Bond Case Briefs

Municipal Finance Law Since 1971

Could Public Banks Help California Fund Affordable Housing?

A coalition of bank activists in ten California cities is pushing for public banks. A bill to support them is working its way through the state legislature.

“We planted a seed,” tweeted Public Banks L.A., the day the organization’s ballot measure—which would have created the country’s first city-led public banking institution—failed last year in Los Angeles. “This is just the beginning.”

Turns out, they were right. After voters in L.A. rejected the measure that would have allowed the city to divest funds from Wall Street banks and create their own public banking institution at the local level, Public Bank L.A. converged with Public Bank San Francisco and coalitions in eight other California cities and regions to form a united public banking front. And now, a state assembly bill, AB 857, that would make it legal for each of these cities to open local banks, cosponsored by San Francisco Assembly member David Chiu and Los Angeles Assembly member Miguel Santiago, has advanced through the California Assembly and into Senate committees.

Continue reading.

CITYLAB

by SARAH HOLDER

JUL 17, 2019

How Bad Is the State and Local Pension Crisis Really?

State and local government pension plans hold nearly $4 trillion in assets and provide retirement income to over 10 million Americans. For most of these plans, the value of liabilities for future benefit payments exceed the value of plan assets. According to many journalists, academics, and policymakers, this failure to fully prefund state and local pensions constitutes a crisis. In a paper presented at the 2019 Municipal Finance Conference at Brookings, Jamie Lenney of the Bank of England, Byron Lutz of the Federal Reserve Board, and Louise Sheiner of Brookings provide an alternative view. Instead of focusing on a full prefunding benchmark, they focus on the sustainability of pension plans—whether plans will run out of assets and need to borrow money or be bailed out to meet benefit obligations.

Focusing on sustainability, Lenney, Lutz, and Sheiner argue, is appropriate for assessing the effect of pensions on state and local finances for several reasons. First, it provides a clear answer to the pressing question of whether public pensions are likely to spark a fiscal crisis. Second, it is consistent with history; in aggregate, these plans have always operated far short of full prefunding. Finally, getting to full prefunding is not necessarily welfare enhancing.

The authors use information in pension actuarial reports and state government comprehensive annual financial reports to project the benefit payments to current and future retirees for a sample of 40 pension systems. They find that benefit payments, as a share of the U.S. economy, are currently at their peak and will remain there for roughly the next two decades. Thereafter, reforms instituted by many plans to lower benefits will gradually cause a significant decline in the size of pension payments relative to GDP. This suggests that the cashflow pressure plans are currently experiencing will eventually recede.

Continue reading.

The Brookings Institute

by Finn Schuele and Louise Sheiner

Monday, July 15, 2019

What Crisis? The Case for Not Panicking Over Pension Debt.

New research released this week shows that even pension plans with big unfunded liabilities are likely to survive in the long term.

Over the past decade, public retirement costs have spiked while governments' unfunded liabilities –now totaling more than $1.2 trillion — have continued to grow.

But according to research that debuted this week, lawmakers shouldn't worry too much about accumulating pension debt. "There's an assumption that fully funding pensions is the right thing to do," said the Brookings Institution's Louise Sheiner at the paper's presentation. "Most of the work in this area has been about calculating how unfunded these plans are [and] that's led to a lot of concern that these plans are in a huge crisis."

Sheiner, along with co-authors Byron F. Lutz of the Federal Reserve Board and Jamie Lenney of the Bank of England, say that's not the case. They argue that pension debt is stable as long as its size relative to the economy doesn't increase. "When you approach the pension situation from a public finance [and sustainability] angle," Sheiner said, "there's less of a crisis than is typically portrayed."

The paper, which was presented at the Brookings Institution's annual municipal finance conference in Washington, D.C., finds that pension benefit payments as a share of GDP are currently at their peak level and will remain there for the next two decades. That's because the 2008 market crash came at a time when pension plans were starting to see baby boomers retire, meaning they dropped in value just when payments to retirees were starting to increase.

By 2040, however, the reforms instituted by many plans following the financial crisis will gradually cause benefit cash flows to decline significantly. Since those changes were to current employees' plans, governments won't see the full effect of those savings until those workers retire.

All of this means that, according to the research, the worst of it is over for most pension plans. For the next 40 or so years, the ratio of pension debt as a share of the economy is expected to remain the same, as long as the plans achieve moderate investment returns and governments continue to make consistent payments equal to or slightly higher than they are now.

Those, however, are two big conditions. Consistent payment schedules that last more than a few election cycles can be difficult for politicians.

Take Illinois. In 1994, it set a 50-year payment schedule that would fund the plan at 90 percent. For the first decade of the schedule, the payments were low. They've since started ramping up. As costs have increased, lawmakers have consistently found ways to avoid making them, meaning that the expected contributions are getting even bigger and bigger. Illinois now has one of the highest state contribution rates as a share of payroll, around 50 percent.

Sheiner said there are some plans, such as Puerto Rico's, that are essentially out of money and probably in need of a bailout. But most plans could achieve their definition of stability by maintaining or slightly increasing their current contribution rate as a percentage of payroll. (The U.S. average is 17.4 of payroll.)

The main concern, she adds, is with all this pressure to be fully funded, what are states giving up? And is that even necessary? "You do hear a lot of stories about people wanting to do things that are incredibly valuable, like getting lead out of water and investing more in education. These have huge rates of return that affect people's health, inequality, basically everything that's really important," she said. "And they can't do it because they have to fully fund their pension."

GOVERNING.COM

BY LIZ FARMER | JULY 19, 2019 AT 4:00 AM

High And Tight: Investment Options For A Rich Muni Market

Summary

- Muni CEFs have had a strong run-up in the last few months, supported by falling nominal rates, tighter credit spreads, and strong muni demand.
- Historically-high leverage costs, low long-term yields, and bond calls continue to pressure muni CEF earnings leading to continued distribution cuts.
- Investors who would like to take some chips off the table but maintain muni exposure can rotate into an ETF or CEFs with more robust coverage and UNII profiles.

Continue reading.

Seeking Alpha

ADS Analytics

Jul. 19, 2019

Muni Bond Defaults More Common than Rating Agency Tallies Suggest.

Defaults on local government bonds have been more frequent than credit rating agencies have reported, according to a paper by Lang (Kate) Yang of The George Washington University and Yulianti Abbas of the University of Indonesia prepared for the 2019 Municipal Finance Conference at

Brookings. But because these defaults usually occur on bonds issued to fund specific projects, as opposed to general obligation bonds, the defaults do not tend to raise the borrowing costs of the defaulting local governments.

Using data on defaults reported by local governments from 2009 to 2015, including bonds that were not rated, the authors identify 2,563 defaults of all kinds – including technical defaults (for example, failure to file an audited financial report) and pre-monetary defaults (for example, unexpectedly drawing on reserve funds to maintain debt-service-ratios required for a loan) as well as failure to make interest payments. Excluding the highly publicized bankruptcies of Detroit, Jefferson County, and Puerto Rico, they count 2,049 defaults with par value of $7.2 billion – still a very small slice of all municipal bonds outstanding.

General Obligation (GO) bonds, the most common type of municipal bonds, are backed by the full faith and credit of the issuing municipality, and issuing governments can tap into all available revenue sources to meet their obligations to bondholders. Revenue bonds, in contrast, have a claim on a specified stream of revenues – tolls on a highway or ticket revenues at a stadium, for instance. Some revenue bonds are issued by a municipality on behalf of a private entity.

Most of these defaults that Yang and Abbas track are among bonds that haven't been rated by a credit rating agency, uninsured bonds, or bonds that are not GO bonds. They do not find an increasing number of defaults; indeed, excluding the three big municipal bankruptcies, they find a decline in defaults since 2012.

Comparing interest rates on government debt across counties and municipalities that experienced some form of default on non-GO bonds to those that did not, the authors find no significant effect of non-GO defaults on overall borrowing costs of the defaulting entity. These effects persist even when controlling for bond characteristics, as well as when looking only at municipalities that frequently default, are frequent borrowers, experience high unemployment rates, and have fewer legal hurdles to declaring municipal bankruptcy. The authors conclude that local governments should be comfortable issuing non-GO bonds or helping private entities access municipal markets despite the fact that such securities have a higher default rate than GO bonds, in part because there is no spillover from a non-GO default to municipal borrowing costs. They also conclude that local governments should not bail out failing non-GO bonds with general tax revenues because the spillover effects are so minimal.

Read the paper here»

The Brookings Institute

Michael Ng and David Wessel

Monday, July 15, 2019

How Puerto Rico's Default Lowered States' Borrowing Costs.

The legal framework for state (as opposed to municipal) default is uncertain; no state has defaulted on its debt since Arkansas did so in 1933. In a paper, "Legal Uncertainty and Municipal Bond Yields: Market Spillovers from Puerto Rico," prepared for the 2019 Municipal Finance Conference at Brookings, Chuck Boyer of the University of Chicago Booth School of Business argues that markets view Puerto Rico's recent default as setting precedents for the legal framework should any U.S.

state default. (In the U.S., municipal and county governments can declare bankruptcy; states cannot.) Using an event study methodology, Boyer finds that state bond prices had statistically significant reactions to legislation and legal decisions regarding Puerto Rico. By reducing the legal uncertainty surrounding a possible state default, the Puerto Rico decisions reduced the cost of state borrowing, he finds.

Boyer studies highlights four events in the Puerto Rico saga. First, in 2014, Puerto Rico enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (Recovery Act), which allows state-owned corporations to restructure their debts. Two years later, in 2016, they passed the Debt Moratorium and Financial Recovery Act (Debt Act) that allowed Puerto Rico to stop making debt payments. Third, in the same year, U.S. Congress passed PROMESA, allowing Puerto Rico to restructure debts with more favorable terms toward creditors than Chapter 9, the means through which local governments declare bankruptcy. Finally, in 2018, a judge ruled that Puerto Rico's special revenue bond payments are optional during bankruptcy proceedings. These events "decrease market uncertainty as they have begun to create some precedent for a framework for state government default," Boyer writes.

Using data on individual bonds issued by state governments, the author estimates changes in the average bond spreads between state-issued bonds and U.S. Treasury debt of similar maturities, 15 days and 30 days following the announcement of each event. Bond spreads are a measure of the market's judgment on the riskiness of a security. Boyer reasons that "if an event leads to an increase in the expected recovery rate, one would expect to see a decrease in spread as the expected payout to debtholders is now higher." Controlling for factors related to the characteristics of each bond, Boyer finds that the three Acts lowered the bond spread between 0.03 and 0.08 percentage points. In addition, consistent with his hypothesis, the ruling that Puerto Rico does not need to pay its revenue bonds in bankruptcy, which decreases recovery rate, increased bond spreads by 0.08 percentage points. These results suggest that state bond prices reacted to the legal events in Puerto Rico.

The author also examines whether states in worse fiscal health are worse affected by the legal decisions in Puerto Rico as they are more likely to default. He finds mixed results for this hypothesis. Although bonds from states with credit ratings below the highest investment grade reacted negatively to the Recovery Act, increasing spreads between 0.95 and 1.25 percentage points, neither the Debt Act nor PROMESA had a sizeable or significant effect. He concludes that there is no broad evidence that weaker state government are particularly affected, but suggests that a model of legal uncertainty may better illuminate reactions.

In short, Boyer finds that the legal decisions on Puerto Rico decrease bond spreads between state bonds and Treasury debt. This suggests that one channel affecting municipal debt is legal uncertainty. The author concedes that more research needs to be done on the legal uncertainty channel, but says that his results imply that establishing a legal framework for state government default could lead to lower borrowing costs for state governments.

The Brookings Institute

Jeffrey Cheng and David Wessel

Monday, July 15, 2019

TAX - ILLINOIS

Peterson Plaza Preservation, L.P. v. City of Chicago Department of Finance

Appellate Court of Illinois, First District, Fifth Division - June 21, 2019 - N.E.3d - 2019 IL App (1st) 181502 - 2019 WL 2588724

Taxpayers filed claims for refunds with city department of finance, based on municipal code section providing exemption for transfers of title to real property.

ALJ granted summary judgment in favor of department of finance, upholding denial of taxpayers' refunds. After actions were consolidated, the Circuit Court upheld the administrative decision denying taxpayers' refunds. Taxpayers appealed.

The Appellate Court held that:

- Taxpayers' use of its enterprise zone property to provide residential housing to low-income families was not primarily commercial purpose;
- Municipal tax ruling was not unconstitutionally vague; and
- Taxpayers failed to show there was no reasonable distinction, under uniformity clause, between hotels and motels and taxpayers' federally subsidized residential apartment buildings.

