims in her suit.

There was no reasonable likelihood that violation of police officer’s attorney-client privilege and of Rule of Professional Conduct precluding direct communication with represented party, stemming from city’s questioning of officer during internal affairs investigation into leak of information to media, would give city any unfair advantage in officer’s harassment and retaliation action against city, and thus disqualification of city attorney’s office was not appropriate, where information disclosed by officer as result of violation was not unfavorable to officer.

BALLOT INITIATIVES - HAWAII

City and County of Honolulu v. State

Supreme Court of Hawai‘i - December 20, 2018 - P.3d - 2018 WL 6696791

Counties brought action against various state election officials, seeking declaratory and injunctive relief invalidating legislation and enjoining a ballot question from being placed on the election ballot.

The Circuit Court denied counties’ motion for a preliminary injunction, and certified the order for interlocutory appeal. Instead of appealing, counties petitioned for an extraordinary writ.

The Supreme Court of Hawaii held that:

- The Supreme Court would consider counties’ petition for extraordinary writ;
- Ballot question was incompatible with statutory and constitutional requirement to not mislead voters; and
- Ballot question was not sufficiently clear.

Supreme Court would consider counties’ petition for extraordinary writ challenging ballot question authored by state legislature proposing constitutional amendment, even though counties could have appealed trial court’s denial of injunctive relief, where counties could not have obtained final resolution before general election even if they had sought to expedite appeal, and it was in public interest to resolve case prior to general election, in light of concerns inherent in after-the-fact invalidation of democratically approved ballot measure.

Ballot question that asked voters whether constitution should be amended to authorize legislature “to establish, as provided by law, a surcharge on investment real property to be used to support public education” was incompatible with statutory and constitutional requirement to not mislead voters; ballot question suggested surcharges on investment real property were not authorized under current law, and voters, to fully appreciate scope of proposed change, would have needed to know that proposed amendment would have made an exception to counties’ exclusive authority to tax real property by granting State concurrent authority to tax what was presumably a subset of real property.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish “a surcharge” on investment real property was not clear, as required by statute and state constitution; if amendment would have allowed State to impose independent tax on real property, term “surcharge” did not obviously convey this meaning, and if, instead, amendment would have authorized only a dependent, supplemental charge added to existing tax imposed by counties, ballot question failed to accurately state upon what basis surcharge would have been calculated and levied.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish a surcharge on “investment real property” was not clear, as required by statute and state constitution; plain language of amendment, considered in isolation, would have allowed legislature to tax virtually any real property, but by qualifying “real property” with term “investment,” amendment and ballot question suggested that legislature would have been empowered to impose the surcharge on only some real property.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish, “as provided by law,” a surcharge on investment real property was unclear and misleading, in violation of statute and state constitutional requirements; expression “as provided by law” had been recognized as inherently ambiguous, average lay voter did not have access to materials required to determine in what sense phrase was intended, and placement of phrase within ballot question may have led average voter to believe that legislature was already authorized by some other source of law to impose surcharge.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish a surcharge to be used “to support public education” was not clear, as required by statute and state constitution; even though funds raised through surcharge would have been required to be used to fund public education, funding provided by surcharge could have been offset by decrease from other sources, and voter would not have been unreasonable in assuming that measure would have resulted in an increase in funding for public education, when ballot question made no such guarantee.

PUBLIC UTILITIES - IDAHO

[Idaho Power Company v. Tidwell]

Supreme Court of Idaho, Boise, September 2018 Term - December 28, 2018 - P.3d - 2018 WL 6817324

Landowner, who intervened in proceeding concerning utility’s application for certificate of public convenience and necessity to construct high-voltage electric transmission line, appealed Public Utility Commission’s decision denying landowner’s request for intervenor funding for reimbursement of landowner’s attorney fees.

The Supreme Court of Idaho held that:

- Deadline to file intervenor funding request was 14 days after Commission held last evidentiary hearing, not due date for petitions for reconsideration of final order;
- Landowner was provided adequate information about right to seek intervenor funding and deadlines governing such requests; and
- Landowner was not entitled to award of appellate attorney fees pursuant to private-attorne--general doctrine.

Landowner waived for judicial review her claims that Public Utility Commission failed to provide adequate notice to all parties that intervenor funding requests arising from utility’s application for certificate of public convenience and necessity to construct high-voltage electric transmission line were due on certain date, that Commission’s denial of intervenor funding request based solely on timing was arbitrary, capricious, and abuse of discretion because Commission had previously awarded intervenor funding to late applicants, that Commission violated the legislative intent behind statute governing award of costs of intervention because it denied her request solely based on timing, and that rule governing deadline for intervenor funding requests was unconstitutional for reason of vagueness, where claims were not raised in request for intervenor funding or petition for reconsideration.

In reviewing Public Utility Commission’s denial of landowner’s intervenor funding request for reimbursement of attorney fees incurred in proceeding concerning utility’s application for certificate of public convenience and necessity to construct high-voltage electric transmission line, Supreme Court would decline to consider landowner’s unpreserved claim that rule governing deadline for intervenor funding requests was unconstitutional for reason of vagueness, where consideration was not necessary for subsequent proceedings in case.

Under rule governing deadline for intervenor funding requests, deadline for landowner to file intervenor funding request for reimbursement of attorney fees incurred regarding utility’s application for certificate of public convenience and necessity to construct high-voltage electric transmission line was 14 days after Public Utility Commission held last evidentiary hearing on application, not due date for petitions for reconsideration of final order.

Landowner was provided adequate information about right to seek intervenor funding and deadlines governing such requests, and thus failure to file request before deadline precluded recovery of funding to reimburse landowner for attorney fees that were incurred regarding utility’s application for certificate of public convenience and necessity to construct high-voltage electric transmission line; although Public Utility Commission was not required by statute or administrative rule to notify landowner of right to seek funding or deadline for request, Commission announced deadline for intervenor funding requests at last evidentiary hearing, and landowner’s attorney received copy of another intervenor’s request, which expressly set forth deadline for filing requests.

Landowner was not entitled to award of appellate attorney fees pursuant to private-attorney-general doctrine in her appeal of Public Utility Commission’s decision denying her intervenor funding request for reimbursement of attorney fees incurred in proceeding concerning utility’s application for certificate of public convenience and necessity to construct high-voltage electric transmission line; landowner did not prevail on appeal.

EMINENT DOMAIN - MARYLAND

Wireless One, Inc. v. Mayor of Baltimore City

Court of Special Appeals of Maryland - December 21, 2018 - A.3d - 2018 WL 6715255

Former tenant, which was informed that it did not fit into redevelopment plans for city's commercial facility, brought action against city and property manager, asserting that tenant was displaced person and was entitled to receive compensation for relocation expenses.

The Circuit Court granted defendants' motion to dismiss for failure to state a claim. Former tenant appealed.

The Court of Special Appeals held that:

- Tenant was not a "displaced person" and thus was not entitled under eminent-domain statute to compensation for relocation expenses, and
- Strict compliance with separate-document requirement, which provided that judgment was required to be set out on separate document, was waived by parties.

Tenant, who rented space in city's commercial facility under month-to-month lease, was not a "displaced person" and thus was not entitled under eminent-domain statute to compensation for relocation expenses, which were incurred when tenant vacated facility after being informed that tenant did not fit into redevelopment plans for facility, where lease was executed many years after city acquired title to facility.

Strict compliance with separate-document requirement, which provided that judgment was required to be set out on separate document, was waived by city, property manager, and former tenant of city's commercial facility regarding trial court's granting of city and property manager's motion to dismiss for failure to state a claim in former tenant's action seeking compensation under eminent-domain statute for relocation expenses, where no party objected to form of trial court's order of dismissal, and docket entry accurately set forth substance of trial court's judgment.

Separate document requirement, which provides that a judgment must be set out on a separate document, is not jurisdictional, and strict compliance may be waived where a technical application of the separate document requirement would only result in unnecessary delay.

EMINENT DOMAIN - NEW YORK

National Fuel Gas Supply Corporation v. Schueckler

Supreme Court, Appellate Division, Fourth Department, New York - November 9, 20181 - 67 A.D.3d 128 - 88 N.Y.S.3d 305 - 2018 N.Y. Slip Op. 07550

After Federal Energy Regulatory Commission (FERC) granted natural gas company's application for certificate of public convenience and necessity to construct and operate natural gas pipeline, company brought condemnation petition pursuant to Eminent Domain Procedure Law (EDPL) to acquire easements over landowners' real property, alleging that FERC certificate exempted company from EDPL's normal public hearing and findings requirements.

Landowners answered, alleging that New York State Department of Environmental Conservation had denied company's application for Clean Water Act (CWA) water quality certification (WQC) and that company therefore no longer held valid and operative FERC certificate.

The Supreme Court, Allegany County, granted company's petition in its entirety. Landowners appealed.

he Supreme Court, Appellate Division, held that company did not hold qualifying federal permit for purposes of statute exempting holder of such permit from standard condemnation hearing and findings procedures, and thus company was not entitled to exemption.

Natural gas company, which sought to acquire by eminent domain easements for construction of natural gas pipeline, did not hold qualifying federal permit for purposes of New York statute exempting holder of federal permit authorizing construction of public project from standard condemnation hearing and findings procedures, and thus company was not entitled to exemption, even though Federal Energy Regulatory Commission (FERC) had granted company Natural Gas Act (NGA) certificate of public convenience and necessity, since certificate was subject to various conditions, including company's obtention of Clean Water Act water quality certification (WQC), but New York State Department of Environmental Conservation denied company's WQC application, thus invaliding company's FERC certificate.

IMMUNITY - NEW YORK

Nair v. City of New York

Supreme Court, Appellate Division, Second Department, New York - December 12, 2018 - N.Y.S.3d - 2018 WL 6519192 - 2018 N.Y. Slip Op. 08492

Motor vehicle operator brought action against city and others to recover damages for personal injuries plaintiff allegedly suffered as result of city police's failure to place flares on roadway near collision site. T

he Supreme Court, Queens County, awarded summary judgment in favor of city and denied plaintiff's motion for leave to renew opposition to motion for summary judgment. Plaintiff appealed.

The Supreme Court, Appellate Division, held that:

- Plaintiff did not have special relationship with city, and
- Purported expert statement that plaintiff originally submitted as affirmation could serve as basis for motion for leave to renew, where plaintiff cured original deficiency by submitting the document as a sworn affidavit.

responding officers' purported instructions to tow truck driver did not constitute an assumption by the city of affirmative duty to act on the plaintiff's behalf, and plaintiff did not rely on officers' purported instructions to him.

Purported expert statement from retired police officer, which trial court did not consider as part of plaintiff's opposition to defendant's motion for summary judgment, since plaintiff submitted the statement as affirmation rather than sworn affidavit, properly served as basis of plaintiff's motion for leave to renew opposition, where plaintiff cured original deficiency by submitting the document as a sworn affidavit.

IMMUNITY - PENNSYLVANIA

[Brewington v. City of Philadelphia]

Supreme Court of Pennsylvania - December 28, 2018 - A.3d - 2018 WL 6815459

Parent, as guardian for her son, brought action against school district alleging negligence arising out of injuries to son when he hit his head on a concrete wall during a relay race in gym class.

The Court of Common Pleas granted school district's motion for summary judgment. Parent appealed. The Commonwealth Court reversed. District appealed.

The Supreme Court of Pennsylvania held that school was not entitled to governmental immunity, disapproving *Rieger v. Altoona Area School District*, 768 A.2d 912.

Under real property exception to governmental immunity, public school was not immune from negligence claim arising from injury that student suffered when he ran into unpadded wall during gym class; student's mother alleged that school negligently failed to apply padding, and concrete walls constituted real property.

IMMUNITY - TEXAS

[Owens v. City of Tyler]

Supreme Court of Texas - December 21, 2018 - S.W.3d - 2018 WL 6711522 - 62 Tex. Sup. Ct. J. 294

Lessee of lot owned by city filed suit against neighbor lessee and city, seeking to enjoin neighbor lessee's construction of boathouse, along with actual and exemplary damages, a declaratory judgment, injunctive relief, and attorney's fees. Other neighbor of defendant lessee, who was also a lessee of land owned by city, intervened.

The County Court at Law denied city's plea to the jurisdiction. City appealed, and the Court of Appeals reversed and remanded. Lessee petitioned for review.

The Supreme Court of Texas held that Court of Appeals was requited to determine whether city was engaged in a governmental or proprietary function when it entered contract, not when it allegedly breached contract.

Court of Appeals, in dispute between lessee of lot owned by city and city over construction of a boathouse, was required to conduct inquiry pursuant to *Wasson Interests, Ltd. v City of Jacksonville*, 489 S.W.3d 427, to determine whether city was engaged in a governmental or proprietary function when it entered the contract, not when it allegedly breached that contract; by no fault of its own, Court of Appeals did not conduct the inquiry under which the city's immunity from a breach of contract claim depended on the nature of the contract, not the nature of the breach.

SCHOOLS - VERMONT

[Paige v. State]

Supreme Court of Vermont - December 21, 2018 - A.3d - 2018 WL 6715479 - 2018 VT 136

Town resident filed suit against State, Vermont Board of Education, Secretary of Education, and others, seeking declaratory and injunctive relief based on challenge to constitutionality of legislation that created multi-year plan for merger of school districts.

The Superior Court dismissed complaint for lack of standing, and resident appealed.

The Supreme Court of Vermont held that:

- Resident failed to allege injury-in-fact, as prerequisite to standing to challenge constitutionality of legislation;
- Resident lacked taxpayer standing to challenge legislation; and
- Resident's position as justice of peace was not basis for conferring standing.

Town resident lacked standing to seek declaratory judgment that legislation enacted to create multi-year process for merging existing school districts in order to maximize operational efficiencies through increased flexibility to manage, share, and transfer resources created disparities in education funding between towns and subjected town residents to higher education costs, following merger of town school district with neighboring town district, while depriving them of ownership of their town school, violated right to equal educational opportunity under Vermont Constitution, where resident was neither public school student nor parent of public school student, and thus was not affected by alleged deprivation of educational opportunities, and transfer of ownership of town school to new merged school district and dilution of town's control of school did not constitute injuries personal to resident, but were injuries shared amongst taxpayers generally.

Town resident lacked standing as taxpayer to seek declaratory judgment that legislation enacted to create multi-year process for merging existing school districts in order to maximize operational efficiencies through increased flexibility to manage, share, and transfer resources created disparities in education funding between towns and subjected town residents to higher education costs following merger with neighboring town, while depriving them of ownership of their town school, in alleged violation of right to equal educational opportunity under Vermont Constitution, where resident did not allege waste of municipal assets, that he paid disproportionately high state and local education taxes compared to similarly situated taxpayers of other Vermont towns, or that he paid higher education taxes than other taxpayers who owned property of same value and had identical adjusted gross incomes.

Town resident's position as justice of peace was not basis for conferring standing to challenge constitutionality of legislation enacted to merge school districts with purpose to maximize operational efficiencies through increased flexibility for management, sharing, and transfer of resources, when resident otherwise had not demonstrated injury in fact, following merger of town school district with neighboring community, where statutes that enumerated powers of justice of peace did not vest resident with standing to bring action to challenge state laws, even if laws were unconstitutional, and his sworn oath not to do anything injurious to Constitution did not impose on resident affirmative duty to bring civil actions against State.

ZONING & LAND USE - VIRGINIA

[Board of Supervisors of Fairfax County v. Cohn]

Supreme Court of Virginia - December 13, 2018 - S.E.2d - 2018 WL 6566782

Property owners appealed decision of county board of zoning appeals that upheld zoning administrator’s decision concluding that property owners violated zoning ordinance because there were three separate dwellings on their residential property, which was in a zoning district that prohibited more than one dwelling unit per lot, and requiring property owners to remedy the zoning violation.

The Circuit Court reversed the board of zoning appeals’ decision. County board of supervisors appealed.

The Supreme Court of Virginia held that:

- Property owners’ use of garage and garden house as dwellings was not a nonconforming use, and
- Zoning statute prohibiting local governments from declaring an existing building or structure illegal after taxes had been paid for 15 years or more did not protect property owners’ use of garage and garden house as dwelling units.

Property owners’ use of garage and garden house on their residential property as dwellings, in violation of zoning ordinance that prohibited more than one dwelling unit on a lot in the zoning district, was not a nonconforming use, and thus property owners had no vested right to use the structures as dwellings under statute concerning nonconforming uses, where garage and garden house were built after effective date of zoning restriction, building permits noted that no kitchens or bathrooms were approved for the structures, and kitchens and bathrooms were added to the structures in violation of zoning ordinance.

Zoning statute prohibiting local governments from declaring an existing building or structure illegal after taxes had been paid for 15 years or more did not protect property owners’ use of garage and garden house as dwelling units, in violation of zoning restriction requiring only one dwelling unit per lot, and thus did not prevent county from requiring property owners to cease their illegal use of the structures as dwelling units and to remove kitchens and other features that allowed the structures to be used as dwellings, even though property owners had paid taxes on the property for more than 15 years; statute protected the structures themselves from removal, but did not protect the uses of the structures.

IRS Releases Final TEFRA Regulations: Orrick

On December 28, 2018, the U.S. Department of the Treasury released final regulations (the “Final TEFRA Regulations”) regarding the requirements for public notice, hearing, and approval of qualified private activity bonds under Section 147(f) of the Internal Revenue Code. The Final TEFRA Regulations replace temporary regulations under Section 103(k) of the Internal Revenue Code of 1954 (the “Existing TEFRA Regulations”) by finalizing rules set forth in proposed regulations issued in September 2017 (the “2017 Proposed Regulations”) with a few notable improvements and clarifications. [The main changes to the Existing TEFRA Regulations implemented and/or confirmed by the Final TEFRA Regulations include:

- *Shortening Notice Period to Seven Days.* Under the Final TEFRA Regulations a notice of public hearing is presumed reasonable if published no fewer than seven days in advance of the hearing. This is shorter than the 14 days presumed reasonable under both the Existing TEFRA Regulations and the 2017 Proposed Regulations.
- *Deadlines Related to Public Approval.* The Existing TEFRA Regulations do not impose any specific restriction on the period of time between a TEFRA hearing and the required public approval.

    - *Period Between TEFRA Notice and Public Approval.* The Final TEFRA Regulations do not impose any specific restriction on the permitted time between the TEFRA Notice and the required public approval. The preamble to the Final TEFRA Regulations confirms that a period of one year between the TEFRA notice and the public approval is reasonable and acknowledges that a period of more than one year also may be reasonable in some circumstances.
    - *Period Between Public Approval and Issuance of Bonds.* For bonds not issued pursuant to a plan of financing, the Final TEFRA Regulations follow the 2017 Proposed Regulations in providing that public approval is timely only if it occurs within one year before the issue date of the bonds. The Final TEFRA Regulations are clear that the one-year clock begins running on the date of the approval, not the date of the hearing.

- *Allowing Website Publication by Governmental and On-Behalf-Of Issuers.* The Final TEFRA Regulations allow the notice requirement to be satisfied with a posting on the approving governmental entity's website or, in the case of on-behalf-of issuers, with a posting on the on-behalf-of issuer's website. Publication of notice in a newspaper is no longer required (but is still permissible). Notably, the Final TEFRA Regulations eliminated the requirement in the 2017 Proposed Regulations that website publication was only permitted with "reasonable alternative notice" by other means to accommodate potential residents with no internet access.

    - *Location of Website Posting.* For issuers with complex, multipage websites, the Final TEFRA Regulations require a public notice to be posted on the issuer's "primary public website" in an area used to inform residents about events such as public meetings.
    - *Maintenance of Records.* Issuers are required to maintain records demonstrating that notices posted to a website satisfied the above requirements and, therefore, must develop procedures for capturing and retaining the time and content data of the applicable website.

- *Expanding Definition of "Project" to Include Non-Proximate Sites Used in Integrated Operations.* One of the few burdensome requirements added by the 2017 Proposed Regulations was that the notice of public hearing must identify the maximum principal amount of bonds to be allocated to each "project" specified in the notice — rather than just stating the amount of bonds for all projects in the aggregate. The Final TEFRA Regulations retain the dollar-breakout requirement.Following the 2017 Proposed Regulations, the Final TEFRA Regulations define "project" as land, building, equipment and other property "located on the same site, or adjacent or proximate sites used for similar purposes." The Final TEFRA Regulations also provide, however, that capital projects or facilities that are used in an "integrated operation" may be treated as the same "project" even if not located on the same site or adjacent or proximate sites.

    - *Practical Compliance Considerations.* The requirement of the 2017 Proposed Regulations to assign a maximum principal amount to each project caused concern among issuers and bond counsel. Although the Final TEFRA Regulations permit an "insubstantial deviation" of 10% above the stated maximum principal amount specified for each project, the lack of specificity around the terms "proximate" and "integrated operation" will likely lead to conservative practices in specifying projects and stating expected amount of bonds.

- *Permitting Supplemental Public Approval.* The Final TEFRA Regulations retain the welcome provision in the 2017 Proposed Regulations that, in certain unforeseen and unexpected

circumstances, a supplemental public approval may be obtained after bonds are issued but before proceeds are spent on a use not set forth in the original TEFRA notice.
- *Clarifying that General Partner Is a Beneficial Party of Interest.* The Existing TEFRA Regulations require that the TEFRA notice to include the name of the initial owner, operator, or manager of the facility. The 2017 Proposed Regulations provided that the notice may comply by naming a significant true beneficial party of interest for the initial owner or user. The Final TEFRA Regulations provide that the general partner of the partnership that owns the facility is a beneficial party of interest that may be named in the TEFRA notice.
- *Special Rules.* The Final TEFRA Regulations confirmed and clarified various rules in the 2017 Proposed TEFRA Regulations that relate to the approval requirements for working capital financings, pooled financings with qualified 501(c)(3) bonds, single-family housing bonds, student loan bonds, airport bonds, and high-speed rail bonds.

Effective Date. The Final TEFRA Regulations apply to bonds issued pursuant to a public approval occurring on or after April 1, 2019. Because the effective date is keyed to the date of the approval rather than the date of the public notice or the date of the bond issue, the Existing TEFRA Regulations apply to notice content, hearings, and approvals for bonds issued after April 1, 2019, provided that the approvals were obtained before that date.

by Andrea Ball, Charles Cardall, Richard Moore & Aviva Roth

January 8, 2019

Orrick, Herrington & Sutcliffe LLP

IRS Releases Proposed Regulations Consolidating Guidance on Reissuance of Tax-Exempt Bonds: Mintz, Levin

On December 31, 2018, the Department of Treasury and Internal Revenue Service released long-awaited proposed regulations (the “Proposed Regulations”) that address when modifications to the terms of tax-exempt bonds are treated as an exchange of existing bonds for newly issued (or “reissued”) bonds for purposes of section 103 and sections 141 through 150 of the Internal Revenue Code and when an issuer’s acquisition of its bonds results in such bonds ceasing to be outstanding for federal tax purposes. The Proposed Regulations (found at https://www.govinfo.gov/content/pkg/FR-2018-12-31/pdf/2018-28370.pdf) are intended to unify and clarify existing guidance.