Taxpayers' use of its enterprise zone property to provide residential housing to low-income families under federal program designed to aid low-income families was not primarily commercial purpose within meaning of municipal code section providing transfer tax exemption for enterprise zone property used primarily for commercial or industrial purposes; although taxpayers provided free services to tenants, such as general education development (GED) classes, literacy programs, health screenings and job training, and taxpayers had intended to establish on-site leasing offices from which they would conduct business of owning, leasing, managing, improving, and maintaining residential apartments, taxpayers primarily used rental units inside enterprise zones to provide residential housing for low-income families, and had dedicated between 87% to 100% of each of their properties to tenant living space, instead of for sale or provision of goods and services.

City's tax ruling, which provided that more than 50% of property in enterprise zone must be used for commercial purposes as to qualify for municipal code exemption from transfer taxation, was not unconstitutionally vague as applied to taxpayers' action alleging their properties consisting of residential and commercial use should qualify for exemption, where amount of space devoted to residential versus commercial use in properties had been quantified, each of taxpayers' properties had allocated between 87% and 100% of its space to residential use for low-income families, and taxpayers did not need to guess at meaning of tax ruling to determine exemption did not apply.

Taxpayers failed to show there was no reasonable distinction, under uniformity clause of Illinois Constitution, between hotels and motels that were classified as properties primarily used for commercial purposes and thereby exempted from transfer taxation, and taxpayers' federally subsidized residential apartment buildings, where taxpayers provided no evidence that their federally funded housing developments for low-income residences inside enterprise zones would have same direct impact on business growth and local economy as hotels and motels, which encourage additional traffic and draw constant influx of visitors, including tourists and out-of-town guests, that patronize businesses and inject money into local economy.

TAX - NEW YORK

Sleepy Hollow Lake, Inc. v. McBride

Supreme Court, Appellate Division, Third Department, New York - July 3, 2019 - N.Y.S.3d - 2019 WL 2817487 - 2019 N.Y. Slip Op. 05371

Homeowners association (HOA) commenced proceedings to challenge municipalities' tax assessments for common areas within development.

The Supreme Court, Greene County, granted HOA's motion for summary judgment, and municipalities appealed.

The Supreme Court, Appellate Division, held that genuine issues of material fact precluded summary judgment.

Genuine issues of material fact concerning whether individual lot owners were granted a license or an easement to common areas, whether property values of individual lot owners included enhanced value or premium sufficient to cover or offset the value of common area parcels, and whether common areas had any value or beneficial property interest for homeowners association (HOA) precluded summary judgment on HOA's petition to reduce tax assessments of the common areas to zero.

Taylor Lembi: How OZs Can Address the Housing Crisis

Can Opportunity Zones help address the nation's housing crisis? Taylor Lembi is founder and CEO at San Francisco-based real estate

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Opportunity Db

July 18, 2019

Multistate Review of Property Tax Decisions and Developments.

Since the last edition of The Evaluator, there have been several notable decisions from courts and tax boards; and legislative developments in jurisdictions across the country.

Valuation

THE KANSAS BOARD OF TAX APPEALS REDUCES ASSESSED VALUES FOR 11 WALMART PROPERTIES BY MORE THAN $120 MILLION

In the Matter of the Equalization Appeals of Wal-Mart Stores, Inc. for the Year 2016 in Johnson County, Kansas, Docket Nos. 2016-2691-EQ et al. (2019).

The Kansas Board of Tax Appeals has decided in favor of Walmart in recent tax appeals initiated by the retailer against Johnson County, KS for eleven of their stores.

To support their tax assessments of the eleven properties, Johnson County had compiled cost and

income approaches for the properties and obtained appraisals from nationally recognized appraisers. Walmart's appraiser performed all three recognized valuation approaches for his appraisals but he placed primary emphasis on the sales comparison approach for the ten owner-occupied properties, and primary emphasis on the income approach for the one leased property. For the appraisals of the ten owner-occupied properties, the appraiser focused on analyzing fee simple sales in his sales comparison approach, and avoided utilizing sale/leaseback and build-to-suit sales.

After the examining the evidence, arguments, and valuation methodologies of the parties, the Board concluded that the income capitalization approach methodology utilized by Walmart's appraiser gave the best indication of the market value for all of the properties. The Board found that the appraiser's "selection and review of pertinent income approach inputs was supported and highly effective at distilling the market value of the subject real property." After slightly modifying the capitalization rates used by Walmart's appraiser in his income capitalization approaches for each property, the total assessed values for the properties were reduced by over $120,000,000 for the two tax years at issue.

KENTUCKY CLAIMS COMMISSION DETERMINES THAT FAIR CASH VALUE FOR A LEASED WALMART PROPERTY IS MOST CLEARLY REPRESENTED BY INCOME APPROACH UTILIZING CONTRACT RENT

Agree Hazard KY, LLC dba Walmart v. Perry County PVA, et al.; KY Claims Commission, File No. K17-S-163, May 22, 2019.

The Kentucky Claims Commission (KCC) recently reversed a decision from the Perry County Board of Assessment Appeals for the tax assessment for a big box property that is leased by Walmart. The KCC determined that the fair cash value of the property was most closely represented by the income valuation of the leased fee estate. This valuation approach utilizes the actual contract rent paid by Walmart as the income. After applying market expenses and appropriate capitalization rates to the contract rent paid by Walmart, the Commission determined that the fair cash value of the leased fee estate was $23,250,000 as of January 1, 2017, and was $22,500,000 as of January 1, 2018.

TENNESSEE STATE BOARD OF EQUALIZATION UPHOLDS COUNTY'S VALUATION FOR OWNER-OCCUPIED LOWE'S STORE DUE TO LACK OF RELEVANT COMPARABLE SALES

In re: Lowe's Home Centers, Inc., Tenn. SBE, Dkt. No. 106409, (June 18, 2019).

The Tennessee State Board of Equalization recently upheld the Shelby County Assessor's valuation for a big-box Lowe's store.

As the appellant, Lowe's had the burden to prove that the Assessor's value should be reduced to the valuation opinion reached by its appraiser. Lowe's primary appraisal expert utilized all three recognized valuation approaches to value the property but he placed almost all of his weight on the sales comparison approach. All but one of his comparable sales were located outside of Tennessee and all were vacant at the time of sale. Lowe's appraiser used comparable big-box sales from Illinois, Michigan, Minnesota, Washington, Georgia, Colorado, and Florida. The appraiser had only personally visited the one comparable that was located in Tennessee, and he did not make adjustments to any of his comparables to account for their location compared to the subject property.

After considering the evidence put forth by the taxpayer and the critique of that evidence offered by the Assessor, the judge determined that the location of a property, vacant or not vacant, is of "paramount importance." The judge found that the appraiser's lack of adjustments to account for the

"city, area of the city, and economic viability of a particular area" was fatal to his analysis. Since the judge found that Lowe's evidence did not support a reduction in value, the Assessor's value for the property was retained.

INDIANA TAX COURT REVERSES BOARD OF TAX REVIEW'S DECISION FOR SHOPPING CENTER DUE TO IMPROPER CAPITALIZATION RATE DETERMINATION

Madison County Assessor v. SEDD Realty Co. (May 22, 2019), Indiana Tax Court No. 18T-TA-00012.

This case stands for the proposition that a reviewing tribunal must be able to support its decision with the evidence on the record. The parties in this matter contested the value of a retail strip center in Anderson, Indiana. While both the county assessor and the owner agreed that the original 2009-2012 values were too high, they disagreed as to the extent of the reduction. Before the Indiana Board of Tax Review, both parties submitted appraisals, which were primarily based on the income approach to value. The Assessor's expert utilized a capitalization rate of 11.25%, while the owner used a capitalization rate of 14%. Upon review of the two approaches, the Board determined that the owner's expert "essentially valued a leased fee interest" rather than a fee simple interest and therefore rejected the conclusions of value. The Board did adopt the net operating income determined by the Assessor's expert. However, the Board then concluded that the capitalization rate the Assessor's expert used was inappropriate because the sales used to calculate the rate had significantly higher occupancy than the subject. The Board next reviewed the sales used by the owner in calculating its capitalization rate and chose three of the 13 comparable sales to determine the Board's own capitalization rate of 12%. The Board then applied this 12% to the assessor's net operating income to find value.

On appeal, the Indiana Tax Court reversed the Board's decision to use the 12% capitalization rate. The Court reasoned that the Board, in developing its own unique capitalization rate, failed to explain how it reached its decision. The Court noted that the 12% was neither the average nor the median of the rates set forth in the owner's report, which had rates between 10.9% and 16.24%. The Court further noted that the report had additional rate data that was not explained by the Board. Thus, the Court concluded that the Board's 12% capitalization rate was "unsupported by any evidence on the record and thus, arbitrary and capricious – little more than throwing a dart at the board." The Court reversed and remanded the matter to the Board with instructions to use the assessor's capitalization rate, as it was the "only probative evidence" in the record.

MINNESOTA TAX COURT FINDS THAT THE COMMISSIONER OVERSTATED THE VALUE OF A NATURAL GAS PIPELINE

Northern Natural Gas Co. v. Commissioner of Revenue, Minn. Tax Ct., Amended Findings of Fact, Conclusions of Law, and Order for Judgement, Dkt. Nos. 8864-R; 8976-R, June 4, 2019.

Northern Natural Gas Company operates a 14,700 mile-long interstate natural gas transmission pipeline, portions of which cross 60 of Minnesota's 87 counties. In valuing the pipeline, the Commissioner's appraisers relied upon stock sales, which included all of the acquired property's property – both tangible and tangible assets to assess the pipeline in Minnesota.

The Commissioner had valued the pipeline at $2,250,081,300 for tax year 2015 and $2,466,132,200 for 2016 within Minnesota. The Minnesota Tax Court held that the taxpayer had established by a preponderance of the evidence that the value should be reduced based upon obsolescence as a result of mandated governmental regulations, even though the Commissioner argued that external

obsolescence should not apply claiming that these factors were within the taxpayer’s control. However the Tax Court found that the taxpayer established that changes in the supply of natural gas was a cause of economic and external obsolescence, and also actually affected the utility and salability of the pipeline on the valuation dates. The Court found that the value should be $1,879,381,400 for 2015 and $1,848,039,200 for 2016 within Minnesota, properly apportioned among the affected counties.

OHIO APPEALS COURT AFFIRMS BOARD OF TAX APPEALS DECISION TO VALUE ASSISTED LIVING FACILITY AT SALE PRICE

Plain Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision, 2019-Ohio-1746.

Canton OH Senior Property, LLC (“Canton Senior”) purchased a 76-unit assisted living facility. The purchase included the real estate and the on-going business. The conveyance fee statement filed at the time of the sale listed total consideration of $13,750,000, with $2,450,000 paid for items other than realty and $11,300,000 for real estate.

For tax year 2015, Stark County valued the property at $3,583,400. The Plain Local Schools (“Plain Local”) filed a complaint seeking a value of $11,300,000. Plain Local submitted evidence of the sale and Canton Senior submitted an appraisal that opined to a value of the real estate at $5,530,000. The Stark County Board of Revision found value consistent with the appraisal and Plain Local appealed.

The Ohio Board of Tax Appeals (“BTA”) found that the sale at $11,300,000 as allocated was the best evidence of value for tax purposes finding that Canton Senior failed to meet its burden to show that the sale was not the best evidence of value for the property. On review, the Court affirmed the BTA finding that the BTA properly analyzed the evidence before it, including the appraisal submitted by Canton Senior, along with the allocation made on the conveyance, and properly determined that the allocation made at the time of sale was not rebutted by the appraisal.

NEW JERSEY TAX COURT FINDS SIGNIFICANT REDUCTION WARRANTED FOR FORMER MERILL LYNCH CORPORATE CAMPUS

ML Plainsboro Ltd. Prntshp/Gomez v. Township of Plainsboro, Case Nos. 002348-2005 & 001620-2006(unpublished) May 29, 2019.

In a nice win for the taxpayer, the Tax Court found that the taxpayer overcame the presumption of the validity of the assessment after an 18-day trial.

The property is a 698,722 square foot office building, originally designed as a corporate campus for Merrill Lynch, which included a hotel and conference center. In 2004, just before the commencement of the appeal, the hotel and conference center was sold to another owner, but due to its configuration a number of easements and agreements were needed. Both the taxpayer and township retained appraisers to opine to the value for tax years 2005 and 2006. During an eighteen day trial, the parties presented their opinions of value. The difference in the value conclusions was considerable because the appraisers differed on the highest and best use determination for the property. The taxpayer’s appraiser determined that the highest and best use was to be rented as corporate office space to a single tenant due to the property’s configuration and utilized the income approach to find value. In contrast, the township’s appraiser opined that the highest and best use was as a special purpose, owner occupied corporate campus for which the cost approach to value was the most appropriate method to find value. The Court determined that the taxpayer’s highest and best use was more credible because although the property was originally constructed as a

corporate campus for Merrill Lynch, over time the property's use changed, and as of the valuation dates the property was more similar to typical office space than a corporate campus.