Background

If, after tax-exempt bonds are issued, an issuer and bondholder agree to significantly modify the terms of the bonds, the original bonds may be treated for federal tax purposes as having been exchanged for newly issued modified bonds. Additionally, if an issuer or its agent acquires and resells a bond, the bond may be treated as having been retired upon acquisition and replaced with a newly issued bond upon resale. The replacement of the old bond with the newly issued bond is commonly referred to as a “reissuance”. Reissuance of a bond is significant because it is treated as a current refunding for tax purposes and the continued tax-exemption of the bond after the reissuance date must be reassessed by reference to tax law requirements and factual circumstances in effect as of the reissuance date. In addition, a reissuance may result in the realization of tax loss or gain as of the reissuance date by the holder of the reissued bond.

Tender option bonds and variable rate demand bonds have certain characteristics that raise reissuance questions. The Proposed Regulations are expected to replace existing guidance in Notice 88-130 and Notice 2008-41 related to tender option bonds and variable rate demand bonds and to conform Treasury Regulations Section 1.1001-3, which generally governs modifications to debt instruments, to the special rules in the Proposed Regulations.

Proposed General Rules for Retirement of Tax-Exempt Bonds

Under the Proposed Regulations, a tax-exempt bond is treated as retired (i.e., no longer outstanding for federal tax purposes) if a significant modification occurs under Regulations Section 1.1001-3, if the issuer or an agent acquires the bond in a manner that liquidates or extinguishes the holder’s investment in the bond, or if the bond is otherwise redeemed (for example, paid at maturity or upon an optional or mandatory redemption). Notably, under the Proposed Regulations, “issuer” is defined to mean the actual issuer of the bonds or any related party rather than the conduit borrower. This means that acquisition of a bond by a conduit borrower would not result in the retirement of that bond.

Exceptions to the General Rules

The Proposed Regulations provide three exceptions to the general rules. The first two exceptions relate to “qualified tender bonds” and the third applies to all tax-exempt bonds. A “qualified tender bond” is defined as a tax-exempt bond that (i) bears interest during each authorized interest rate mode at a fixed interest rate, a qualified floating rate or an objective rate, (ii) bears interest unconditionally payable at periodic intervals of no more than one year, (iii) has a stated maturity date that is not later than 40 years after the issue date of the bond, and (iv) includes a qualified tender right. A “qualified tender right” is defined as the right or obligation of a holder of the bond to tender the bond for purchase that (i) is available on at least one date before the stated maturity date, (ii) has a purchase price equal to par plus any accrued interest, and (iii) is followed by the issuer or remarketing agent either redeeming the bond or using reasonable efforts to resell the bond within 90-days from the date of tender for a purchase price of par plus any accrued interest.

Under the first exception in the Proposed Regulations, both the existence and exercise of a qualified tender right are disregarded when applying Regulations Section 1.1001-3 to a qualified tender bond. Accordingly, an interest rate mode change that occurs pursuant to the terms of a qualified tender bond does not cause the bond to be reissued because the qualified tender right is ignored and the issuer’s election to change the interest rate mode is considered the exercise of a unilateral option, which under Regulations Section 1.1001-3 is not treated as a modification.

Under the second exception in the Proposed Regulations, the acquisition of a qualified tender bond by the issuer or its agent does not result in retirement of the bond if the acquisition is pursuant to the operation of a qualified tender right and the bond is not held by the issuer or its agent for more than 90 days after the date of tender. In other words, if a qualified tender bond is tendered to an issuer, the issuer or its agent can hold the bond for up to 90 days before remarketing it without causing a reissuance of the bond. As noted above, a conduit borrower or its agent can hold such a bond indefinitely before remarketing without causing a reissuance.

The third exception under the Proposed Regulations applies to all tax-exempt bonds, not just qualified tender bonds. Under this exception, the acquisition of a tax-exempt bond by a guarantor or liquidity facility provider acting on the issuer’s behalf but unrelated to the issuer does not result in retirement of the bond if the acquisition is pursuant to the terms of the guarantee or liquidity facility.

Consequences of Retirement

If a bond is treated as retired pursuant to the Proposed Regulations due to a deemed exchange, the modified bond is treated as a new bond issued in exchange for the original bond. If a bond is treated as retired pursuant to the Proposed Regulations following the acquisition of the bond by the issuer or its agent, (i) if the issuer resells the bond, the bond is treated as a new bond issued on the date of resale, or (ii) if the issuer does not resell the bond, it simply ceases to be outstanding for federal tax purposes. If the bond is treated as a newly issued bond, it will generally be treated as a current refunding bond which must be retested for qualification as a tax-exempt bond under sections 103 and 141 through 150 of the Internal Revenue Code. Potential negative consequences for the issuer include a change in yield for purposes of arbitrage and rebate, acceleration of any required rebate calculation and payment and change-in-law risk.

Optional Application

The Proposed Regulations will be effective 90 days after they are published (following comments and any revisions) as final regulations in the Federal Register but they may be applied to events and actions taken with respect to tax-exempt bonds that occur before that date.

Comments and requests for a public hearing must be received by March 1, 2018.

by Christie L. Martin

January 11, 2019

MSRB Releases Education Resource for New SEC Rule 15c2-12.

Trying to understand the new SEC Rule 15c2-12 requirements?

The MSRB today published a new educational resource to help issuers prepare for upcoming changes.

S&P U.S. State Sector 2019 Outlook: Caution - Slower Speeds Ahead

For the U.S. states, S&P Global Ratings' baseline economic forecast of slower growth in 2019 holds the potential for renewed fiscal strain. Although now long in duration, the economic expansion that began in mid-2009 has been shallow.

Continue Reading

Jan. 8, 2019

Public Comment on Reporting Requirements in Proposed Opportunity Zone Regulations.

Abstract

The Department of Treasury solicited comments as part of the process for the proposed rule "Investing in Qualified Opportunity Funds, IRS REG-115420-18." As the IRS considers revisions to Form 8996, we recommend they consider including additional Fund- and transaction-level reporting requirements. Following precedent from prior economic development incentives and programs, nonburdensome reporting requirements would answer questions of "who", "what", "when", "where", and "how much" for each Opportunity Zones investment. Without collecting this basic information, it will be difficult for IRS to fulfill its statutory evaluation obligations for Opportunity Zones.

DOWNLOAD PDF

The Urban Institute

by Brett Theodos & Brady Meixell

December 28, 2018

BDA 2018 4Q Update – Advocacy & Representation

Read the Update.

Bond Dealers of America

January 9, 2019

Fitch Ratings: Kentucky Benefit Changes Unlikely to Affect Pension Burden Near Term

Fitch Ratings-New York-10 January 2019: As a new legislative session begins in Kentucky with pension changes likely up for debate, the commitment to address rising expenditure demands, particularly for pensions, remains a key determinant in the trajectory of the commonwealth's 'AA-'/Stable Outlook Issuer Default Rating (IDR), according to Fitch Ratings.

Kentucky has made fiscal progress in recent years, including raising additional revenues to support spending growth, which included full pension actuarial contributions. However, continued budget balancing challenges despite economic recovery indicate a structural problem that extends beyond the effects of economic cyclicality on Kentucky's financial operations. Pension benefit changes could be helpful in easing fiscal pressure over a very long timeframe, but are likely to have only a modest effect on the commonwealth's pension burden in the near term. Fitch's primary focus remains whether Kentucky can continue recent progress towards structural budget balance, including maintaining full pension funding.

Kentucky's governor called the legislature into special session in December to consider legislation that would largely re-enact provisions of a pension bill recently struck down by the commonwealth's Supreme Court. The court overturned the bill, SB 151, on procedural grounds and did not assess the legality of the benefit changes. The special session ended without a bill; however, leadership indicated plans to revisit the issue in the regular session that began this week. Even if the legislature and governor enact replacement legislation, Fitch anticipates further litigation. Given the modest savings anticipated, the proposed pension benefit changes, and any related litigation, would not affect the state's rating.

While Kentucky's somewhat elevated long-term liability burden, including net pension liabilities, is amongst the highest for U.S. states, Fitch considers the burden moderate and anticipates it will remain there for the foreseeable future. SB 151's legislative sponsor estimated it would generate roughly $300 million in savings over the next 30 years, less than 1% of the commonwealth's Fitch-adjusted net pension liability of approximately $40 billion. Assuming the legislature pursues similar provisions in a new bill, Fitch anticipates any beneficial effects to emerge slowly, as new hires with lower benefits gradually replace existing employees with higher benefits. These changes are unlikely to materially affect Fitch's view of Kentucky's long-term liability burden.

Fitch's primary rating sensitivity for Kentucky is the commonwealth's ability to maintain structural spending commitments, most notably for pensions, while continuing to reduce reliance on non-recurring budget measures. Over the past several biennia, Kentucky's budgets moved closer to addressing inadequate pension contributions, which had been one of the primary drivers of the state's elevated pension burden. For the biennium that began July 1, 2018, the commonwealth has budgeted full actuarial contributions for all systems, reaching an important fiscal milestone. To achieve this, the budget included significant spending cuts across most state agencies, tax changes resulting in a sizable net revenue increase, and several one-time fund transfers.

In addition to the benefit changes, SB 151 also established an ongoing statutory commitment for the commonwealth to make full pension system actuarial contributions, calculated using a more actuarially conservative level dollar amortization method. A replacement bill would likely include similar provisions.

Fitch views an ongoing statutory funding provision as a positive step, but not determinative in assessing Kentucky's commitment to meeting pension budgetary obligations. As demonstrated most explicitly in New Jersey several years ago, future legislatures and governors generally have discretion to revise statutory multi-year budgetary commitments to pensions.

Instead, Fitch will focus on the state's actual budgetary practices and performance over the next several years to assess Kentucky's ability to meet rising spending demands. The 2019 – 2020 biennial budget includes approximately $500 million in one-time fund transfers that likely will be challenging to address in the next budget even if the economy continues to grow at the current pace. The challenge would be exacerbated by any downturn in the economy and revenues. Kentucky's ability to manage rising spending demands while reducing reliance on one-time items will continue to drive Fitch's assessment of the commonwealth's financial resilience as the next, inevitable, recession draws closer.

Contact:

Eric Kim
Director
+1-212-908-0241
Fitch Ratings, Inc.
33 Whitehall Street

New York, NY 10004

Karen Krop
Senior Director
+1-212-908-0661

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 Rtgs: Data Breaches Highlight US Public Institutions' Cyber Risks

Fitch Ratings-Austin-09 January 2019: The recently reported data breach at San Diego Unified School District, affecting the personal data of as many as 500,000 students, underscores the heightened threat of cyberattacks that educational, governmental and healthcare organizations face due to the sizable amount of personal data housed on their networks, says Fitch Ratings. Cyber risk is not a driver of credit risk or rating actions. However, our ratings reflect issuers' overall resilience to manage and respond to changes in its operating environment, including risks associated with cyberattacks.

Data breaches in the education, governmental (including federal and military) and healthcare sectors (including private concerns) accounted for about 40% of total data breaches in 2017 and 2018, according to the Identity Theft Resource Center (ITRC). Approximately 27% of total breaches occurred in the healthcare sector. Combined data breaches for these sectors have increased 160% since 2005, with healthcare having the highest attributable growth, while governmental organizations realized modest improvement. The growth of Internet of Things (IoT), interconnected sensors embedded in technology, such as WIFI networks, building maintenance systems, medical devices and traffic sensors, further contribute to cyber risk. IoT devices outnumbered the world's population in 2017 and are projected to double by 2020, according to Gartner technology consultants.