Based upon its analysis, the Court determined that for 2005 the value should be $99MM, consistent with the taxpayer's appraisal evidence, as opposed to $214.5MM opined to by the township's appraiser. For tax year 2006, the Court found value at $107.5MM. This case is a good example of the need for appraisers to formulate full opinions and ensure they have properly considered all approaches to value, especially in light of a difference of opinion on highest and best use.

INDIANA TAX COURT UPHOLDS SPECIAL PROPERTY'S ASSESSMENT BASED ON ITS MARKET VALUE-IN-USE

Wigwam Holdings LLC v. Madison Cty. Assessor, Indiana Tax Court, 18-TA-00015 (May 8, 2019).

The owner of a former school building asked the Indiana Tax Court (the "Court") to overturn the state Board of Tax Review's (the "Board's") classification and valuation of the 220,000 square foot building, claiming that the special purpose property's highest and best use was vacant land.

The owner challenged the Board's recent reclassification of the entire property as utility/storage and its resulting assessment of the property. On appeal, the owner cited to the appraisal report it had submitted to the Board, claiming that because it had presented a compliant appraisal and the county assessor had not presented any rebuttal evidence, the owner had met its burden of proof. The appraisal stated that the subject property's highest and best use was as vacant land because the building was functionally and economically obsolete.

The Court disagreed with the owner, stating that merely presenting an appraisal does not establish a prima facie case for a reduction. The Court confirmed that the Board must find such an appraisal to be probative evidence of value, and agreed with the Board that the appraisal in the instant case was not probative. Specifically, the Court held that the appraisal was not probative because it provided an estimate of the subject property's market value rather than its market value-in-use. In so holding, the Court noted that while the market value-in-use for most properties is often equivalent to market value, special purpose properties like the subject are a rare exception. Because a special purpose property's current use is inconsistent with its highest and best use, its market value-in-use does not equal market value because a sales price will not reflect the property's utility. As a result, the owner's appraisal did not constitute probative evidence of the subject property's market value-i--use.

The Court also rejected the owner's argument that the current assessment failed to account for abnormal obsolescence. Because the owner did not affirmatively identify the causes of the obsolescence or quantify the amount of the obsolescence, the Court declined to overturn the Board's decision on this basis.

OHIO'S EIGHTH DISTRICT COURT OF APPEALS FINDS BOARD OF TAX APPEALS ACTED UNLAWFULLY AND UNREASONABLY WHEN IT FAILED TO CONSIDER APPRAISAL EVIDENCE OFFERED TO REBUT LEASED FEE SALE

Spirit Master Funding IX, LLC, et al. v. Cuyahoga County Bd. of Revision, et al., 8th Dist. Cuyahoga No. 107382, 2019-Ohio-1394.

The owner of a restaurant property filed an appeal of the decision of the Ohio Board of Tax Appeals ("BTA") on the grounds that the BTA failed to consider the property owner's appraisal report. The

subject property sold in two leased fee transactions: one in August 2014 and one in December 2014. The property owner filed a complaint seeking a decrease in the value of the subject property for tax year 2014 and tax year 2015. In connection with the 2014 case, the Board of Revision ("BOR") adopted the August 2014 leased fee sale price.

In support of its decrease complaint, the restaurant provided an appraisal report and testimony of the appraiser. The BTA retained the BOR's valuation and declined to consider the property owner's appraisal report. The property owner appealed the BTA's 2014 decision to the Ohio Supreme Court. The Ohio Supreme Court held that the BTA acted improperly when it failed to consider the appraisal report in connection with the 2014 case and remanded the matter to the BTA with instructions to consider the appraisal report.

The property owner presented the same evidence in connection with the tax year 2015 case. The BOR increased the value of the subject property to the December 2014 sale price finding that it was the best evidence of value. The property owner appealed the BOR's decision to the BTA, which again declined to consider the property owner's appraisal report.

The appellate court determined that the BTA erred again in the 2015 case when it refused to consider the appraisal report. The appellate court specifically noted that given the Ohio Supreme Court's decision in the 2014 case, the BTA erred when it ruled that the appraiser's testimony about the sales and sale price was hearsay. Following Terraza 8, LLC v. Franklin Cty. Bd. of Revision, 150 Ohio St. 3d 527, 2017-Ohio-4415, 83 N.E.3d 916, the appellate court also reiterated that the BTA was to consider not only the sale price, but any other evidence the parties present that is relevant to the value of the unencumbered fee simple estate. Therefore, the BTA acted unreasonably and unlawfully when it failed to consider the appraisal report.

OHIO BOARD OF TAX APPEALS FINDS PROPERTY OWNER'S APPRAISAL NOT RELIABLE EVIDENCE AND DID NOT REBUT PRESUMPTION OF LEASED FEE SALE THAT OCCURRED AFTER SALE/LEASEBACK TRANSACTION

QCA-Parma, LLC v. Cuyahoga Cty. Bd. of Revision, BTA No. 2017-2169, (June 19, 2019).

The property owner appealed a decision of the Board of Revision increasing the value of the subject property based on a November 2016 leased fee sale. The November 2016 transaction was a sale/leaseback transaction, which the property owner argued was not good for setting value under the Ohio Supreme Court's decision in Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 151 Ohio St.3d 100, 2017-Ohio-7578 ("State Farm"). While the case was pending at the Board of Tax Appeals ("BTA"), the subject property was transferred again in a May 2017 leased fee transaction.

At the BTA, the property owner argued that the May 2017 sale was subject to an above-market lease, negotiated in context of a prior sale/leaseback transaction and therefore not indicative of fair market value. The property owner provided an appraisal report opining to a value of $1,400,000 as of tax lien date using the sales and income capitalization approaches to value. The BTA determined that based on the evidence, the November 2016 transaction was a sale/leaseback transaction because the same person signed as the agent of the seller and the agent of the lessee. Notably, however, the BTA rejected any reliance on the appraiser's statements about the circumstances of the November 2016 sale as hearsay.

The BTA stopped short of holding that the May 2017 sale following the sale/leaseback transaction would also not be an arm's length sale. The BTA rejected the property owner's argument that the fact that the lease was negotiated in the context of a sale/leaseback negated the utility of the sale in

valuing the property as of tax lien date. The BTA also noted that no one personally involved with the property owner or the tenant testified about the details of the lease. Moreover, the BTA criticized the property owner because the only record of the actual lease is the Memorandum of Lease which contains the lease term, but no lease rate, and the only evidence of the lease rate was provided by the appraiser. The BTA also commented that the appraiser considered vacant "dark" properties in his sales comparison reports rather than those sold subject to a lease.

The BTA found that the appraisal report was not probative of the property's value and concluded that the May 2017 leased fee sale was the best evidence of value for the property.

PENNSYLVANIA COURT UPHOLDS DISMISSALS OF PROPERTY OWNER'S CLASS ACTION COMPLAINT CONTESTING INCREASE COMPLAINTS FILED BY TAXING AUTHORITY

Joseph Nissim Martel and Ester Martel, husband and wife, on behalf of themselves and all others similarly situated v. Allegheny County, City of Pittsburgh, Pittsburgh Public Schools, and Allegheny County Board of Assessment Appeals and Review, No. 568 C.D. 2018, 2019 Pa.Commw. LEXIS 468 (May 22, 2019).

Residential property owners filed a class action complaint in equity on behalf of themselves and other property owners in the Allegheny County Court of Common Pleas. In their complaint, the property owners sought class wide relief from property assessments which were based on assessment appeals brought by the school district, County, and City.

The property owners contended that the Allegheny County Assessment Review Board (the "Board") erred by increasing their real property assessments based solely upon improperly submitted evidence of the sales prices for the subject property. The property owners contended that the Administrative Code precluded the Board from increasing the base year assessment value of a property absent physical changes or improvements to the property and that these appeals resulted in "'de facto' spot reassessments." By using evidence of current market value, rather than the base year assessment system, the property owners argued that the County violated the uniformity clause and due process clauses of the federal and state constitutions.

The trial court dismissed the property owner's class action complaint as legally insufficient. In essence, the Court of Common Pleas determined that the Administrative Code and Board Rule that the property owners relied upon were invalid because they conflicted with the authority granted to the Taxing Authority.

The appellate court ruled that the trial court properly dismissed the class action complaint but concluded that the trial court should have dismissed the complaint on the grounds that the property owners failed to exhaust the remedies available to them pursuant to the Assessment Law. Because the legislature provided a statutory remedy for challenging assessments, the Board was the property authority to hear all issues related to an assessment appeal.

OHIO APPEALS COURT UPHOLDS DISMISSAL OF OWNER'S APPEAL AS UNTIMELY

M&F Lexington, LLC v. Franklin Cty. Bd. of Revision, 2019-Ohio-2022.

An Ohio appeals court recently had occasion to interpret and apply certain statutory filing requirements governing appeals to the state's Board of Tax Appeals (the "Board"), upholding the Board's dismissal of a property owner's valuation appeal as untimely. The property owner asked the Court to overturn the Board's decision and to consider its appeal filed as of the date it mailed the appeal to the county Board of Revision (the "BOR").

The filing requirements for appeals of BOR decisions are governed by statute; notices of appeal must be filed with both the Board and the county BOR within 30 days after the mailing of the BOR decision. What is deemed "filed" is also set by statute, and depends on the method of delivery. In the instant case, the property owner filed its notice with the BTA electronically and via mail to the BOR. The property owner mailed the notice on the filing deadline, but the BOR did not actually receive it until several days after the 30-day deadline.

The property owner claimed that it had timely filed its notice with the BOR because it mailed the notice before the appeal window closed. However, the property owner failed to specify what method of delivery was actually used, and presented no evidence that it had used one of the statutorily-permissible methods (certified mail, express mail, or authorized delivery service). Though the property owner submitted affidavits from its representative and the BOR clerk, the Court noted that the affidavits were irrelevant without a sender's receipt showing the date of mailing by an appropriate method. Without such evidence, the Court deemed the date the BOR received the appeal as the date of filing. Because that filing date was five days after the 30-day deadline, the Court agreed with the Board that the appeal was untimely, and affirmed its dismissal.

INDIANA TAX COURT REAFFIRMS DISMISSAL OF TAX APPEAL FOR HOTEL DUE TO LACK OF SUBJECT MATTER JURISDICTION

Convention Headquarters Hotel, LLC v. Marion County Assessor (May 22, 2019), Indiana Tax Court No. 19T-TA-6.

In the last edition of the Evaluator, we reviewed an Indiana Tax Court decision regarding the ability of a taxpayer to appeal a real property tax valuation question to the Indiana Tax Court when the lower tribunal, the County Property Tax Assessment Board of Appeals, has failed to rule on an appeal. The Court held that a Board of Review must issue its determination within one-year of the filing of a petition; this is the "maximum time" afforded by statute. Failure to meet this one-year deadline permits the petitioner to invoke the Jurisdiction of the Tax Court over the valuation question. However, because the appeal at issue was filed before the one-year "maximum time" granted to the Board, the appeal was premature and had to be dismissed. Convention Headquarters Hotels, LLC v. Marion County Assessor (Jan. 25, 2019), Indiana Tax Court No. 18T-TA-00014. ("Convention Headquarters I")

The current decision follows from the Court's dismissal in Convention Headquarters I. The matter returned to the Assessment Board of Appeals for hearing, which was set for March 1, 2019. However, that very morning, the property owner again filed an appeal to the Indiana Tax Court, claiming that the March 1 hearing date was after the close of the "maximum time" granted to the Board for its review. Before the Court, the county assessor moved for dismissal, claiming that the board had until March 3 to finish its review. The Tax Court agreed with the county and dismissed the appeal as premature. The Court noted that it had set forth in Convention Headquarters I the proper calculation for determining the maximum time in which the board could act. This deadline was March 3. However, the property owner explicitly rejected the Court's calculation, substituting its own calculation of the maximum time based on other factors. This led the owner to file before the statutory time had elapsed.

Exemption

ARIZONA AMENDS LOW-INCOME HOUSING EXEMPTION STATUTE TO BROADEN ENTITIES ELIGIBLE TO APPLY FOR EXEMPTION

Arizona has passed a law amending the existing exemption for low income housing projects. L. 2019,

S1300 will be effective on the 91st day following adjournment of the legislative session.

In the prior version of the statute, affordable housing pursuant to IRS Code Section 42 or subject to a similar restrictive covenant was exempt from property tax only if the property was not used or held for profit. The statute further required that the property be owned by a charitable fund, foundation, or other charitable corporation to qualify for the exemption. Typically, the only types of affordable housing that received the exemption were for low income housing for the elderly or assisted living facilities.

This new law now permits the property to be owned by a 501(c)(3) or 501(c)(4) corporation or a limited partnership or LLC in which the general partner is an eligible non-profit. It may also be a single purpose entity that is wholly owned by one or more eligible non profits. This amendment is a positive development that will allow for low-income housing or LIHTC developments to receive the tax exemption on a much broader basis.

COLORADO MODIFIES EXEMPTION FOR LOW INCOME-HOUSING

L. 2019 H.1319 (effective on Sept. 1, 2019).

Colorado has updated its low-income housing exemption statute to eliminate a draconian penalty following revocation of exemption. Colorado law requires that a low-income exemption will be revoked if the partnership that owns the property distributes income, has income available for distribution, or sells the property. Under the former version of the exemption statute, if an exemption was revoked, the property tax administrator was required to levy and collect property taxes against the property from the date the exemption was initially granted plus interest. The new law provides that the administrator will instead terminate the exemption as of the date the property is transferred or the date income became available.

This is a helpful change to a disproportionate consequence for non-compliance.

IDAHO DENIES EXEMPTION FOR LOW INCOME HOUSING BECAUSE PROPERTY NOT DEDICATED TO PROVIDING HOUSING TO QUALIFIED TENANTS

Aspen Park, Inc. v. Bonneville Co., Idaho S. Ct Dkt No. 45679, (July 10, 2019).

The Idaho Supreme Court held that a low-income housing project did not qualify for exemption because the taxpayer had non-qualifying tenants renting units in the low income housing project.

The taxpayer owned a 72-unit low-income housing project. In 2016, the taxpayer leased 13 units to individuals that did not qualify as low-income because their income was exceeded 60% of the county median income level. The taxpayer argued that because of chronic vacancy in the apartment complex, it was permitted under the law to lease to higher-income individuals while some units remained vacant and available.

The taxpayer asserted that the word “dedicated” did not mean that units dedicated for lease to tenants with income not exceeding 60% of the county’s median income level could not be leased to non-qualifying tenants if qualifying tenants were not applying for lease. Idaho law requires all of the non-profit organization’s apartment units to be leased to qualifying tenants, except for a manager’s unit. The Court held that the term “dedicated” requires all of the apartment units to be set apart for a complying use to qualify for exemption.

OHIO BOARD OF TAX APPEALS DENIES CHARITABLE EXEMPTION FOR CITY-OWNED AIRPORT LEASED TO AVIATION EDUCATION ORGANIZATION

City of Toledo v. McClain, BTA No. 2017-956 (June 24, 2019).

The Ohio Board of Tax Appeals (the "Board") recently affirmed the state tax commissioner's denial of the City of Toledo's application for exemption from real property taxation for a hangar located within the Toledo Executive Airport. The City, which leased the subject property to the local chapter of a national aviation organization, claimed that the property was entitled to a charitable exemption because it was used to educate the general public about aviation and the science of flight.

The City argued on appeal that the organization's activities and use of the subject property qualified the property for an exemption. The Board cited the relevant charitable exemption statute, noting that a property owned by a municipal corporation like the City can only qualify for exemption if it is used exclusively for either accommodation or support of the poor, or is leased to the state or other political subdivision for public purposes. Because the subject property was not used for either of these uses, the Board found that it did not qualify for exemption.

The Board also noted that its jurisdiction was limited to a review of only the statutory sections under which the City had sought exemption. Because the City had only applied under the charitable section, the Board could not consider whether the subject property would qualify for any other exemptions, including the public property exemption.

by Kenneth R. West, Andrew E. DeBord, Megan Savage Knox, Nicholas M.J. Ray, Karen H. Bauernschmidt, David M. Aldous, Lauren M. Johnson, Lindsay Doss Spillman, Hilary J. Houston, Steven L. Smiseck, Anthony L. Ehler, David A. Froling and Scott J. Ziance

July 17 2019

Vorys Sater Seymour and Pease LLP

Coal's Dimming Future Spotlights Public Finance Disclosure Shortcomings.

WASHINGTON — The expected decline of coal production amid growing momentum for climate change action makes it urgent for municipal bond market participants to demand more disclosure, according to a Brookings Institution expert.

Adele C. Morris, a senior fellow and policy director for Climate and Energy Economics at Brookings, said better disclosure is needed to highlight risks certain local economies face from relaying on the increasingly obsolete energy source.

"Local governments — including coal-reliant counties — have yet to grapple with the implications of climate policies for their financial conditions," according to a paper Morris delivered Monday at the Brooking Institution's 8th Annual Municipal Finance Conference. It was co-authored by Noah Kaufman of the Columbia University SIPA Center on Global Energy Policy and Siddhi Doshi of Brookings.

Morris said a "fiscal tsunami" is heading toward coal-backed assets and that "vague and "incomplete" disclosures often seen now in bond documents from issuers heavily reliant on the coal industry create bad governance and may also violate regulatory obligations to bondholders.

"The municipal finance industry can do a better job of determining what the impact of the coal industry means," Morris said in an interview. "If we're going to do something significant on climate

change, or even something modest, it's going to have a disruptive impact on the coal industry."

A "moderately stringent" climate policy could create potential declines in U.S. coal production of around 75% in the 2020s, according to Morris. Coal production dipped by one-third between 2007 and 2017 due largely to lower costs for natural gas and renewables coupled with air quality regulations and clean electricity standards, she said.

Morris noted that despite regulations requiring disclosures of financial risk posed to municipalities, a review of outstanding bonds in coal-reliant localities showed "uneven" and in some cases "misleading" by omission information about climate risks. Credit rating agencies have also failed in many cases to highlight risks from dependence on coal revenues, Morris said.

"It is up to municipal bond market participants to determine ways to account for risks from the coal industry," Morris said. "The problem is not going to go away, so we'd best pay attention."

Debt issuance from state governments that top coal-producing rankings made up about 10% of the $388 billion of total bond volume in 2018, according to data from MSRB's Electronic Municipal Market Access website. Morris noted that some of the bond maturities extended to 2039, which would fall nearly a decade after a 2030 date when the U.S. Energy Information Administration projects the nation's coal production will fall 77% below 2016 levels.

The complex nature of tracking coal revenue creates some barriers toward transparency in the municipal market space. Most states have some version of tax levy for severing valuable deposits like coal that can prove to be very volatile. Morris noted that West Virginia's severance taxes garnered $483 million of revenue in 2011 and then just $262 million five years later in 2016, underscoring the fiscal effects of coal's downturn.

S&P Global Ratings credit analyst Timothy Little said that severance taxes such as those levied on coal extraction have greater revenue volatility than more common government revenue sources and can create budgetary pressures for issuers without revenue diversity.

"Broadly speaking, the decline of the coal industry has contributed to our view of more negative economic assessments and demographic changes in parts of the country," Little said.

Little, who is the agency's primary analyst for West Virginia and Kentucky, said S&P has encouraged "broad transparency" about volatile financial performance from declining coal production and will share in credit reports when they see risks. He said they ask coal-reliant issuers about revenue concentration, volatility and changes in large private employers.

"Management's preparedness for the pace and severity of climate change is an important credit consideration, whether the risk comes from rising sea levels and extreme weather events or economic changes to industries that contribute to climate change," Little said. "In coal-reliant communities we would want to know what management is doing to offset the risk of plant or mine closings, the effect it may have on the tax base or regional economy, and if revenue flexibility exists should coal-related revenues decline."

The coal industry's negative projections underscore the need for policymakers to prioritize expanding their economies and revenue systems, Morris said. She said that achieving noticeable changes won't be easy since coal-dependent localities have been intertwined with the industry for generations.

"Coal-reliant communities need to diversify their economies," Morris said, "but that is a challenge since many of these areas are remote and may require major environmental cleanups to attract

investment."

By Andrew Coen

BY SOURCEMEDIA | MUNICIPAL | 07/16/19 11:53 AM EDT

Task Force on Climate-related Financial Disclosures: 2019 Status Report

2019 Status Report: Executive Summary

In June 2017, The Task Force on Climate-related Financial Disclosures (Task Force or TCFD) released its final recommendations (2017 report), which provide a framework for companies and other organizations to develop more effective climate-related financial disclosures through their existing reporting processes. In its 2017 report, the Task Force emphasized the importance of transparency in pricing risk—including risk related to climate change—to support informed, efficient capital-allocation decisions. The large-scale and complex nature of climate change makes it uniquely challenging, especially in the context of economic decision making. Furthermore, many companies incorrectly view the implications of climate change to be relevant only in the long term and, therefore, not necessarily relevant to decisions made today. Those views, however, have begun to change.

A Call to Action

Based on a recent report issued by the Intergovernmental Panel on Climate Change, a global group of climate scientists convened by the United Nations, urgent and unprecedented changes are needed to meet the goals of the Paris Agreement. The report warns limiting the global average temperature to a maximum of 1.5°C "require[s] rapid and far-reaching transitions in energy, land, urban and infrastructure [systems] (including transport and buildings), and industrial systems." In fact, according to a recent United Nations Environment Programme report on emissions, global greenhouse gas emissions have to peak by 2020 and decline rapidly thereafter to limit the increase in the global average temperature to no more than 1.5°C above pre-industrial levels. However, based on current policies and commitments, "global emissions are not even estimated to peak by 2030—let alone by 2020." As a result, governments and private-sector entities are considering a range of options for reducing global emissions, which could result in disruptive changes across economic sectors and regions in the near term.

Figure E1 (p. iii) illustrates the level of impact and risk on people, economies, and ecosystems associated with global average temperature increases. Importantly, four of the five categories of risk have increased since 2014 "based on multiple lines of evidence." Now more than ever it is critical for companies to consider the impact of climate change and associated mitigation and adaptation efforts on their strategies and operations and disclose related material information. Companies that invest in activities that may not be viable in the longer term may be less resilient to risks related to climate change; and their investors may experience lower financial returns.

Compounding the effect on longer-term returns is the risk that present valuations do not adequately factor in climate-related risks because of insufficient information. As such, investors need better information on how companies—across a wide range of sectors—have prepared or are preparing for a lower-carbon economy; and those companies that meet this need may have a competitive advantage over others.

In addition, there is a growing demand for decision-useful, climate-related financial information by

investors. There are likely many factors driving investor demand, ranging from European regulations requiring certain investors to disclose climate-related information to weather-driven events resulting in significant financial impacts and leading investors to seek better information on their exposure to climate-related risks. As evidence of this demand, more than 340 investors with nearly $34 trillion in assets under management have committed to engage the world's largest corporate greenhouse gas emitters to strengthen their climate-related disclosures by implementing the TCFD recommendations as part of Climate Action 100+.

There is also growing interest in climate-related financial disclosures by financial regulators. In April, the Network for Greening the Financial System (NGFS)—comprised of 36 central banks and supervisors and six observers, representing five continents—issued six recommendations aimed at facilitating the role of the financial sector in achieving the objectives of the Paris Agreement. One of the recommendations is to achieve robust and internationally consistent climate and environment-related disclosure; and the NGFS "encourages all companies issuing public debt or equity as well as financial sector institutions to disclose in line with the TCFD recommendations."

Climate-Related Financial Disclosure Practices

As part of its efforts to promote adoption of the recommendations, the Task Force prepared this status report to provide an overview of current disclosure practices as they relate to the Task Force's recommendations, highlight key challenges associated with implementing the recommendations, and outline some of the efforts the Task Force will consider undertaking in coming months to help address some of the implementation challenges.

To better understand current climate-related financial disclosure practices and how they have evolved, the Task Force reviewed—using artificial intelligence technology—reports for over 1,000 large companies in multiple sectors and regions over a three-year period. In addition, the Task Force conducted a survey on companies' efforts to implement the TCFD recommendations as well as users' views on the usefulness of climate-related financial disclosures for decision-making. While the Task Force found some of the results of its disclosure review and survey encouraging, it is concerned that not enough companies are disclosing decision-useful climate-related financial information. This could be problematic for financial markets if market participants do not have sufficient information about the potential financial impact of climate-related issues on companies. Table E1 summarizes the key themes and findings from the Task Force's disclosure review and survey results.

In addition, Figure E2 (p. vi) provides a summary of additional themes and findings from this report, and Section A.2. Purpose of Report provides an overview of the report's major sections.

Overall, the Task Force found signs of progress in implementing the recommendations among companies traditionally engaged on climate-related issues. These companies demonstrate that disclosing climate-related information consistent with the TCFD recommendations is possible and is a journey of continuing improvement. Given the urgent and unprecedented changes needed to meet the goals of the Paris Agreement, the Task Force is concerned that not enough companies are disclosing information about their climate-related risks and opportunities.

The Task Force strongly encourages more companies to use its recommendations as a framework for reporting on climate-related risks and opportunities, especially companies with material climate-related risks. Companies in early stages of evaluating the impact of climate change on their businesses and strategies and those that have determined climate-related issues are not material are encouraged to disclose information on their governance and risk management practices. To accelerate the disclosure of consistent, comparable, reliable, and clear climate-related financial information, the Task Force encourages investors and other users of such information to engage with companies on the specific types of information that are most useful for decision making.