Cyberattacks create service disruptions for educational, healthcare and governmental organizations, adversely affecting their public service missions and resulting in increased costs. Incident response, crisis management, forensic services and restoration can cost millions of dollars for resource-challenged operations. Some organizations have also paid ransomware demands to retrieve data. Public confidence can also be affected if an organization is perceived to lack preparedness or if their response is seen as insufficient. Exposure of personal and sensitive data can lead to direct costs to personal consumers and loss of confidence in public organizations. Fifty-three percent of data breaches during 2017 exposed Social Security numbers and 19% exposed credit/debit card numbers, according to the ITRC.

The Department of Education has suggested that schools conduct security audits and train staff and students on data security best practices to mitigate cyberattacks. However, there are challenges to adopting cybersecurity best practices within schools as laws do not generally mandate comprehensive standards. Furthermore, these activities compete for scarce budget dollars. Governmental resources are available for guidance and support, such as those provided by The National Institute of Standards and Technology (NIST). However, NIST services have been recently curtailed due to the current lapse in governmental funding.

Contact:

Rebecca Meyer, CFA, CPA, CISA
Director, Public Finance
+1 512 215-3733
Fitch Ratings, Inc.
111 Congress Ave., Suite 2010
Austin, TX 78701

Justin Patrie, CFA
Fitch Wire
+1 646 582-4964
33 Whitehall Street
New York, NY 10004

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

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Fitch Rtgs: Gov't Shutdown Effects Limited for US Public Finance Credits

Fitch Ratings-New York-10 January 2019: The ongoing federal government shutdown should not have significant effects on U.S. public finance credits, says Fitch Ratings. The partial shutdown is only affecting around 20%-25% of the federal government, and funding critical to rated sectors remains in place. However, there are risks of localized economic effects in areas with large concentrations of federal employees and the potential for credit risks will grow the longer the shutdown continues. In addition, the political deadlock in Washington is a negative signal for federal policymaking that could have longer term implications for states.

Federal government transfers to states are largely for Medicaid and, to a lesser extent, transportation. Both areas are largely unaffected by the current shutdown. Indirect economic effects could feed very quickly to state revenues, given state governments' reliance on personal income and sales taxes. However, the partial nature of the shutdown should limit these effects.

At the local level, the shutdown could have a disproportionate effect on areas with a high concentration of federal employees, particularly if it continues for much longer. The federal government accounts for around 25% of non-farm payrolls in the District of Columbia. Maryland, Hawaii, Alaska and Virginia are the states with the highest proportion of federal employment but only account for around 5% in each of these states. Moreover, most federal employees, including Defense and the U.S. Postal Service, which account for about 40% of federal employees nationally, are not affected by the shutdown. In addition, furloughed federal employees have been compensated for missed pay during previous shutdowns, so assuming this remains the case, consumption that has been affected is likely to only be deferred.

That said, a prolonged shutdown without a clear path or timeline to resolution could trigger significant concern among unpaid federal employees leading to at least temporary economic effects in localities with high federal employment concentration. The first potential missed federal payroll date since the start of the shutdown will be on Friday.

The District of Columbia is operating fully under its locally enacted fiscal 2019 budget owing to a provision in the federal fiscal 2018 budget bill. This is a notable difference from the 2013 shutdown when the District did not have full authorization to operate its local budget and instead made temporary draws on ample reserves to remain operational.

Healthcare credits should also be unaffected as Medicare and Medicaid program are not part of the shutdown.

Parts of Housing and Urban Development are affected, specifically the Housing Finance Agencies (HFA). Federal Housing Administration (FHA) loan applications will be delayed for new single family FHA mortgages and multifamily properties with FHA risk share loans. This will delay the addition of new mortgage assets to programs, and there will be a negative impact on HFA loan programs and debt repayments

Higher education and non-profit credits maintain sufficient expense flexibility and liquidity to manage a short-term revenue impact but will also see a greater effect in the event of a prolonged shutdown. The Department of Education is not affected by the shutdown; however, grant funding agencies such as the National Science Foundation and National Endowment for the Humanities (among others) have been impacted. As such, the effect of the shutdown on recipient institutions will increase the longer it lasts, as grant funds are not being disbursed and new grant applications are not being processed. Grant revenue is not a primary source of revenue for the sector but can be material for some rated research institutions.

Contact:

Laura Porter
Managing Director, USPF
+ 1 212 908-0575
Fitch Ratings
33 Whitehall Street
New York, NY 10004

Justin Patrie, CFA
Fitch Wire
+1 646 582-4964

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

Additional information is available on www.fitchratings.com.

[S&P U.S. Not-For-Profit Health Care 2019 Sector Outlook: Stable Overall, Yet Key Risks Remain.]

S&P Global Ratings believes the outlook for the U.S. not-for-profit health care sector for 2019 remains stable. This reflects continued balance-sheet strength, a long-term trend of improving business profiles mostly from mergers and acquisitions, and a growing array of diversifying joint ventures.

Continue Reading

Jan. 10, 2019

S&P U.S. Local Government 2019 Sector Outlook: Showers For Some, Downpours For Others

Although 2019 is starting out with growing economic uncertainty in the U.S., S&P Global Ratings believes the U.S. local government sector remains stable and resilient for now. Local governments benefited from positive economic trends in 2018 (such as higher GDP growth and low unemployment), but 2019 already show some signs of slowing, including lower GDP projections and higher interest rates.

Continue Reading

Jan. 9, 2019

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

Read the Criteria.

Taking a Tactical Approach to the 2019 Muni Market.

Robert Dimella, senior portfolio manager at Mackay Municipal Managers, discusses the municipal bond market and his firm's strategy for the year ahead. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg Markets TV Shows

January 9th, 2019, 9:01 AM MST

How a Prolonged Government Shutdown May Ripple Down to States.

- **Economic impact seen in Virginia, elsewhere as paychecks halt**
- **Public housing projects, transit systems rely on U.S. grants**

Almost a third of the $2 trillion that U.S. states spend each year comes from Washington, so the partial shutdown of the federal government would seem to spell major financial trouble in America's statehouses. So far, the impact has been relatively limited, because only about a quarter of the government has been closed and funding for the biggest state-run program, Medicaid, will continue no matter how long the impasse persists.

While the president has said he'd be willing to keep some of the government shut for months if lawmakers don't agree to fund a wall on the Mexican border, he may seek to circumvent Congress in a bid to end the standoff. But if the closure persists, the impact on states may grow, particularly in those with a large number of federal employees. Here's how:

Missing Paychecks

As some 800,000 employees begin missing paychecks, the impact will ripple through economies with a big share of federal workers, including Virginia, Maryland, Hawaii and Alaska, where about 5 percent of workers are employed by the federal government, according to Fitch Ratings. Virginia Governor Ralph Northam, a Democrat whose state has some 130,000 federal employees, said the 2013 shutdown cost residents in the area around the capital $217 million a day in wages — a hit that was minimized because Congress decided to pay them back.

The lost pay, however, will be felt far beyond the beltway in places like Florence, Colorado, a 3,800-person city home to a federal prison complex where more than 860 people are working without compensation. Nationwide, Moody's Analytics estimates the shutdown will slow economic growth by about 0.04 percentage points for every week that it lasts, which would crimp sales-tax collections for states and cities.

Saving Safety Net

The longer it drags on, the more states would be forced to tap their own funds to make up for numerous programs supported by federal grants, including Temporary Assistance for Needy Families, which extends cash payments to the poor. The shutdown has cut off funding for that program, among others, according to the Center for Law and Social Policy. That's left states relying on federal money from prior year budgets, but they'd need to step in once that runs out, said John Hicks, executive director of the National Association of State Budget Officers. "There is no default as to what the response would be by states," he said.

Renters at Risk

While vouchers for poor renters are expected to continue through February, about 1,150 Housing and Urban Development Department contracts with local housing projects that were up for renewal were put on hold this month, affecting 70,000 to 85,000 low-income households, according to the Campaign for Housing and Community Development Funding.

Over a thousand more come up for renewal through the end of February, and some of the developers count on the money to repay municipal bonds that financed the projects. "You're put in a pretty sticky situation where you have to make debt service but you don't have a significant part of the project income — so at some point, you might have to opt out and re-tenant the building with people that can pay the rent," said Thom Amdur, executive director of the National Housing and Rehabilitation Association. "There are millions of low-income families living in subsidized housing that are put at risk as a result of this."

Bond Market Spillover

A standoff that lasts past the end of the debt-ceiling suspension on March 1 could increase the risk of a technical default on the U.S. debt and raise the likelihood of a downgrade, according to some ratings analysts. A downgrade to the Treasury's rating would likely trigger municipal-bond rating cuts, which happened in 2011, when S&P Global Ratings cut the grades on thousands of state and local securities tied to the federal government.

Separately, Moody's Investors Service said the impact of the shutdown has been minimal on municipal-bond issuers so far. If it goes longer, it could cut into tax revenue in areas that are reliant on federal workers, making it more of a challenge for governments, Moody's said.

Subways, Trains, Roads

Public subways, commuter trains and other transit systems rely heavily on federal grants that would be slowed if employees remain idled. Such funding can account for a fifth of some operating budgets, according to Moody's, which warned that a disruption could lead to weaker financial positions, delayed projects and higher debt costs. Problem-plagued New Jersey Transit Corp.'s available cash, as of 2017, was only enough to cover about one month's operations, the rating company said.

The uncertainty about the budget may also slow the pace of work on infrastructure projects because states can't say for sure how much they will get once the budget impasse ends. "States are not going to be letting new projects because of the uncertainty associated with the federal program," said Jim Tymon, executive director of the American Association of State Highway and Transportation Officials. One state has already done that: Oklahoma officials said they're delaying new contracts for about 45 upcoming projects totaling more than $137 million because of the shutdown.

Bloomberg Business

By Amanda Albright, Danielle Moran, and Martin Z Braun

January 11, 2019, 5:20 AM MST

— With assistance by Claire Ballentine

N.J. Mega Mall, Other High-Risk Muni Deals at Make-or-Break Year.

- **Speculative projects easily financed in market hunting yield**
- **Developers now facing openings, interest payments in 2019**

This year is the moment of truth for risky projects across the U.S. and the municipal-bond investors who bet big on them.

New Jersey's massive new shopping mall and a California rice-to-lumber facility are some of the projects financed in the $3.8 trillion market that are supposed to start operating or are scheduled to make payments to bondholders in 2019. It has been a great time to sell unrated debt because investors have been willing to take on more risk in return for higher yields. Soon, the buyers will find out if it was a worth it.

"Borrowers were coming out with deals that had weak covenants, more speculative plans, optimistic projections, and in categories that have not historically done so well," said Bill Black, senior portfolio manager for City National Rochdale, who oversees a $1.2 billion high-yield municipal fund. "In 2019, it's going to be interesting to see what happens."

Continue reading.

Bloomberg Markets

By Amanda Albright

January 8, 2019, 9:00 AM MST

Natural Disaster Forces Critical Decisions For Municipalities And Residents.