The Task Force has often highlighted that implementation of its recommendations would be a journey, and it applauds those who have started down the path. The Task Force urges those companies to continually improve the quality and usefulness of their climate-related financial disclosures. For those companies that are "piloting" reporting internally, it is time to begin disclosing; and for those who have not started, now is the time.

Next Steps

The Task Force believes its climate-related financial disclosures review and survey results highlight the need for continued efforts to support implementation of the recommendations, especially in terms of companies using scenario analysis to assess the resilience of their strategies under a range of plausible future climate states. As such, over the next several months, the Task Force will continue to promote and monitor adoption of its recommendations and will prepare another status report for the Financial Stability Board in September 2020. In addition, the Task Force is considering additional work in the following areas:

- Clarifying elements of the Task Force's supplemental guidance contained in the annex to its 2017 report (Implementing the Recommendations of the TCFD),
- Developing process guidance around how to introduce and conduct climate-related scenario analysis, and
- Identifying business-relevant and accessible climate-related scenarios.

The Task Force believes the success of its recommendations depends on continued, widespread adoption by companies in the financial and non-financial sectors. Through widespread adoption, climate-related risks and opportunities will become a natural part of companies' risk management and strategic planning processes. As this occurs, companies' and investors' understanding of the financial implications associated with climate change will grow, information will become more useful for decision making, and risks and opportunities will be more accurately priced, allowing for the more efficient allocation of capital and contributing to a more orderly transition to a low-carbon economy.

2019 Status Report: Key Takeaways

Disclosure of climate-related financial information has increased since 2016, but is still insufficient for investors. Based on the TCFD survey, the artificial intelligence review, and input from external initiatives, the Task Force sees progress being made to improve the availability and quality of climate-related financial information. However, given the speed at which changes are needed to limit the rise in the global average temperature—across a wide range of sectors—more companies need to consider the potential impact of climate change and disclose material findings.

More clarity is needed on the potential financial impact of climate-related issues on companies. The top area identified by users of climate-related financial disclosures as needing improvement is for companies to provide more clarity on the potential financial impact of climate-related issues on their businesses. Without such information, users may not have the information they need to make informed financial decisions.

Of companies using scenarios, the majority do not disclose information on the resilience of their strategies. Three out of five companies responding to the TCFD survey that view climate-related risk as material and use scenario analysis to assess the resilience of their strategies do not disclose information on the resilience of their strategies. This is an important gap in disclosure for companies with material climate-related risks, but it is consistent with the Task Force's understanding from discussions with various companies, industry associations, and other groups that companies are still early in the process of using climate-related scenarios internally, evolving their approaches, and learning how to integrate scenarios into corporate strategy formulation processes.

Mainstreaming climate-related issues requires the involvement of multiple functions. While sustainability and corporate responsibility functions are the primary drivers of TCFD implementation efforts, risk management, finance, and executive management are increasingly involved as well. The Task Force believes involvement of multiple functions is critical to mainstreaming climate-related issues, especially the involvement of the risk management and finance functions.

Download the Report.

BLX/Orrick 7th Annual Post-Issuance Compliance Workshop.

BLX/Orrick 7th Annual Post-Issuance Compliance Workshop

Austin, TX | November 14-15

A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing.

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PROGRAM DESCRIPTION

The BLX/Orrick Workshop offers timely discussions of topics related to post-issuance compliance and tax law for the public finance and 501(c)(3) communities who borrow on a tax-exempt basis. With open forums allowing for attendee participation, BLX and Orrick professionals will lead the program and assist participants with understanding the IRS and SEC regulations and requirements relating to tax-exempt debt. The sessions allow for audience participation and address questions from participants relating to real life situations. Our team strives to make the discussion of tedious tax laws understandable and relatable.

SEC Staff Statement on Opportunity Zones: Federal and State Securities Laws Considerations

The adoption of the Tax Cuts and Jobs Act[1] in December 2017 established the "opportunity zone" program to provide tax incentives for long-term investing in designated economically distressed communities. The program allows taxpayers to defer and reduce taxes on capital gains by reinvesting gains in "qualified opportunity funds" that are required to have at least 90 percent of their assets in designated low-income zones.

The staffs of the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA) are providing this summary of the opportunity zone program that briefly discusses the program and describes the compliance implications for opportunity funds under federal and state securities laws.[2]

Continue reading.

Anu Varadharajan & Michelle Thompson: Academia's Role in Opportunity Zones

Are colleges and universities an untapped resource for Opportunity Zone development? Anu Varadharajan is a tax professor at Tulane University.

Read More »

Opportunity Db

July 16, 2019

New Financial State of Chicago.

Government finance and transparency watchdog Truth in Accounting (TIA) released its annual report today on the fiscal health of the City of Chicago. This year's report found that Chicago owes $34.4 billion, the majority of which can be attributed to unfunded retirement promises for municipal employees. TIA gathers its data from Chicago's audited Comprehensive Annual Financial Report (CAFR) and retirement plans' reports for the 2018 fiscal year and is the only organization that analyzes municipal finances on this scale.

Chicago's CAFR is due, according to state law, within six months of the fiscal year end. Chicago's fiscal year ends on December 31. As of July 1, 2019, the 2018 fiscal year CAFR was not publicly available. On July 5, 2019, the CAFR was made available on the city's website with a letter of transmittal backdated to June 28, 2019.

The level of Chicago's indebtedness assessed from the CAFR can be difficult to contextualize, which is why TIA calculates this number as a Taxpayer Burden™, or the amount of money each city taxpayer would have to contribute to city hall for the city to be debt free. Chicago's Taxpayer Burden is a staggering $38,100, which increased by $2,100 from the previous fiscal year largely due to increases in pension liabilities. And because Chicago Public Schools and the Chicago Transit Authority are separate entities, their debt is not included in this analysis.

These new findings are notable for several reasons. First, Truth in Accounting's rigorous methodology cuts through common bookkeeping gimmicks to present data free of political distortions. Second, this report allows the public to gauge financial health accurately and consistently going back several years.

"We found that Chicago's leaders have failed to address the structural problems weakening its financial system, instead plugging the holes with short-term fixes," said TIA founder and CEO Sheila Weinberg. "When the bills come due, Chicago politicians are going to face a lose-lose dilemma: reduce services and benefits, or fix the problem on the backs of future taxpayers."

Fiscal accountability in U.S. politics often focuses on highly visible federal budgets or the national debt. Truth in Accounting has repeatedly found that poor budgeting and accounting practices at the city and state levels of government presents equally alarming threats.

July 11, 2019

What Is Driving Up the Cost of Highway Construction?

The cost of building one mile of interstate highway in the 1980s was three times what it cost in the 1960s, adjusted for inflation, Leah Brooks of The George Washington University and Zachary Liscow of Yale University find in a paper prepared for the 2019 Municipal Finance Conference at Brookings.

Brooks and Liscow marshal historical data from the Federal Highway Administration to try to explain these spending patterns. They rule out a few popular explanations: highway planners did not leave the most geographically challenging routes to do last. Changing costs for construction material or labor don't explain the increase in spending over time. Neither do the costs of acquiring rights of way or the costs of planning. And there were no large changing of federal interstate highway construction standards over time.

Instead, the authors find evidence that suggests two other explanations. One is what the authors call "the rise of 'citizen voice'" beginning in the 1970s, which brought costly environmental review delays. They suggest that "projects associated with wigglier highways may have encountered resistance that both led to less direct routes and also more expensive construction." They find that a 0.01 mile per year increase in the wiggliness of a highway is associated with a $9.71 million increase in costs.

The second possible explanation is an increase in the quantity (not the price) of labor. The authors use unionization rates and the average share voting Democrat in presidential campaigns (an indication of a state's political leanings) over time as proxies for the importance of labor in each state.

Brooks and Liscow also find substantial variation in spending among states: New Jersey, for instance, spent $35 million more per mile than Delaware. They find these differences are not explainable by observable differences in state policy or in the geography of the places where the roads are built. "This puzzling but striking unexplained residual," they write, "resembles the large explained residual in health care spending across states and merits further investigation."

Read the paper here»

The Brookings Institution

Manny Prunty and David Wessel

Monday, July 15, 2019

Las Vegas Monorail Pays Off Bonds, Plans Market Return.

- **Rail line wiped out 98% of its bonded debt in 2010 bankruptcy**
- **$20M deal that matures in 2049 is listed as day-to-day pricing**

Seven years after emerging from a Chapter 11 bankruptcy that wiped out 98% of bondholders' money, the Las Vegas Monorail is planning a return to the municipal-bond market.

The Las Vegas Monorail Co. has listed $19.75 million in unrated federally tax-exempt revenue bonds maturing in 2049 on the Bloomberg sale calendar. AnnMarie McDonald, a spokeswoman for Wells

Fargo & Co., underwriter for the sale, confirmed the listing. The deal is listed as a day-to-day pricing, indicating it could come as early as next week, data compiled by Bloomberg show.

Record inflows of cash to municipal-bond mutual funds coupled with the drop in tax-exempt yields has helped fuel the number of deals in more default prone sectors. Such transactions should stay strong this year, according to Municipal Market Analytics Inc., which cited the heavy demand for state and local debt. These kind of offerings include transactions for recycling mills, proton cancer therapy facilities, and shopping centers, among other things.

Last Friday, Monorail spokeswoman Ingrid Reisman said in an email that the company had "put a new loan facility in place that allowed it to meet all of its obligations under the 2012 Series A and Series B Las Vegas Monorail bonds."

Those were exchanged with holders of $650 million in revenue bonds sold in 2000 to finance the takeover and expansion of the Monorail.

The $10 million in series A bonds carried a coupon of 5.50% and matured on Monday. The $3 million in series B bonds mature in 2055, also with a 5.50% coupon, but holders including Nuveen Asset Management and J.P. Morgan Securities LLC agreed to their redemption on July 5.

"We continue to work on elements of the financing for the expansion with our financial advisors and partners," Reisman said in an email without providing details on the project. "We intend to finance the expansion program as planned."

The Las Vegas monorail opened in 1995 as a privately financed venture running less than a mile between the back of the MGM Grand and the rear of Bally's casinos. There was no fare, and it carried around 13,000 riders daily. In 1997, the existing owners set up a nonprofit, public benefit corporation to acquire the franchise. In September of 2000, a state agency sold $650 million in tax-exempt bonds to finance the acquisition and expansion of the system. The bonds were secured by Monorail fare and advertising revenue.

The Monorail now runs almost four miles, and stops at six casinos and the city's convention center. Management had planned to expand service beyond the Strip out to McCarran International Airport. The consultant's report to the 2000 bonds by URS Greiner Woodward Clyde of New York predicted that 19.5 million people would use the Monorail by 2004, and this would rise to 23.6 million by 2035.

That level of ridership never materialized. In 2008, the company dipped into reserves to pay debt service, and in 2010, filed for Chapter 11 bankruptcy. The Monorail exited bankruptcy in 2012 after Judge Bruce A. Markell rejected a plan to reduce the bonded debt to $40.4 million and it was revised to $13 million. The judge characterized the Monorail as a "glaring example of nonsense on stilts."

In 2016, the Monorail carried 4.9 million riders and had farebox revenue of $21.5 million, according to publicly available financial statements. Reisman, the Monorail spokeswoman, didn't respond to request for more up-to-date information.

The original 2000 bonds included $451 million in first-tier bonds insured by Ambac Assurance Corp., whose holding company itself went bankrupt in November of 2010 because of its exposure to risky mortgage securities. This didn't extinguish the insurer's liability. Ambac refused to disclose how much investors eventually received.

Bloomberg Markets

By Joe Mysak

July 18, 2019, 2:12 PM PDT

— With assistance by Amanda Albright

Republican Ideas to Fund Michigan Road Repairs Taking Shape Over Summer.

One Republican idea to help counties and larger cities in Michigan pay for local road repairs: allowing them to levy their own gas taxes and vehicle registration fees.

The concept is among several floating around Lansing this summer as GOP legislative leaders say they continue to work on a plan to fix Michigan's crumbling roads and bridges — an estimated $2.5 billion problem for which a solution remains elusive.

Leaders of the GOP-led House and Senate have not shared specifics of the ideas they intend to propose as part of a road-funding plan to counter Democratic Gov. Gretchen Whitmer's proposed 45-cent gas tax increase. The Legislature recessed for the summer in June without completing a 2020 budget or roads deal; the state's new fiscal year starts Oct. 1.

Republicans' central dilemma: how to raise the roughly $2.5 billion a year needed for road repairs while avoiding — or, at least, limiting — tax increases that are anathema to the party and much of its political base?

Continue reading.