Last year, we wrote a post to mark the sixth anniversary of “Superstorm Sandy,” a Category 1 storm that made landfall in October 2012. We also shared a preview of this year’s series of posts on extreme weather, and its impact on municipalities. In this post, we focus on several decision facing property owners in a storm’s aftermath: to rebuild, redevelop, or in some cases sell land to the state. While not as powerful as other storms to be covered in this series, Superstorm Sandy did cause damage in New York State, estimated as more than $32.8 billion along (according to CNN), including economic losses of nearly $19 billion in New York City (according to the Office of the New York City Mayor in 2013). As readers may remember, Sandy did not bring large rain totals nor extreme wind gusts to New York. Rather, it was the rain and wind together with spring tide that created a storm surge of more than 14 feet – followed less than one week later by a nor’easter. The neighborhood of Breezy Point, in Queens, was infamously hit by a possible transformer explosion and subsequent fire that destroyed or damaged over 130 buildings; while Suffolk County saw no fewer than 10 fires from downed trees on power lines followed by transformer explosions. Among the outer boroughs, Staten Island was hit hardest by Sandy. Its neighborhoods of Ocean Breeze, Midland Beach and Dongan Hills, which face the Atlantic Ocean, are between three and seven feet above sea level, resulting in massive flooding and destruction during Sandy. Some residents of these areas, and other areas of New York City and Long Island, sold their properties to developers. Others sold properties to New York state, understanding those parcels could be “returned to their natural state” as wetlands or open space. Those who sold to the state were reported by various outlets to have done so for a variety of reasons: fear of another storm; the financial costs of rebuilding; and the financial and emotional costs of future insurance coverage. The state of New Jersey, like New York state, implemented plans to buy back homes in certain counties that were damaged or destroyed by Sandy, leveraging state and federal funds to do so; and finding sellers for the reasons outlined above. Similar to homeowners and renters, municipalities were confronted with decisions regarding how to reconstruct, how to rezone, and whether to relocate existing equipment and/or existing amenities.

State and municipal incentives for reconstruction

Shortly after Sandy, Mayor Bloomberg adopted an executive order waiving height restrictions under zoning code so that reconstructed buildings could meet improved flood standards. This executive order was among the first steps in New York City’s process to update both its building code and its zoning code for new construction, in light of the damage from Sandy and in anticipation of future weather events including flooding. According to the Bloomberg administration, absent this executive order, existing and newly-constructed buildings would be out of compliance with the Federal Emergency Management Agency (“FEMA”) recommended elevations to address flooding concerns. In an attempt to stimulate immediate reconstruction, New York state and New York City announced multiple initiatives, including loans, grants, and tax exemptions for impacted businesses to use to mitigate loss of inventory, physical damage to real property, and loss of revenue stemming from business closures with a focus on those “directly impacted” by flood waters or power outages. Small businesses within New York City, utilizing its Industrial Development Agency, were also eligible to claim up to $100,000 in sales tax exemptions for purchases of construction and renovation materials along with services necessary for rebuilding. This initiative was limited to the first 250 applicants. New York state, though the Empire State Development Corporation, administered a $10 million loan program for up to $25,000 in loans for small businesses with less than 100 employees in designated disaster areas statewide, and offered similar terms to the emergency loans provided by New York City.

Addressing future flooding concerns

As covered in an earlier MuniBlog post, FEMA has been considering redrawing flood maps in the state of New York. While this work is ongoing and may take several years to complete, FEMA has preliminary flood hazard data for certain areas. In the years since Sandy hit, New York City has adopted amendments to its zoning and building codes in an effort to better address future flooding concerns. Among the changes are requirements that new buildings start at a higher elevation and contain flood protections including floodgates. More recently, the City of New York, in conjunction with the Department of Housing and Urban Development (HUD), announced a plan to develop protection along 10 miles of coastline along the southern tip of Manhattan. Expected to begin this year, construction will involve levees, floodwalls and parks to protect that area of Manhattan from future flooding. Unlike New Orleans following Katrina, New York City did not see a population drain. However, not all redevelopment initiatives have been spurred by government. In an effort to market their buildings as more resilient to the next storm, some developers and landlords have installed generators or relocated existing generators and mechanical equipment above ground level. That perception of resilience and protection is critical for business in a state with more than 500 miles of coastline, and billions of dollars in real estate development along waterfronts.

by David Rothman

January 11, 2019

Harris Beach PLLC

NJ Municipalities Must Demonstrate "Necessity" Linked to a Redevelopment Project to Condemn.

The New Jersey Appellate Division reversed a decision allowing the Borough of Glassboro to condemn property just because it was part of a "Redevelopment Area" and has been since 2000. In *Borough of Glassboro v. Grossman*. Glassboro attempted to condemn a small parcel about a block from an ongoing retail redevelopment project. In court filings, Glassboro stated the condemnation was needed to increase the availability of public parking for the project.

The Appellate Division reversed, finding Glassboro's justification to be unsupported by any evidence. New Jersey allows municipalities to declare areas as "in need of redevelopment" (previously called "blighted") under various circumstances and grants the municipalities condemnation authority, but only if the condemnation is "necessary" for a redevelopment project. Because of this, the Court concluded, a municipality cannot take any property just because it is located in a "Redevelopment Area."

Instead, going forward, when contested, municipalities and other condemning authorities will have to connect the condemnation with a specific redevelopment project and present some evidential basis – facts, data, or even an expert report – to show that the taking of the property is necessary for the project. The Court stressed that this will not be a heavy burden since the State's redevelopment laws expressly give municipalities broad discretion.

For municipalities and private developers that work with municipalities on redevelopment projects, this decision serves as a warning for the need to develop specific facts and data regarding the need to acquire specific parcels.

by Lawrence Bluestone

January 9, 2019

Genova Burns LLC

Emission Guidelines for Municipal Solid Waste Landfills: Multistate Coalition Comments to U.S. Environmental Protection Agency Opposing Rule Delay

A multistate coalition submitted January 3rd comments to the United States Environmental Protection Agency ("EPA") opposing a proposed rule denominated as:

> *Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills*
>
> 83 Fed. Reg. 54527 (Oct. 30, 2018) ("*Delay Rule*")

The states collectively submitting the comments include:

- California
- Illinois
- Maryland
- New Jersey
- New Mexico
- Oregon
- Pennsylvania
- Rhode Island
- Vermont
- California Air Resources Board

The *Delay Rule* addresses a final rule styled Emission Guidelines Compliance Times for Municipal Solid Waste Landfills. 81 Fed. Reg. 59,276 ("Guidelines"). The states note that this rule was finalized on August 29, 2016, and effective October 28, 2016.

The states argue that had EPA implemented the Guidelines, every state would have had an approved state or federal plan to reduce emissions from existing municipal solid waste landfills by November 30, 2017. Citing 40 C.F.R. §§ 60.30F(b), 60.27(b) & (d). They argue that the *Delay Rule* would push back implementing the Guidelines by an additional four years.

The *Delay Rule* is argued to have a substantive impact as opposed to a procedural change. As a result, the states object to the federal agency's describing the *Delay Rule* as procedural in nature. They argue that adverse impacts of the proposed *Delay Rule* on human health and the environment were in fact objectives Congress tasked EPA with safeguarding.

Additional arguments raised in opposition to the *Delay Rule* include:

- EPA is violating its statutory responsibility of the Clean Air Act to reduce the emission of air pollutants that endanger human health and the environment

- EPA fails to provide a reasoned explanation for the change of course (four years of delay)
- EPA failed to conduct a regulatory impact analysis or otherwise analyze the foregone benefits resulting from the *Delay Rule*
- EPA predicates the proposed *Delay Rule* on another proposed rule that does not on its face apply and is likely unlawful
- EPA failed to comply with various executive orders such as one that would determine whether there was a disproportionate impact on low-income or minority populations

A copy of the comments can be found here.

by Walter Wright

January 10, 2019

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

New Year, New Laws Impacting Public Agencies In California – Part I

2019 Brings Changes to Election, Revenue, Conflict of Interest, Property and Public Safety Laws… and More

The California Legislature passed a number of laws last year that will have a significant impact on how public agencies — including cities and counties, special districts, schools and school districts and more — do business. In this Legal Alert series, Best Best & Krieger LLP summarizes these new laws. Please be sure to contact us for further information. All laws went into effect Jan. 1, unless otherwise noted.

Elections

SB 759: Elections: vote by mail ballots
Previously, the law prohibited an elections official from counting mailed-in ballots if the voter's signature did not match the signature on the voter's affidavit of registration or the signature on the form provided as part of the voter's registration record. This bill lifts the counting prohibition and requires the elections official to notify the voter, and give the voter the opportunity to verify his or her signature, before certification of the election. Certain state-mandated costs associated with the bill will be reimbursed to the local agency.

Revenue

AB 888: Charitable raffles
Under the California Constitution, a major league sports organization is authorized to conduct a raffle if 50 percent of the gross receipts directly support a California beneficial or charitable purpose or financially support a private nonprofit organization. The amount of the gross percentage can also be amended by statute, by a 2/3 vote of both houses. This measure extends the operation of these provisions until Jan. 1, 2024.

SB 961: Enhanced infrastructure financing districts
Enhanced infrastructure financing districts undertake economic development projects for public facilities, affordable housing and economic revitalization with funding from voter-approved bonds. Under the Neighborhood Infill Finance and Transit Improvements Act, a city or county is authorized

to adopt a resolution to allocate tax revenues from that entity to the EIFD. This new law enacts the Second Neighborhood Infill Finance and Transit Improvements Act, which follows the provisions of the original Neighborhood Infill, provided that the area financed is within 1/2 mile of a major transit stop, and the issuance of bonds does not require voter approval. Under the Second Neighborhood Infill, the EIFD must follow certain notice, protest and election proceedings for the adoption of the financing plan.

SB 1145: Enhanced Infrastructure financing districts: maintenance
Previously, the legislative body of a city or county could establish an enhanced EIFD to finance capital facilities or certain community projects. It authorized the issuance of bonds to fund this work if approved by 55 percent of the voters. This measure authorizes a district to finance ongoing or capitalized costs to maintain capital facilities, but prohibits the use of bond proceeds to finance maintenance of any kind.

Conflicts of Interest

SB 1239: Political Reform Act of 1974: campaign disclosures
This new law amends the Political Reform Act of 1974 to include online and electronic filing processes for elected officials, candidates and committees who are required to file statements and reports with the Secretary of State's Office. The law repeals former monetary restrictions and makes the online and electronic filing requirements applicable to all specified filers. The new law extends the deadline for payment of the annual fee to April 30 of each year, and requires the funding details statement to direct the reader to the Secretary of State's website for a list of top contributors. The law requires that statements and reports be signed under penalty of perjury, and provides that any violation of the law is punishable as a misdemeanor. By expanding the scope of existing crimes, the law imposes a state-mandated local program, but also provides that the state is not required to reimburse local agencies for the mandated costs for a specified reason.

Public Property

AB 939: Local Government: taxicab transportation services
This measure makes it unlawful to operate a taxicab company without a valid permit issued by a city or county where the taxicab company is "substantially located" (as defined), and requires a city or county to adopt an ordinance or resolution providing for a permitting program for taxicab drivers of those companies. The bill removes the prohibition that a taxicab company or driver cannot operate in a county unless the company or driver are substantially located in at least one city within the county or the unincorporated area of that county. It also authorizes a permitted taxicab company to prearrange trips anywhere in that county subject to compliance with vehicle inspection requirements and a mandatory controlled substance and alcohol testing certification program for drivers.

AB 1999: Local Government: public broadband services
This measure expands the government entities expressly authorized to own broadband facilities and provide broadband Internet services. The bill allows a county service area to build, maintain or operate broadband Internet access services, and allows an infrastructure financing district or EIFD to transfer the management and operation of any broadband facility to a local agency. The bill also applies net neutrality provisions to the broadband Internet services provided by county service areas, local agencies and community service districts. Additionally, the bill removes the requirement that a community services district first determine that a private party is unwilling or unable to provide broadband services before the district may construct, own, improve, maintain or operate broadband facilities, and the bill no longer requires that the district lease or transfer title of the broadband facilities if a private party offers to provide those services.

AB 2179: Municipal corporations: public utility service: water and sewer service
This bill simplifies the voting requirements for a municipal corporation to consolidate its sewer service with neighboring sewer systems. A municipal corporation owning and operating a public utility offering sewer service outside its boundaries may lease, sell or transfer that part of its service to another public entity or utility with a majority vote of its legislative body and adequate justification. A municipal corporation that wants to sell the public utility offering sewer services within its boundaries may now do so with a majority vote of its legislative body and its electorate, instead of a super majority vote. The measure also provides that an acquiring entity must satisfy certain disclosure requirements to the public.

AB 2339: Water utility service: sale of water utility property by a city
Until Jan. 1, 2022, this measure authorizes the cities of El Monte, Montebello and Willows to sell their water utility services and consolidate with another water utility service located within the boundaries of the city, if the city determines that it is uneconomical and not in the public interest to own and operate the its water utility service, and if other requirements are met. If 50 percent of interested persons protest the sale, the measure would prohibit the city from selling the water utility service for 1 year.

AB 2392: Vehicles: towing and storage
This bill requires that storage fees for a towed vehicle be reasonable as defined. The bill also provides additional consumer protections, including the requirement that facilities are open and accessible during business hours. The measure also applies to repair garages or service stations that charge for vehicle storage.

AB 2544: Parking Penalties
Currently, processing agencies can use the Department of Motor Vehicles to collect unpaid parking citations and late fees. Beginning July 1, this measure requires processing agencies to provide a payment plan option and a waiver of late fees to indigent people before sending an itemization of unpaid parking penalties to the DMV.

AB 2876: Vehicles: removal and impound authority
This measure reinforces state and federal constitutional protections to vehicle owners by providing that a warrantless removal of a vehicle must be reasonable under Fourth Amendment jurisprudence. Moreover, the new law provides that a warrantless removal based on community caretaking is only reasonable if it is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic, or protecting the property from theft or vandalism.

SB 946: Sidewalk vendors
This measure seeks to protect sidewalk vendors from criminal penalties by requiring local authorities that elect to adopt a sidewalk vending program to comply with certain time, place and manner provisions. The measure addresses the regulation of sidewalk vendors in public rights of way, public parks, certified farmer’s markets and permitted swap meets, and imposes an administrative fine (based on an ability to pay) for any violation instead of a criminal penalty. A local authority is not required to adopt a new program if its existing program substantially complies with the provisions of this new law. (More information can be found here.)

Public Safety

AB 1747: School Safety Plans
This measure imposes a state mandated program requiring that all public schools, kindergarten to grade 12, develop a comprehensive school safety plan, in cooperation with the fire department and other first responder entities, including strategies for tactical responses to criminal incidents, and

training of all school staff about the safety plan.

AB 1793: Cannabis-convictions resentencing
The Control, Regulate and Tax Adult Use of Marijuana Act, known as AUMA, enacted by voters in 2016 allows the possession, processing, purchasing and transporting of cannabis for people over 21 years of age. As such, the AUMA allows a person to petition for the recall or dismissal of a sentence, the dismissal and sealing, or the redesignation of a cannabis conviction. This new law goes one step further and requires the Department of Justice to review the state criminal history database before July 1, 2019, and notify prosecutors of all cases that are eligible for recall, dismissal, sealing or the redesignation of a conviction. The law further requires prosecutors to review all cases before July 1, 2020 to determine whether to challenge a case. Prosecutors may challenge a case if an individual is ineligible or poses an unreasonable risk to public safety, and must comply with certain notice requirements. The measure also requires the court to reduce or dismiss the conviction if there is no challenge by July 2, 2020. The law also requires the Department of Justice to modify the state criminal history database to conform to any changes in an individual's status within 30 days.

AB 2989: Motorized scooter: use of helmet: maximum speed
Previous law prohibited motorized scooter operation on a highway with a speed limit over 25 miles per hour (unless operated in a Class II bike lane). It also required a person to drive a motorized scooter no faster than 15 miles per hour (regardless of the speed limit). The new law maintains this speed limit in general, but allows a local authority to authorize motorized scooters on highways with a speed limit up to 35 miles per hour, and higher if the scooter is operated in a Class IV bikeway. The new law requires an operator under 18 years of age to wear a helmet.

AB 3077: Vehicles: bicycle helmets
Under the Vehicle Code, a minor must wear a bicycle helmet while operating or riding a bicycle, scooter, skateboard or skates on a public street, bike path or trail. Violators and can be cited and issued a $25 fine. This measure provides a corrective mechanism for a minor who has been cited or fined for failure to wear a helmet. The new law prohibits an issuing agency from transmitting a record of the citation to the court or imposing a fee, if a parent or legal guardian of the infracting minor delivers proof to the issuing agency within 120 days that the minor has a helmet and has completed a local bicycle safety course.

SB 1205: Fire protection services: inspections: compliance reporting
The new law requires that every city, county or district fire department required to annually inspect buildings used as a public or private school and certain other structures, including hotels, motels, lodging houses and apartment houses for compliance with building code standards must now annually report on compliance with the inspections to its administrative authority. The measure also requires that the administering authority acknowledge receipt of the report by resolution or similar document. If the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs will be made.

Miscellaneous

AB 1884: Food facilities: single-use plastic straws
This measure prohibits a full-service restaurant from providing single-use plastic straws to customers unless requested by the customer. The new law provides that first and second violations of the provisions will result in a notice of violation, and subsequent violations will be considered an infraction punishable by a $25 fine for each day the restaurant is in violation, not to exceed $300 a year. The provisions will be enforced by California Retail Food Code officers. This bill imposes a state-mandated local program and reimbursement for costs will be made.

AB 2178: Limited service charitable feeding operation
A limited service charitable feeding operation provides food service to a consumer for charity administered by a nonprofit organization. The bill exempts such operations from the provisions of the California Retail Food Code except for general food and safety requirements. With some exceptions, the organization must register with a local enforcement agency. The bill authorizes the operation to distribute food in an outdoor location for 4 hours per day, using best management practices and subject to the approval of the local enforcement agency. The operation cannot provide food service unless it has registered with the local law enforcement agency. The bill authorizes the local enforcement agency to recover reasonable regulatory costs from the operation. If the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs will be made.

SB 1498: Local Government Omnibus Act of 2018
Lastly, the Legislature compiles several minor, local government-related bills into a single omnibus bill. While some of these are non-substantive technical updates, there are some changes that do impact cities and other local agencies. In general, the substantive changes in the bill remove various inefficiencies in existing statutes.

There is a trend in recent legislation to use local agencies' websites as a means to provide more efficient and effective notice to constituents. This bill continues that trend in two ways. First, the Mello-Roos Community Facilities Act of 1982 requires cities and other local agencies to report information on their community facilities districts' bonds and expenditures to the State, and to display the reported information prominently on their websites. This bill would allow cities to simply link to the information on the State Treasurer's website, along with other identifying information. Similarly, when forming an EIFD, cities must mail information about the proposed district to affected landowners. This bill enables cities to mail a single-page notice that provides information regarding the website, where the full documents are available.

The Legislature has also removed a redundancy in the process for forming a property and business improvement district. Cities were previously required to adopt both a resolution of formation and resolution of establishment, containing the same information. This bill removes the need for a second resolution. For special districts, previous law required the State Controller to report annually on the fund balance, retained earnings, fixed assets and cash investments of each agency. This bill simply requires that the report be consistent with generally accepted accounting principles and Governmental Accounting Standards Board statements. Additionally, for counties with population in excess of 200,000, the purchasing agent may contract with independent contractors when the annual aggregate cost does not exceed $100,000. This bill increases the threshold to $200,000.

Next in the New Public Agency Law Legal Alert Series:

- Thursday: Housing, Land Use and the Environment
- Later: Legislation and court decisions impacting the California Public Record Act

January 10, 2019

Best Best & Krieger LLP

[Few Signs So Far Sports Wagering Will Be Huge Boon for State Budgets.]

"Large amounts of tax revenue from sports gambling is no sure bet," one expert notes.

Six states have joined Nevada in allowing for sports betting since the U.S. Supreme Court in May struck down a federal law that had largely blocked the practice.

Delaware, Mississippi, New Jersey, Pennsylvania, Rhode Island and West Virginia have entered the sports betting field so far. The District of Columbia is also moving ahead with a sports betting program and during upcoming legislative sessions state lawmakers elsewhere are expected to discuss the topic.

But a researcher with the Urban-Brookings Tax Policy Center, Richard Auxier, cautioned this week that the wagering may not generate as much tax revenue as some are hoping for.

Continue reading.

Route Fifty

By Bill Lucia

JANUARY 12, 2019

A Turbulent Stock Market Can Benefit State and Local Borrowers.

When stocks get dicey, one place investors turn to is municipal bonds.

Volatility in the stock market, like the swings on display in recent weeks, has possible upsides for state and local governments that are seeking to borrow money or refinance debt.

That's because when equities become erratic municipal bonds can offer an attractive alternative for investors searching for a more stable place to park their money. U.S. stocks in 2018 endured their worst year since the 2008 financial crisis, with wild ups and downs in December.

"Volatility historically has been a good thing for us," Ben Watkins, director of Florida's Division of Bond Finance, said this week.

Continue reading.

Route Fifty

by Bill Lucia

JANUARY 9, 2019

Municipal Bonds: Great Expectations For 2019

The Big Picture

This year already appears more promising for investors after the difficult environment experienced in 2018 for most asset classes, as volatility often creates opportunity. That said, increasing concerns in financial markets around slowing global economic growth, international trade and political uncertainty have created a more tenuous backdrop for many sectors in 2019.

After hiking short-term interest rates four times in 2018, the Federal Reserve seems prepared to keep increases on hold at least through early 2019. Although hard economic data has continued to be solid, the muted inflation environment provides leeway for the Fed to wait and see how the economy evolves. Chairman Powell affirmed that there is no preset path for rates and that the Fed will be nimble in shifting its policy if necessary to keep the economy strong. This encouraging dialogue is a positive for financial markets broadly, and a calmer interest rate environment is especially supportive for fixed income assets.

Given the steeper municipal yield curve relative to Treasuries, investors can still benefit from taking on duration (interest rate risk). Additionally, investors who buy and hold muni bonds throughout the year will be better positioned to capture coupon income, which we expect to make up the majority of total return in 2019.

Supply Is On Our Side

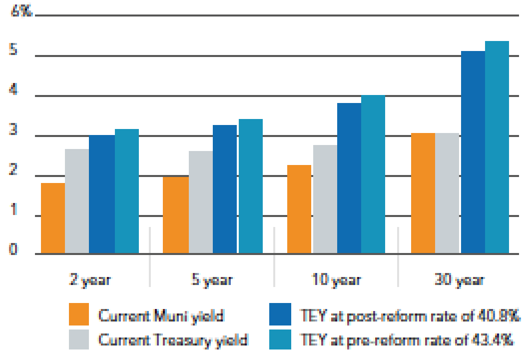
Although markets tend to focus on gross supply numbers, what actually influences market performance is net supply—i.e., the total amount of new issuance minus the total amount of debt that is called, refunded or reaches maturity. Net supply turning negative generally provides a powerful tailwind for muni bond performance.

On the whole, 2018 was a net negative supply year and we expect the same in 2019. Forward supply estimates are only marginally higher than last year, and Congressional gridlock is likely to impede the approval of government spending on infrastructure projects. Additionally, the heavy selling among banks in 2018 ahead of tax and accounting-related changes, which added significant “shadow supply,” should be nearly played out at this point.

After back-to-back years of disrupted seasonal trends, we foresee a more traditional year coming up, which likely means more predictable patterns around both supply and demand. From a strategy perspective, we would lean toward longer duration (i.e., taking more interest rate risk) heading into periods of net negative supply, and shorter duration when supply is poised to outpace demand.