Bridge

by Lindsay VanHulle

July 15, 2019

- GASB Proposes Omnibus Statement Addressing Wide Range of Practice Issues.
- For All But the Lowest-Rated State and Local Governments, Buying Bond Insurance is a Bad Deal.
- The SOFR Primer, by SIFMA Insights.
- Multi-Asset Funds, Aggregating, Gentrification And Abuse: IRS Still Has A Lot On Its OZ Regs Plate.
- Carbon Capture Legislation – Potential for a New Type of Exempt Facility Bond: Squire Patton Boggs
- And finally, Perhaps We Won't Be Relocating After All is brought to us this week by *Beltran-Serrano v. City of Tacoma*, in which we learned that a combination of two factors are likely to result in getting shot in the back: 1) "mental illness;" and b) "limited English proficiency." As those are the defining features of the BCB workforce, we'll be steering clear of Tacoma for now. The court's opinion did include this gem, "As Officer Volk approached Beltran-Serrano, he laid down on his stomach and started digging in a hole. Officer Volk greeted Beltran-Serrano, but he looked up at her blankly and kept digging in the hole." Eerily similar to the average BCB workplace communication.

IMMUNITY - COLORADO

Martinez v. CSG Redevelopment Partners LLLP

Colorado Court of Appeals, Division V - June 20, 2019 - P.3d - 2019 WL 2528770 - 2019 COA 91

Low-income-housing tenant who slipped and fell on the walkway leading to his apartment brought action against the partnership that managed and owned the apartment building, alleging premises liability and negligence.

The District Court granted partnership's motion to dismiss. Tenant appealed.

The Court of Appeals held that:

- Partnership was instrumentality of public entity entitled to governmental immunity;
- As a matter of first impression, low-income-housing apartment building was not "public building open for public business," and thus "public building" exception to governmental immunity did not apply; and
- The apartment building was not located in recreation area, and thus recreation area waiver of governmental immunity did not apply.

Private partnership that owned and managed low-income-housing apartment building was an "instrumentality" of a public entity, the public housing authority, and thus was entitled to governmental immunity in tenant's lawsuit alleging he was injured by a slip and fall at the building, although private investor had 99.989% ownership interest in the partnership; partnership was formed to take advantage of the federal Low-Income Housing Tax Credit (LIHTC) program, investor did not have any control or management of the partnership, partnership's affairs were exclusively directed by public housing authority which also oversaw maintenance and repair of building, and partnership was created to serve public purpose of providing low-income housing.

Low-income-housing apartment building where tenant lived was not "public building open for public business," and thus public building exception to governmental immunity did not apply and partnership that owned and operated the building as an instrumentality of the public housing authority had governmental immunity in tenant's lawsuit alleging he was injured by a slip and fall on an icy walkway at the building; only residents and staff had key cards to enter the building, no public events took place on the premises, no public business was conducted there, and residents were prohibited by their lease agreements from allowing anyone they did not know into the building.

Low-income-housing apartment building where tenant lived was not located in a "recreation area," and thus "recreation area" waiver of governmental immunity did not apply and partnership that owned and operated the building as an instrumentality of the public housing authority had governmental immunity in tenant's lawsuit alleging he was injured by a slip and fall on an icy walkway leading to the building; building was low-income housing facility, not a park, and, although it included an area with picnic tables and grills, those amenities were for private use by residents and their guests only.

IMMUNITY - CONNECTICUT

Northrup v. Witkowski

Supreme Court of Connecticut - July 2, 2019 - A.3d - 332 Conn. 158 - 2019 WL 2720605

Property owners brought action against town and town officials, alleging that defendants' negligence in maintaining and repairing town's storm drains and drainage pipes had caused repeated flooding of property owners' residence.

Defendants moved for summary judgment, claiming governmental immunity.

The Superior Court granted the motion. Property owners appealed. The Appellate Court affirmed. Property owners appealed.

The Supreme Court held that:

- Under modern principles of governmental immunity, the salient consideration in determining whether a municipal duty is discretionary or ministerial is not whether the duty was imposed on the municipality by statute or voluntarily assumed pursuant to its own ordinances or regulations, but whether there is any statute, city charter provision, ordinance, regulation, rule, policy, or any other directive requiring the government official to act in a prescribed manner, overruling *Spitzer v. City of Waterbury*, 113 Conn. 84, 154 A. 157, and
- Neither creation of schedule for cleaning all catch basins at least once per year nor practice of attempting to respond to every complaint about malfunctioning storm drains constituted policy or rule converting town officials' discretionary duty to carry out functions mandated by town ordinance into clear ministerial duty, and thus officials were entitled to immunity.

ZONING & PLANNING - GEORGIA

Clayton County v. New Image MA-012 Towing and Recovery, Inc.

Court of Appeals of Georgia - July 2, 2019 - S.E.2d - 2019 WL 2754562

Business license permit applicant petitioned for writ of certiorari from county zoning board of appeals decision that required applicant to submit a site plan of its proposed use of the property to demonstrate compliance with parking and other development requirements under zoning ordinance.

The Superior Court, reversed the board of appeals decision, and county appealed.

The Court of Appeals held that:

- Applicant was required to comply with parking and other development requirements under zoning ordinance, and
- County administrator did not abuse her discretion in requiring applicant to submit a site plan of its proposed use of the property during the application process.

The term "altered" in zoning ordinance provision governing land use changes included changes in land use unaccompanied by physical alterations to the site, and thus, business license permit applicant, whose proposed use of the site varied from that of the former lessee, was required to comply with parking and other development requirements under zoning ordinance; as recognized by zoning board of appeals members, and testified to by planning and zoning division consultant, there was a significant difference in intensity of use between former fencing company's "laying wire," and applicant's proposed use involving "laying down any number of vehicles."

County administrator did not abuse her discretion in requiring business license permit applicant to submit a site plan of its proposed use of the property during the application process to demonstrate compliance with parking and other development requirements under zoning ordinance; the

administrator explained that a site plan was necessary to determine whether applicant's proposed use of the property was in compliance with ordinance governing land use changes, which included changes unaccompanied by physical alterations to the site.

NUISANCE - GEORGIA

Wright v. City of Greensboro

Court of Appeals of Georgia - June 21, 2019 - S.E.2d - 2019 WL 2559481

Co-owners and/or residents of property brought action against city alleging city's negligence in maintaining sewer line that transversed property created a continuing nuisance that damaged property and created a serious health hazard, and as relief, sought money damages, injunctive relief, attorney fees, and litigation costs.

The trial court granted city's motion to dismiss money damages claim, and co-owners and/or residents appealed.

The Court of Appeals held that:

- The ante litem statute applied to continuing nuisance claims based on sewage overflows onto the subject property;
- Co-owners and/or residents were required to comply with the ante litem notice statute, and provide city with the specific amount of monetary damages being sought; and
- Anti litem notice given city failed to substantially comply with statute requiring notice to "include the specific amount of monetary damages being sought."

MUNICIPAL ORDINANCE - KANSAS

Dwagfys Manufacturing, Inc. v. City of Topeka

Supreme Court of Kansas - June 28, 2019 - P.3d - 2019 WL 2694573

Stores sued city, seeking to prevent enforcement of city ordinance, making it unlawful for any person to sell, furnish or distribute cigarettes, electronic cigarettes, tobacco products or liquid nicotine to any person under 21 years of age.

The District Court issued a temporary restraining order and eventually a permanent injunction, and city appealed.

The Supreme Court held that:

- Cigarette and Tobacco Products Act does not show a clear manifestation of intent by the legislature to prohibit cities from enacting ordinances on the same subject;
- Act did not preempt city ordinance; disapproving *Blevins v. Hiebert*, 795 P.2d 325;
- Act coexisted, without conflict, with city ordinance; and
- City ordinance was constitutional exercise of city's home rule power.

MUNICIPAL CORPORATIONS - NEW HAMPSHIRE

Teeboom v. City of Nashua

Supreme Court of New Hampshire - July 2, 2019 - A.3d - 2019 WL 2865877

Taxpayer brought action against city, alleging ordinance exempting wastewater treatment fund from combined annual budget violated spending cap provision of city charter.

Following a bench trial, the Superior Court ruled the spending cap was unenforceable, and thus, that taxpayer lacked standing to bring his claims. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer demonstrated the requisite causal connection between his alleged injury and the claimed violation sufficient to confer taxpayer standing; but
- City charter provision that allowed the board of aldermen to exempt municipal bond and capital expenditures from city spending cap did not constitute an "override provision"; and
- City spending cap was unenforceable because it did not contain an override provision.

City charter provision that allowed the board of aldermen to exempt municipal bond and capital expenditures from city spending cap did not constitute an "override provision" by which board could exceed the spending cap through a supermajority vote; the legislature distinguished between override provisions and provisions allowing certain expenditures to be excluded from the spending cap.

City spending cap was unenforceable because it did not contain an override provision; statutory provision that authorized city to adopt spending cap provided that such a cap "shall" include an override threshold, and the statute contained no exceptions for spending caps adopted before its effective date.

INSURANCE - PUERTO RICO

UBS Financial Services, Inc. of Puerto Rico v. XL Specialty Insurance Co.

United States Court of Appeals, First Circuit - July 3, 2019 - F.3d - 2019 WL 2864751

Insured underwriter and licensed broker-dealer, that sold shares of closed-end funds (CEFs) to brokerage customers in Puerto Rico, and insured manager of 23 CEFs filed suit against primary insurer and secondary insurers, claiming breach of liability policies by failing to reimburse insureds for defense costs incurred in connection with underlying disputed matters, including Securities and Exchange Commission (SEC) investigations, investors' civil litigation, Financial Institutions Regulatory Association (FINRA) investigation, and FINRA arbitrations.

The United States District Court for the District of Puerto Rico granted insurers summary judgment. Insureds appealed.

The Court of Appeals held that:

- Specific litigation exclusion barred coverage for disputed matters;
- Exclusion did not render policies illusory;
- Exclusion applied to entire claims against insureds;
- Allocation clause did not preclude application of exclusion to entire claims;
- Exclusion was not required to be construed in favor of insureds.

Under Puerto Rico law, specific litigation exclusion in primary and secondary liability policies barred coverage for disputed matters against insureds, including regulatory investigations, investors' litigation, and arbitrations, concerning closed-end funds (CEFs) for which insureds sold shares and also managed; exclusion barred coverage for "any Claim based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving" prior matters "or any fact, circumstance or situation underlying or alleged therein," disputed matters all involved facts, circumstances, or situations underlying prior matters that policies specified as regulatory investigation and investors' litigation, and substantial overlap was not required between disputed and prior matters.

Under Puerto Rico law, specific litigation exclusion in primary and secondary liability policies that barred coverage for underlying disputed matters against insureds, including regulatory investigations, investors' litigation, and arbitrations, concerning closed-end funds (CEFs) for which insureds sold shares to Puerto Rico customers and also managed, did not render policies illusory, although substantial portion of insureds' business was excluded from coverage because CEFs were insureds' core business, since exclusion did not bar coverage for all claims, such as claims for breach of fiduciary duties due to accounting errors or claims for self-dealing, failure to protect confidential customer information from disclosure, whistleblower protection, and deficient investment advisory services.

Under Puerto Rico law, specific litigation exclusion in primary and secondary liability policies that barred coverage for underlying disputed matters against insureds, including regulatory investigations, investors' litigation, and arbitrations, concerning closed-end funds (CEFs) for which insureds sold shares to Puerto Rico customers and also managed, applied to entire "claims" against insureds, defined under policies as "any formal, civil, criminal, administrative, or regulatory investigation" of insureds, rather than merely applying to portions of claims that had nexus to prior matters specified in policies as regulatory investigation and investors' litigation regarding CEFs.

Under Puerto Rico law, allocation clause in primary and secondary liability policies, permitting parsing of claims into covered and uncovered matters in allocating loss, did not preclude application of policies' specific litigation exclusion to entire "claims" against insureds, defined under policies as "any formal, civil, criminal, administrative, or regulatory investigation" of insureds, since policies' definition of claim was more specific in context of determining scope of claim in exclusion than more general allocation clause.

Under Puerto Rico law, specific litigation exclusion in primary and secondary liability policies that barred coverage for underlying disputed matters against insureds, including regulatory investigations, investors' litigation, and arbitrations, concerning closed-end funds (CEFs) for which insureds sold shares to Puerto Rico customers and also managed, was not required to be construed in favor of insureds, rather than insurers, since terms of exclusion were clear, insureds were sophisticated financial players and engaged large and respected broker with expertise in Puerto Rican market to assist insureds in negotiating policies at arm's length, and insureds received advice and suggestions from coverage counsel regarding exclusion.

EMPLOYEE BENEFITS - RHODE ISLAND

Hebert v. City of Woonsocket by and through Baldelli-Hunt

Supreme Court of Rhode Island - July 2, 2019 - A.3d - 2019 WL 2751844 - 2019 Employee Benefits Cas. 245, 133

Retired city police officers brought action against city for injunctive and declaratory relief, seeking to preclude city from changing terms of officers' retiree health insurance.