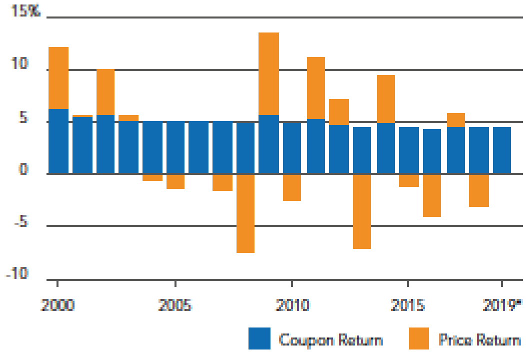
Don’t Discount Retail Demand

Demand for municipal bonds is supported by the multiple benefits of investing in the asset class—the most obvious being the tax advantage. The recent tax reform has had little impact on the tax equivalent yield provided by municipal bonds versus Treasuries. As April approaches, it will become more evident that individuals have experienced little, if any, tax cut after the State & Local Tax Deduction (SALT) curtailment is factored in. This effect will be especially pronounced in high tax states including Connecticut, New Jersey, New York, Massachusetts, Maryland and California.



Source: BlackRock and Bloomberg, as of January 7, 2019. Current Muni Yield is before tax. Tax equivalent yield (TEY) figures show the yield offered by the municipal bond after factoring in the high tax rate prior to reform at 43.4% and the current high tax rate of 40.8%.

Another driver of demand for munis is a renewed appreciation for the stability of the asset class as the prolonged period of ultra-low volatility is clearly behind us. Municipals tend to have higher credit quality and provide consistent levels of income over time. While price return is sensitive to macro trends across fixed income markets, coupon return has historically provided a stable portion of total returns in the municipal market.

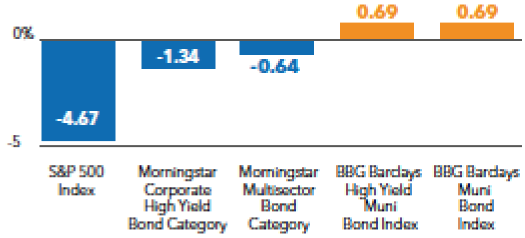


Source: BlackRock, Bloomberg Barclays Municipal Bond Index.
* 2019 forecast for total return is 4.20%, sourced from coupon.

The S&P 500 Index lost more than 4 percent in 2018, while the S&P Municipal Bond Index posted a 1.36 percent gain. The negative correlation of municipal bond and equity returns underscores the importance of muni bonds as a portfolio diversifier and a ballast to equity and equity-like risk.

Muni bonds are an important portfolio diversifier

Average returns during S&P 500 selloffs



Source: Morningstar. S&P 500 selloff is defined as a calendar month period in which the S&P 500 Index fell by 2 or more percent. Returns are the average of 13 monthly periods from 12/31/10- 12/31/18. Diversification cannot assure profit or protect against a loss. Past performance is no guarantee of future results. Index performance is shown for illustrative purposes only. It is not possible to invest directly in an unmanaged index.

Credit Perspectives: What To Watch In 2019

State and local government sectors could come under pressure this year if the U.S. economy slows enough to constrain revenues from sales and income tax receipts. State governments may be forced to rein in their spending, most likely impacting Medicaid and K-12 education, and pension underfunding remains a significant concern. At the local level, property tax receipts tend to perform relatively well during a slowdown; however, local governments often bear the brunt of state spending cuts. We prefer revenue bonds over general obligation bonds as the latter can be vulnerable to risks stemming from state and local budget negotiations.

The high yield municipal market may experience a period of minor spread-widening due to an influx of supply as Puerto Rico returns as an investable name. Upon finalization of the bankruptcy process in mid-January, the restructuring of the commonwealth's government debt and sales tax bonds, known as COFINA bonds, will result in an exchange whereby holders of defaulted debt will receive new bonds. We expect Puerto Rico bonds will gradually regain acceptance with traditional market participants over time. Any weakness caused by the supply increase could create attractive buying opportunities in the short term; however, certain credits that were bid up while Puerto Rico was absent from the market may experience a longer term negative impact. Broadly, we believe high yield muni bonds are an important contributor to income generation in a diversified portfolio.

Hospitals and health-care providers are facing headline risk due to the Affordable Care Act (ACA) having been ruled unconstitutional at the end of 2018. If the ruling is upheld, the loss of Medicaid coverage and consumer protections for many patients would have a negative effect on these industries as the potential for bad debt increases and patient volume declines. No immediate impact to ACA exchanges is anticipated in 2019 as the Act remains in effect throughout the appeals process, which will not conclude until 2020 at the earliest.

Investment Ideas For 2019

1. Stay invested. Sitting in cash means missing out on coupon payments. A buy-and-hold approach to municipal investing provides better potential for total return, which we expect will be made up largely of coupon return versus price return throughout this year.

2. Position tactically. Seasonal patterns should be more true to form this year. Increase duration ahead of negative net supply periods and reduce duration when supply is poised to outpace demand.

3. Diversify opportunistically. Consider high tax states including New Jersey, New York, Massachusetts, Maryland and California, where the SALT curtailment will have the largest effect on individual tax payers.

4. Don't dismiss high yield. We wouldn't recommend an overweight currently given uncertainty around Puerto Rico issuance, but we believe some exposure can be beneficial for income generation within a well-rounded portfolio.

FINANCIAL ADVISOR

JANUARY 11, 2019 | SEAN CARNEY, PETER HAYES

Peter Hayes is head of the Municipal Bonds Group at BlackRock. Sean Carney is head of municipal strategy at BlackRock.

Judge Rules on Constitutionality of Tax Credit Bonds.

The small oil companies and banks holding more than $800 million in refundable tax credits scored a victory Wednesday when an Alaska Superior Court judge threw out a lawsuit challenging the state's plan to sell bonds to pay off those credits.

Judge Jude Pate granted the State of Alaska's motion to dismiss the suit filed by former University of Alaska regent Eric Forrer arguing against the constitutionality of the bond scheme contained in House Bill 331 that the Legislature approved last spring.

In making the ruling, Pate concluded that Forrer and his attorney, Juneau lawyer Joe Geldhof, failed to state a claim upon which the court could grant relief on the grounds that HB 331 "passes constitutional muster."

Forrer filed the suit in May, contending the plan to sell the "tax credit bonds" falls outside the tight sideboards the Alaska Constitution puts on the state's ability to incur debt. He also said in interviews and through court filings that the plan amounts to a de-facto dedication of general fund money to pay the bond debt because not making the payments would have grave consequences on the state's credit rating and future finances.

Attorneys with the Legislative Legal Services office also questioned the legality of the tax credit bonds while HB 331 was being debated. A competing legal opinion by former Attorney General Jahna Lindemuth declared the bill was constitutional.

Geldhof said Friday morning that Forrer will appeal Pate's ruling to the Alaska Supreme Court.

The state Constitution generally limits the Legislature from bonding for debt to general obligation, or GO, bonds for capital projects, veterans' housing and state emergencies. In most cases the voters must approve the GO bond proposals before the bonds are sold.

State corporations can also sell revenue bonds, but those are usually linked to a corresponding income stream and only obligate the corporation to make payments, not the State of Alaska as a whole.

HB 331 allows the Revenue Department to set up the Alaska Tax Credit Certificate Bond Corp. specifically for the purpose of issuing the 10-year bonds.

State attorneys contended the plan is legal because the bonds would be "subject to appropriation" by the Legislature, which the bond buyers would be aware of, and therefore would not legally bind the state to make the annual debt payments.

New Attorney General Kevin Clarkson and Revenue Commissioner Bruce Tangeman praised Pate's order in a formal statement from the Department of Law.

"With this tax credit bond program, we are following through in paying down the tax credits, so industry and the financial markets know we are open for business. This will bring more stability to state finances and help the business community to get the economy back on track," Tangeman said.

Tangeman also said in a brief interview earlier Thursday that the state would be working to release $100 million originally approved in the current fiscal year budget for companies that chose not to participate in the bond plan.

"It's a high priority to cut that $100 million loose," he said, noting even if HB 331 is upheld at the Supreme Court it will take several months to execute a large bond sale.

State officials initially planned to hold the sale last August, but it was put off given the looming lawsuit would almost certainly require high interest rates on the bonds, if they could be sold at all. That situation could remain if Forrer appeals Pate's ruling as expected.

Pate, in a narrow but lengthy ruling, wrote that while the policy implications of selling the bonds can be debated, those issues are not the courts' to decide, noting that HB 331 has provisions that allow credit holders to sue the Tax Credit Certificate Corp., but not the State of Alaska, if the bonds aren't paid through appropriations by the Legislature.

"An examination of the bond transaction in HB 331 demonstrates the presence of both an effective non-appropriations clause and the shield of an independent state corporation," he wrote. "These two features sufficiently ensure that HB 331 does not create any debt that is legally enforceable against the State."

Hatched by former Gov. Bill Walker's administration as a way to pay off the large tax credit obligation — expected to be upwards of $1 billion when the final tax credit certificates are applied for — HB 331 would allow the companies and banks holding credits to get their money relatively quickly instead of possibly waiting for the state to pay them off over years of appropriations according to current statute.

Until Walker vetoed $200 million worth of the credits in the 2016 budget while facing a deficit of more than $3 billion, the Legislature had always paid off the full credit balance each year.

To get paid sooner the credit holders would have to accept a discount of up to 10 percent less than the face value of the certificates. The state Department of Revenue would then use the difference between the credit values and the discounted amount actually paid to cover the borrowing costs.

Forrer, Geldhof and others skeptical of the plan have also questioned the economics of it.

Supporters of the tax credit bonds insist it is a way to restart investment by small producers and explorers in Alaska's oil and gas fields that has been slowed by three years of credit payment amounts at levels below what was applied for as the Legislature and the administration debated how to resolve the state's large budget deficits.

The credits were largely issued to small exploration companies that did qualifying work, but they were then often used as collateral for loans issued by investment banks to support additional exploration work. A commonly used credit for explorers with no production and no tax liability had the state paying 35 percent of the cost of qualifying work in cash.

When the earned credits weren't paid off in full in the fiscal years 2016-18 state budgets, as had previously been done, the banks holding them mostly stopped lending into the Alaska oil sector.

In one unique instance, the Department of Revenue in October 2015 issued a $22.5 million tax credit-backed loan to a holding company set up by the state-owned Alaska Industrial Development and Export Authority. The loan was made because the authority had not received payment on its investment in a small North Slope oil development spearheaded by Brooks Range Petroleum Corp. — payment that was supposed to come from tax credits paid by Revenue for work Brooks Range had performed.

Forrer and Geldhof rebut that the new corporation would not have any revenue of its own — which Pate acknowledged in his order — but would rely on legislative appropriations from the general fund. According to Geldhof, Pate incorrectly applied a prior Alaska Supreme Court decision involving a lease-purchase agreement that does not apply to this case.

"Everybody's admitting that, well, if a future Legislature doesn't use general funds to give this phony shell corporation the money to pay back the bond holders there'll be enormous consequences through Moody's and the other ratings agencies and Alaska's credit rating will take a hit and there is recourse," he said.

Permitting the state to invoke the subject to appropriation language and set up pass-through corporations for the use of selling bonds sets a dangerous precedent, Geldhof argued further.

"It's going to be all bets are off and the State of Alaska will start incurring fantastic debt," he said, later adding, "It's a recipe for running this place like Illinois or Venezuela."

Pate acknowledged this argument, but wrote that, "the court should not engage in second guessing the wisdom of the legislature's fiscal policy decisions, even when those decisions may have a negative impact on the State's credit rating."

The judge also pointed to prior court rulings that "concerns regarding the state's credit rating do not create legally binding debt."

While he disagrees with Pate's ruling on multiple fronts, Geldhof said he appreciates the effort that went into it. During oral arguments in October Pate said he would issue a decision in early November, but the 44-page order wasn't published until Jan. 2.

"As an attorney I at least want to know the judge heard my argument. He clearly did because he labored on it," Geldof commented

Alaska Journal of Commerce

By: Elwood Brehmer

01/03/2019

What Successful Public-Private Partnerships Do.

Despite spending $2.5 trillion a year on roads, railways, ports, water, and other public infrastructure projects, countries around the world are still falling far short of what they need to invest, according to one estimate. Thus, it's no surprise that there is renewed interest in public-private partnership (P3) projects, where businesses supplement public investment in return for reaping rewards such as tolls and fees. The White House, for one, suggests using private investments to fund most of its proposed $1.5 trillion in U.S. infrastructure spending.

But many P3 projects go off the rails. For example, a European Union review of nine such projects launched between 2000 and 2014 found seven were late and over budget. A U.S. interstate highway project near Indianapolis was found to be 51% over budget and two years past the proposed completion date. These highly publicized travails not only make P3 projects a public nuisance (or more), they create big political hurdles to overcome the next time a much-needed infrastructure project requires outside funding.

Yet despite these failures, some P3 initiatives have been highly successful, and they provide a trove of valuable lessons for managing any large project that involves multiple organizations — think digital transformations involving multiple consulting and training firms, merger integrations, enterprise software installations, corporate headquarters relocations, and so on.

Received wisdom in P3 management is that ironclad contracts and tougher enforcement of them improves chances of success. But over the last three years, we conducted research interviews with 72 leaders from organizations that design, build, finance, provide legal advice, manage projects and advise North American P3 projects. Numerous interviewees told us that focusing on contract terms often set partners to act more like adversaries than allies. "Public clients prefer building iron-clad, oppressive contracts that are extremely one-sided and which start the relationship off on the wrong foot," said a leader of a semi-governmental Canadian agency. Others told us that contractors often exploit the contract terms to increase their profit at the expense of the project.

Another recurring complaint was that an intense focus on meeting project milestones took critical attention away from monitoring the health of the working relationships among the public and private entities. Said a project adviser to a U.S. P3 project: "The partnership is extremely important. A lot fall short in that people fall into familiar behaviors quickly. They're like people who get married after two dates; they don't have ways of working things out together."

From these interviews, we heard about uncommon ways used by leaders of the most successful projects to keep these large, high-stakes initiatives from running late, over budget or both. We found project success had little to do with trying to force all parties to adhere to strict contractual obligations. Instead, when we examined what led to productive working relationship over the life of these projects, we found they had three things in common: a commitment to a strong partnership beyond the terms of the contract; built-in mechanisms to share perspectives about the project (especially problems and concerns); and effective ways to rebound from failures to deliver.

Striking Personal Commitments Far Beyond the Contract

At the crux of successful P3 infrastructure projects is a simple but difficult-to-achieve construct: each party must be as committed to achieving the others' goals as they are to their own goals.

Contracts alone can't achieve this. Legal documents can spell out what must go right (e.g., spending, responsibilities, steps, deliverables, and dates) and what happens when things go wrong. But they cannot anticipate everything that can go wrong, and they don't provide a roadmap of how to right things quickly. That requires leaders from each entity to regularly share their interests and concerns, and to help resolve them. A key part of this is having each party acknowledge interests in the project they may not have stated in the contract, and which may not be interests of the other parties.

When Australia's [Road Traffic Authority](#) (now known as Roads and Maritime Services) began the Pacific Highway Upgrade of 408 miles (657 kilometers)of road in 1996, the Ballina Bypass was one of the first projects. Building the 7.5-mile roadway in New South Wales involved five organizations that provided designing, contracting, and geotechnical services. The project was a major technical challenge because the road had to be built on soft ground. The RTA had a lot riding on the success of the Ballina Bypass because such P3 contracts were relatively new in the country. The pressure on the RTA was enormous.

The five organizations were new to working together, so they had to establish operating principles for the project. They needed to continually demonstrate to the RTA that they were working as an integrated team, sharing innovations, and solving steep technical problems as they arose (and there were many).

The organizations appointed people to three roles to strengthen their working relationships: an alliance manager, the alliance leadership team, and the alliance management team. The teams then designated and trained functional experts to be leaders responsible for achieving key metrics in their areas. The functional experts communicated weekly on project status with the alliance leadership and management teams, and through fortnightly meetings, regular emails, and weekly site walks.

All this ensured the five organizations openly heard and resolved project problems together. The leadership training also enabled the functional experts to learn how to resolve issues constructively. One of these issues occurred near the end of the project, when the road builders had to add very expensive fill – even more than they originally projected – to shore up soft ground. All five partners accepted this reality, even though it pinched their profits, in keeping with the win-win/lose-lose principles they had set up for the partnership.

The result: They finished the work seven months ahead of schedule and for $100 million less than the estimate in the concept design.

Hashing Out Differences Authentically

In our interviews and consulting work, we have found it rare for P3 partners to state their interests in a project beyond their shared goals. Such unspoken interests include dealing with minimal public complaints, building a reputation to win future P3 work, and generating a profit from the project (even if it's a small one). Stating such interests openly and honestly is a key success factor.

Why is sharing these typically unspoken perceptions so important? Doing so defuses or at least reduces the inevitable flare-ups that escalate rapidly when people's actions and motivations are in question.

When one party doesn't come through as expected – misses an important deadline, falls short on quality, forgets a step, and so on – the other parties can rush to judgment. "They're just cutting corners." "They don't care about quality." "They no longer have their best people on the project." All are sentiments we've heard on these projects over the last two decades.

The problem with such perceptions is they can fan the flames of distrust and engender countermeasures that make things worse. The way the parties in the Ballina Bypass minimized such negativity was by holding weekly meetings of the members of the alliance team. These project "health checks" helped partners move from blaming each other for problems to creating shared responsibility to fix them. It also enabled the project to have a staff churn rate of only 5% — far lower than the industry average of 20% to 25%.

Admitting to and Correcting Setbacks Quickly

P3 infrastructure projects are vital pieces of a nation's economic fabric. A region's population health, industry base, and political careers can be at stake if deadlines slip, budgets creep up, and quality problems emerge — an especially harsh environment for project leaders and managers. In such a working environment, it's natural for team members to overlook small problems, push back the schedule, blame others, and cover their tracks. In contrast, team members on successful P3 projects admit failures when they occur, and then they move quickly to correct them. In that way, they use these failures as opportunities to strengthen their commitment to the partnership.

Such psychological safety can only happen when the parties agree at the outset how they will handle the inevitable problems, long before anyone reaches for the contract. We found this to be critical to coaching the two lead contractors on a failing multibillion-dollar offshore drilling project. While this was an entirely private partnership, the lessons hold true for public-private partnerships too. The two contractors had blown through numerous deadlines and disagreed vehemently on how to get the project back on the rails. They blamed each other for project failures and were barely speaking to one another beyond the minimum required to do the work. In addition, a major subcontractor located in a different time zone also complicated things, ignoring requests to work faster.

To get their relationships back in working order, the two contractors held sessions in which the team members could voice stumbling blocks and suggest ways to remove them. We facilitated constructive dialogs on these issues, including each company's distrust of the other's project schedule. (Teams from one firm didn't believe the other firm's statement that it had not built "cushion" into the timelines.) The focus shifted away from deadlines toward promises to complete work. In addition, project leaders at both companies committed to a short-term win: gaining year-end regulatory approval. In turn, that required each side to agree to completing the technical design documents required for construction approvals and demonstrate they had met safety and quality standards.

This "sprint" showed what a real working partnership was all about, and the teams met their mutually agreed upon goals. It helped them turn around the working relationship for the remainder of the project.

Building Better Partnerships

The lessons of what makes the best P3 partnerships work apply to any large initiative in which more than one organization is responsible for its success. The word "partner" truly must connote that "we're in this together," a sentiment that no contract can ever convey. As a U.S.-based manager on a highly successful P3 infrastructure project put it, "Success can be defined as a situation where the project is completed on time and on budget, and with all participants being happy survivors of the experience." Project leaders who have an explicit plan of how they will meet the project's goals and keep the working relationships of all parties strong throughout the process have a much higher likelihood of success.

Harvard Business Review

by Elyse Maltin

JANUARY 08, 2019

IRS Cancels Meeting on Opportunity Zones Rules Due to Shutdown.

Those interested in the economic development program have been closely tracking the guidelines.

Citing the partial federal government shutdown, the Treasury Department on Monday cancelled a hearing scheduled for later this week on rules for the Opportunity Zones program.

The department said a new date for the postponed Jan. 10 meeting would be set once its appropriations are restored. Treasury released proposed rules for the economic development initiative in October.

Investors and others were eager for Treasury to issue guidelines for the program so that more investments could start to flow through it.

While the current proposed regulations provided substantial insights into how the program would work, they also left some key questions about it unanswered. And dozens of written comments offering feedback on the rules, from parties ranging from nonprofits to investment firms, have been submitted in recent weeks.

On Tuesday, the partial government shutdown was in its 18th day, with Democratic lawmakers and President Trump unable to break an impasse over the president’s demands for billions of dollars to build a wall on the nation’s southern border with Mexico.

Created by the sprawling 2017 federal tax overhaul, the Opportunity Zones program offers tax breaks to investors who funnel capital gains into special funds that are supposed to invest the money into eligible census tracts that are economically distressed—the “zones.”

When the Treasury Department released the draft rules last October, the department said it anticipated issuing a second round of guidance before the end of the year.

But, as of Tuesday, the White House Office of Information and Regulatory Affairs had not publicly reported that any additional Opportunity Zones rules were under review.

Dec. 28 was the deadline for written comments on the draft rules released in October.

The online federal docket for the regulations shows that at least 145 comments had been received.

One group that submitted feedback is the Florida Housing Coalition. The nonprofit suggested Treasury set performance measures and reporting requirements for the program, and that it should take steps to prevent “predatory or speculative” purchases of vacant land.

Another example of the comments is from Ovation Partners, an investment adviser that manages more than $500 million of assets. The firm is seeking greater clarity on timing requirements for investing gains from partnerships into the funds that can invest in the zones.

Treasury says the new date for a hearing on the proposed rules will be set no earlier than two weeks from the date a notice announcing it is published in the Federal Register. This week’s meeting was going to be held at an IRS building in Washington, D.C.

Route Fifty

By Bill Lucia,
Senior Reporter

JANUARY 8, 2019

[The States That Give and Get the Most Federal Dollars.]

A new analysis identifies states that have sent more money to Washington than they saw in returned federal spending.

Connecticut, Massachusetts, New Jersey and New York are among the places that come out at the bottom of the heap in a new analysis that compares how the money that flows from states to the federal government stacks up against federal spending within each state.

The Rockefeller Institute of Government examined the distribution of federal revenues and spending for each state, and came up with "balance of payments" figures that measure the gap between the two sums overall and on a per-capita basis to control for population size.

Forty states had a positive balance of payments in the 2017 federal fiscal year, according to the analysis, meaning federal spending in those states was greater than the taxes and other revenues sent from the states to the federal government. Ten states had negative balances.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

JANUARY 8, 2019

The Shutdown's Next Victims Could Be Public Transit Systems.

Watch out, New Jersey commuters: NJ Transit's budget could be one of several public-transportation credit casualties if the standoff in Washington, D.C., drags into the spring.

The federal government shutdown is now in its 20th day, with still no end in sight. If it extends long enough, it could cause a budget crunch for the public transportation systems that get support from the Federal Transit Administration. Most of the FTA's programs are now closed, and 90% of its staff is furloughed, because of the shutdown, according to a note from credit-ratings firm Moody's.

"US mass transit systems have temporarily lost financial aid that supports a wide range of needs, from daily maintenance and service to ongoing repair and expansion projects," the firm's analysts write.

Continue reading.

Barron's

By Alexandra Scaggs

Jan. 10, 2019 11:27 a.m. ET