The Superior Court granted preliminary injunction to officers and entered final judgment in favor of officers. City appealed.

The Supreme Court held that:

- Court would treat preliminary injunction as permanent injunction given existence of final judgment;
- Provision in collective bargaining agreements between city and police officers, granting officers the right to immutable lifetime health care benefits at no cost, was proprietary in nature, as could support finding that agreements were not void for extending past the unexpired terms of members of city council;
- Agreements lasted no longer than was necessary to accomplish contract goals, as could support finding that agreements could validly bind successors to city council members; but
- Provision of Fiscal Stability Act (FSA) granting certain "broad and encompassing" powers to budget commissions to secure financial stability of a city did not limit city budget commission's authority to adopt resolutions requiring retired police officers to contribute to their health care expenses; and
- Trial court placed incorrect burden of proof on city by requiring that city prove that circumstances were so dire that city was on verge of bankruptcy and that there was need for appointment of receiver, in order to prevail on officers' claim that city violated state constitution's contracts clause by altering health care benefits.

IMMUNITY - TEXAS

Worsdale v. City of Killeen, Texas

Supreme Court of Texas - June 14, 2019 - S.W.3d - 2019 WL 2479177 - 62 Tex. Sup. Ct. J. 1246

Personal representative of estate of motorcycle driver and personal representative of the estate of passenger brought a wrongful death action against city arising from accident in which driver collided with a large dirt mound, which was not marked by any traffic control device, barricade, or other safety features, and which obstructed the full width of the roadway, causing serious injuries and ultimately death to both driver and passenger.

The District Court denied city's plea to the jurisdiction. City appealed. The Court of Appeals reversed and rendered. Personal representatives petitioned for review.

The Supreme Court held that City had actual notice of claims made against it on behalf of motorcycle driver and passenger who died from injuries sustained when driver collided with a large dirt mound that completely obstructed an otherwise open asphalt road that was not barricaded, as would render formal notice requirements of the Tort Claims Act inapplicable; city was subjectively aware of allegations that the road condition and the absence of warning signs were contributing factors to the accident and that the city was responsible for maintaining the road when city officials from key departments participated in the investigation of the accident, including engineering, street works, and legal, and the city inspector conceded the city was aware the road had been blocked for at least two years.

LIABILITY - WASHINGTON

Beltran-Serrano v. City of Tacoma

Supreme Court of Washington - June 13, 2019 - 442 P.3d 608

Through a guardian ad litem, plaintiff, a homeless man who suffered from a mental illness and had limited English language proficiency, brought action against city, asserting claims for negligence and assault and battery arising from plaintiff's social encounter with a police officer that resulted in plaintiff being shot multiple times.

The Superior Court entered summary judgment for city. Plaintiff appealed.

The Supreme Court held that:

- Fact that officer's conduct may have constituted intentional tort did not preclude negligence claim, and
- Public duty doctrine did not apply to prevent city's liability in tort.

Fact that police officer's conduct in shooting plaintiff, a mentally ill homeless man, during social encounter may have constituted intentional tort of assault and battery did not preclude plaintiff's ability to bring a negligence claim against city premised on officer's failure to use ordinary care to avoid unreasonably escalating encounter to use of deadly force; officer's alleged acts of negligence, including her failure to respond appropriately to clear signs of mental illness or impairment, decision to continue to engage plaintiff in English when he appeared to have limited English language proficiency, and failure to recognize ineffectiveness of using stun gun on a mentally ill person, led up to use of force and were delineated from use of force itself, so that case was not one characterized as one involving nothing but an intentional tort.

Public duty doctrine did not apply to prevent city's liability in tort for police officer's alleged negligence in shooting plaintiff, a mentally ill homeless man with limited English-language proficiency, during social encounter; officer owed duty in tort to plaintiff based on her affirmative conduct throughout their interaction, not the performance of generalized public duty of policing.

GASB Proposes Omnibus Statement Addressing Wide Range of Practice Issues.

Norwalk, CT, July 9, 2019 — The Governmental Accounting Standards Board (GASB) has proposed guidance addressing various accounting and financial reporting issues identified during the implementation and application of certain GASB pronouncements.

The issues covered by the Exposure Draft, *Omnibus 20xx*, include:

- The effective date of Statement No. 87, *Leases*, to address concerns regarding interim financial reports
- Reporting of intra-entity transfers of assets between a primary government employer and a component unit pension plan or other postemployment benefit (OPEB) plan
- The applicability of Statement No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68*, as amended, and Statement No. 74, *Financial Reporting*

for Postemployment Benefit Plans Other Than Pension Plans, as amended, to reporting assets accumulated for pensions and OPEB
- The applicability of certain requirements of Statement No. 84, *Fiduciary Activities*, to pension and OPEB arrangements, and
- Measurement of liabilities and assets, if any, related to asset retirement obligations in a government acquisition.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by October 4, 2019.

California Legislature Approves Multibillion-Dollar Wildfire Fund.

Addressing Wall Street fears, bill aims to help PG&E, other utilities, cover future liability costs

SACRAMENTO, Calif.—California lawmakers on Thursday approved a multibillion-dollar fund meant to stabilize the state's largest utilities amid fears of sizable future liability costs from deadly wildfires tied to their equipment.

The creation of the wildfire fund, one of the biggest challenges in the first year of Democratic Gov. Gavin Newsom's administration, is part of a broader regulatory overhaul meant to mitigate the crisis created when PG&E Corp. PCG -5.13% sought bankruptcy protection in January, citing more that $30 billion in potential liability costs stemming from its role in sparking wildfires.

The company's collapse sowed concern on Wall Street that the state's other large utilities, Edison International EIX 0.99% 's Southern California Edison and Sempra Energy SRE -0.36% 's San Diego Gas & Electric, may face similar fates. Credit-ratings firms threatened to downgrade them unless lawmakers moved to limit their liability exposure.

After concern among investors that lawmakers wouldn't pass the bill before beginning a month-long summer recess this Friday, a final version was hammered out late last week. It passed the state Senate Monday with a vote of 31-7 and the Assembly Thursday with a preliminary tally of 63 in favor and 9 opposed, winning bipartisan support in both houses. Mr. Newsom is expected to act quickly to sign the bill into law.

The legislation creates two routes for a wildfire fund—one valued at $10.5 billion and another at $21 billion or more. The smaller proposal would be structured as a revolving loan funded by extending a surcharge on electricity bills and securitizing the revenue through state-issued bonds. The larger would include an insurance policy requiring a $10.5 billion contribution from the three utilities.

Southern California Edison and San Diego Gas & Electric will have 15 days upon enactment of the bill into law to choose between the two options. They are likely to coalesce on one plan, said people close to the companies.

PG&E can't participate in the decision-making process while it restructures in bankruptcy court, but will be bound by what the other two companies choose. The other two utilities are widely expected to select the larger option, which would require PG&E to contribute the most money to the fund given the size of its service area.

An unusual state constitutional provision makes utilities responsible for property damages resulting

from fires sparked by their equipment. The legislation would allow utilities to tap the wildfire fund to cover future claims arising from such fires if they were found to have acted responsibly.

Mr. Newsom's proposal was aimed at satisfying investor demands that the state partially reform utilities' exposure to wildfire risk, which has intensified in recent years with severe drought and climate change—while avoiding a bailout of PG&E. The state's largest power company has lost political goodwill in the wake of 19 wildfires state investigators have found its equipment caused in 2017 and 2018, including last year's Camp Fire, the deadliest in state history, which killed 85 people.

The new legislation does nothing to address PG&E's liability for past wildfires. The company last week pressed lawmakers to allow it to securitize future earnings to pay past wildfire claims, according to people familiar with the matter, but that provision wasn't included in the bill. Analysts expect lawmakers to consider that proposal later this session, given the amount of money PG&E will be required to contribute to the wildfire fund going forward.

Many longtime critics of PG&E's safety record, including consumer group The Utility Reform Network, supported the legislation, noting that it imposes new safety restrictions while limiting rate increases and corporate profits.

The wildfire fund will essentially spread future liabilities among the three utilities, making it easier for them to cover costs without raising rates for customers. To access the fund, a utility must obtain a safety certification from a new division of the California Public Utilities Commission that will be created to oversee wildfire safety efforts.

"Make no mistake—this is not a utility bailout, it is a ratepayer bailout," said Democratic State Sen. Bill Dodd, co-author of the bill.

But some critics argued the measure still fell short.

State Senator Scott Wiener, a Democrat from San Francisco, who voted against the bill, said the legislation would make it harder for cities to create their own utilities. San Francisco has been considering purchasing some of PG&E's assets and forming a municipal utility.

"This is a dramatic sea change in terms of our ability to try a new model," Mr. Wiener said at a Monday hearing. He was the only Democrat in the state Senate to buck his party and Mr. Newsom, the former mayor of San Francisco.

The Wall Street Journal

By Alejandro Lazo and Katherine Blunt

July 11, 2019 2:43 pm ET

Fitch Ratings: FY18 Median Ratios Show Widening Credit Gap; Strong Fundamentals for U.S. Higher Ed

Fitch Ratings-Chicago-12 July 2019: Fiscal 2018 ratios show a more bifurcated sector and widening credit gap among U.S. universities and colleges, with higher-rated institutions getting stronger and lower-rated entities facing more operating, leverage and demand pressures, according to a new

report from Fitch Ratings. Trends highlighted in the median report show relatively flat student-generated revenues and public funding continue to pressure margins, while solid fundamentals helped to support largely stable median liquidity and leverage levels in fiscal 2018.

Student-driven revenue remains paramount across the sector, and tuition pressures at the lower end of the rating spectrum continue to rise; with a range from marginal growth below 2% for 'A' category public institutions and 'BBB' category private institutions, and net tuition declines and volatility at lower ratings. Tuition discounting continues a steady rise across rating categories, and poses a real credit concern for those credits with weaker demand profiles and thinner balance sheet resources.

Still, a strong year for endowment performance and ongoing expense control helped support liquidity-related metrics in fiscal 2018, which continue to be a distinguishing factor across rating levels. Median ratios of available funds (AF) to debt and AF to expenses increased for most Fitch-rated institutions in fiscal 2018, and were at worst flat in the lower rated categories.

Two new metrics related to the release of the new 'U.S. Public Finance College and University Rating Criteria' (June 2019) aid this analysis: adjusted cash flow margin and available funds to adjusted debt.

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Additional information is available on www.fitchratings.com

Fitch Ratings Updates Criteria for U.S. Military Housing Rating Criteria.

Link to Fitch Ratings' Report(s): U.S. Military Housing Rating Criteria

Fitch Ratings-New York-12 July 2019: Fitch Ratings has published an updated criteria report titled 'U.S. Military Housing Rating Criteria.' The report replaces the existing criteria of the same title published on July 25, 2018.

The changes to the criteria mainly relate to further clarification of the data sources section and the addition of a disclosure section commenting on the disclosure of assumptions used in developing revenue projections at issuance and any significant changes to those assumptions in surveillance reviews. In addition, methodology for assessing investment quality and counterparty exposure was

further clarified in the report.

No changes to the ratings of existing transactions are expected as a result of the application of the updated rating criteria.

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Additional information is available on www.fitchratings.com

California's Fix for Utility Crisis Depends on Munis, Again.

- **Municipal bonds key part of plan to prop up electric companies**
- **California sold munis in solution for earlier energy crisis**

While California's wildfire liability crisis can be seen clearly through the stock gyrations of the state's largest investor-owned electric utilities, it's the stolid municipal-bond market that stands to solve it. And it would be the second time that it's come to the aid of California.

A centerpiece of Governor Gavin Newsom's sweeping plan to help the companies cover the mounting costs from wildfires that their equipment keeps igniting is a fund seeded with $10.5 billion in municipal revenue bonds. The fund may expand from being used as a line of credit to a $21 billion insurance pool should the companies agree to make contributions.

Tapping municipal-bond investors is how California paid for its efforts to end rolling blackouts during the 2000-2001 energy crisis, sparked by a botched deregulation of electricity markets. It's also how Florida stopped insurers from leaving the state after Hurricane Andrew devastated coastal communities in 1992. Given the appetite for municipal bonds — a mainstay of retirement accounts that for the most part fails to draw headline-making trades — the strategy is likely to prove an effective one for the state when it's ready to sell the bonds.

"California taxpayers' thirst for supply right now is insatiable. The marketplace would be able to

absorb it with no issues whatsoever," said David Alter, head of municipal bond research at Goldman Sachs Asset Management. "I don't think they'll do all $10.5 billion all at once, but in this environment, that wouldn't be a problem either, frankly."

Legislation passed Thursday seeks to address a multi-billion dollar problem that helped push the state's biggest utility, PG&E Corp., into bankruptcy in January: Wildfires are increasing in number and severity. And an unusual California doctrine holds utilities liable for wildfires that their equipment sparks, even if they aren't proven negligent, leaving officials worried about the reliability of power in the most-populous U.S. state. Just weeks into the fire season, utility lines are already sparking blazes.

Newsom's plan helps investor-owned utilities pay for future wildfire damages by setting up — at the minimum — a $10.5 billion fund to act as a line of credit. The state's Department of Water Resources would issue one or more series of the debt. It would be backed by extending a charge customers are already seeing on their bills from the $11.2 billion in bonds the state sold starting in 2002. That issuance reimbursed California from buying electricity for insolvent utilities hobbled by rising prices and manipulation by Enron Corp. and other companies in the deregulated market.

(Corporate bond investors may get a cut of the action if a utility that draws down on the line of credit gets permission to sell so-called recovery bonds. These deals would be backed by a different charge on ratepayers.)

Enough Yield

The bill explicitly notes that neither the faith and credit nor the taxing power of the state of California would be pledged to cover debt payments. While details have yet to be fleshed out, the legislation calls for investment-grade ratings.

Separately, PG&E is pushing lawmakers for legislation that would authorize a state entity to issue about $10 billion in tax-exempt bonds, with about $7 billion of the proceeds set aside for a $14 billion fund for claims from past wildfire victims. Another $3 billion would be earmarked for PG&E's contributions to the statewide fund, according to people familiar with the matter.

The tax-exempt status would allow more capital to be raised more quickly, with the debt being securitized by diverting a portion of the company's earnings over the life of the bonds, the people said.

While the municipal market is different today than it was 20 years ago, one aspect is still true: Californians flock to tax-free income because of the state's high taxes on the wealthy. A 2002 sale of the bonds saw good demand, according to Bloomberg reports at the time. It's accentuated now because of the low supply of bonds, due to a variety of reasons, including the federal tax overhaul that also resulted in a cap of state and local deductions. Yields on bonds issued by the state and many local governments are in line or below those for top-rated debt.

Craig Brothers, a senior portfolio manager at Bel Air Investment Advisors in Los Angeles, said the fact that the issuance is to cover wildfire costs may give investors pause. Fires are an annual occurrence, while East Coast governments have issued bonds after hurricanes, discrete natural disasters, he said.

Still, he said, any debt, particularly those issued now in California, could draw buyers with enough compensation. "If they give enough yield, that may cause people to overlook the flaws of the concept," Brothers said. "They can probably tempt people to overlook strict credit analysis with

yield.”

Bloomberg Business

By Romy Varghese and Danielle Moran

July 11, 2019, 11:51 AM PDT

— With assistance by Mark Chediak and Scott Deveau

FCC Blocks Part of San Francisco's First-in-Nation Broadband Law.

The Federal Communications Commission voted to preempt part of a San Francisco city law that prevents property owners from denying internet service providers access to existing wiring within multiunit buildings.

The provision of the San Francisco law, known as Article 52, says property owners can’t deny internet service providers access to wiring that’s already in multiunit residential and commercial buildings. When the law was passed in December 2016, it was thought to be the first city ordinance of its kind in the nation, according to then-supervisor Mark Farrell.

FCC Chairman Ajit Pai has called the city’s law an “outlier.”

“To provide service, broadband providers must have access to potential customers in the building,” Pai said. “But when they know that they will have to share the communications facilities that they install with their competitors, they’re less likely to make the effort in the first place.”

He added that an in-use wire sharing requirement wasn’t consistent with federal policy of promoting “facilities-based competition as a means of encouraging broadband deployment and investment.”

Commissioner Jessica Rosenworcel dissented.

“We should support efforts to allow Americans more broadband choices,” Rosenworcel said. “But today, the Federal Communications Commission says ‘not so fast.’ We stop efforts in California designed to encourage competition in apartment buildings. Specifically, we say … to the city of San Francisco, where more than half of the population rents housing in often multi-tenant units, we say you cannot encourage broadband competition. This is crazy. There’s so much wrong with this decision.”

The measure was approved by Pai and commissioners Michael O’Reilly and Brendan Carr. Commissioner Geoffrey Starks joined Rosenworcel in dissenting on the preemption of the San Francisco law, though he concurred on a broader FCC bid to reexamine broadband access in apartment buildings.

Mayor London Breed previously spoke out against the commission’s attempt to roll back the provision, saying in a letter sent last week to House Speaker Nancy Pelosi that the commission’s proposed order “would strip occupants of many (multi-tenant environments) in San Francisco of a meaningful choice of communications providers.” She added that the commission’s proposal mischaracterized Article 52, and that the provision did not require sharing of in-use wiring.

Breed’s office did not immediately respond to a request for comment on the vote.

Pai sharply criticized the city's approach to the issue in the hearing.

"Throughout this proceeding, the city of San Francisco has failed to mount any defense whatsoever of requiring the sharing of in-use wiring," Pai said. "Yet before I circulated this draft declaratory ruling to my colleagues three weeks ago, the city also refused to say that its ordinance didn't mandate the sharing of in-use wiring. Indeed, it was only last week that the city finally stopped playing games and belatedly claimed that its ordinance 'does not require sharing of in-use wiring.'"

Some lawmakers pushed back on the proposal before Wednesday's vote. Rep. Katie Porter, D-Irvine, introduced a budget amendment that would prevent the commission from finalizing a draft rule that would overrule local laws that encourage broadband competition. The House of Representatives passed a group of amendments including Porter's last week.

House Speaker Nancy Pelosi, D-San Francisco, sent a letter to the commission Wednesday morning, urging them to delay and reconsider the vote on the measure concerning San Francisco's Article 52.

"This proposal is deeply misguided, and would undermine freedom of choice, increase costs and reduce service quality for residents, as it puts a chilling effect on much-needed competition in the telecommunications sector," Pelosi wrote.

Pelosi said her office and San Francisco broadband user and tenant advocate organizations hadn't received any complaints about in-use wiring. She also included a letter from San Francisco internet service provider Monkeybrains, which wrote to Pelosi's office to oppose the commission's attempt to preempt Article 52.

By Sophia Kunthara

BY TRIBUNE NEWS SERVICE | JULY 12, 2019 AT 8:42 AM

S&P When The Cycle Turns: U.S. Airport Balance Sheets - And Exposures - Increase With Traffic

Aside from America's roadway network, U.S. airports have been at the forefront of a national conversation related to aging infrastructure, congestion, and delays that inhibit growth and global competitiveness. These are on display every day to 2.7 million travelers on 44,000 flights across the U.S. aviation system.

Continue Reading

Jul. 9, 2019

HUD Bets on Tech Innovation for Opportunity Zones.

The U.S. Department of Housing and Urban Development (HUD) has announced that it will co-lead an Opportunity Zone-focused workforce challenge of the U.S. Census Bureau's "The Opportunity Project (TOP)" initiative. TOP is an accelerator program that matches tech companies, universities, government, and communities together to create useful digital products for the public.

For this challenge, HUD said that it will collaborate with the private sector so that stakeholders in opportunity zones, including communities and investors, can use technology to strengthen investments in underserved areas.

"HUD is pleased that leading innovators from across the country are directly taking on the challenge of developing products to help people invest in Opportunity Zones," said Ben Carson, Secretary HUD. "We also want to thank the Census Bureau and the other agencies participating in this summer's Opportunity Project. Working together, we collaborate with the private sector to solve some of the most pressing issues facing Americans in economically distressed areas. This project will help ensure that Opportunity Zone stakeholders have access to the best data, innovation, and expertise as investment continues to flow into these underserved areas."

The Census Bureau's Opportunity Project utilizes the expertise of professionals from across government, the technology sector, and private business to focus on a specific challenge during designated 'sprints.' The final products for the summer challenge will be shared in Washington, D.C. in December 2019, HUD said in a statement.

"Government, the technology industry, and the communities that comprise Opportunity Zones all have a significant role to play in establishing new products and services that can benefit the Americans who need them most," said Scott Turner, Executive Director of the White House Opportunity and Revitalization Council.

HUD said that the Opportunity Challenge was part of the work being undertaken by Carson as the Chair of the White House Opportunity and Revitalization Council. The Council's 16 Federal member agencies and Federal-State partnerships are engaging with governments at all levels—state, local, tribal, and territorial—and the private sector on ways to more effectively use taxpayer dollars to revitalize low-income communities.

DS News

by Radhika Ojha

7/9/19

For All But the Lowest-Rated State and Local Governments, Buying Bond Insurance is a Bad Deal.

State and local governments paid over $17 billion in insurance premiums on their bonds between 1995 and 2008. Insuring a bond should add a layer of protection against default for investors in the bond and reduce interest costs for borrowing municipalities. But after many bond insurers collapsed during the financial crisis, the benefits of bond insurance to state and local taxpayers became much less clear.

In a paper presented at the 2019 Municipal Finance Conference at Brookings, Kimberly Cornaggia and Giang Nguyen of Pennsylvania State University and John Hund of the University of Georgia find that today, only a handful of state and local governments benefit from insuring their bonds. The authors studied a sample of over 700,000 municipal bonds issued over the last 30 years. They find that, before the financial crisis, bond insurers tended to have high credit ratings, so buying insurance on muni bonds was a good way for state and local governments of all credit ratings to reduce interest rate costs on their debt. In that period, local governments saved about 0.1

percentage point in borrowing costs by paying to insure the bonds.

When bond insurers' credit ratings were downgraded during the crisis, however, investors began to consider insurance to be less valuable. Post-crisis, insuring led to lower borrowing costs only for state and local governments with the lowest credit ratings. The authors show that insurance is effective at reducing interest costs only when the insurer has a higher credit rating than the borrowing government; after the financial crisis, very few insurers continued to have credit ratings as high or higher than the municipalities they insured.

Still, many municipalities continue to pay insurance premiums today. There is no clear explanation why well-rated governments do this, and the authors say that doing so subsidizes lower-rated municipalities that benefit from the insurance. The authors say their findings indicate that moving away from bond insurance could result in significant savings for state and local taxpayers.

In addition to lowering borrowing costs for municipalities, bond insurance should make purchasing and trading bonds cheaper for investors. Cornaggia and coauthors show, however, that transaction costs tend to be the same or even higher for insured municipal bonds relative to their uninsured counterparts. This finding points to another avenue by which bond insurance doesn't deliver benefits.

Read the paper here»

The Brookings Institute

Sage Belz and David Wessel

Monday, July 15, 2019

The SOFR Primer, by SIFMA Insights.

Transitioning away from LIBOR

The publication of LIBOR is not guaranteed beyond 2021. To ensure financial stability, a significant, coordinated effort is underway to transition to alternative interest rate benchmarks. With an estimated $200 trillion of financial contracts referencing USD LIBOR, much work lies ahead in order to implement a successful reference rate change and time is of the essence.

In this primer, published as we gather for a LIBOR Transition Briefing with policymakers at the center of the transition, SIFMA Insights provides an overview of the LIBOR transition – as well as an actionable checklist – with a focus on the proposed U.S. alternative reference rate, Secured Overnight Financing Rate (SOFR).

Get the Primer.

Expansion of PABs Proposed for Zero Emission Charging Stations.

The use of tax-exempt private activity bonds would be expanded to include financing for new charging stations for zero-emission vehicles under a bill proposed by Sen. Catherine Cortez Masto,

D-Nev.

The bill, S. 2039, has two other original cosponsors, Democratic Sens. Kirsten Gillibrand of New York and Tina Smith of Minnesota.

The bill has no House sponsors but it is among several in both chambers that have been filed in recent weeks with targeted ways to expand the use of PABs.

Among those bills is a proposal in both the House and Senate that would raise the federal cap on PABsfor surface transportation and freight improvement projects by $5.8 billion. The current $15 billion volume cap has just over $2.5 billion in authorization remaining.

Transportation and freight PABs are among 22 eligible PABs that are subject to varying federal rules, according to the nonpartisan Congressional Research Service.

Another bill to expand the use of PABs is the Move America Bonds Act, which would leverage $8 billion in federal investment into $226 billion worth of bond authority over the next 10 years or up to $56 billion over 10 years in tax credits, according to an estimate by the nonpartisan congressional Joint Committee on Taxation.

Another PABs bill is the bipartisan Public Buildings Renewal Act that would authorize $5 billion in private activity bonds for the construction or rehabilitation government-owned buildings.

This latest proposal to create a category of PABs for zero-emission charging stations is timely because the use of electric vehicles, often referred to as EVs, has been on the rise, spurred by a $7,500 tax credit available to the purchasers of new vehicles.

The U.S. Energy Information Administration estimates there are 990,000 EVs on the road this year and that number will grow to 1.5 million next year and 2.17 million in 2021.

EV use is expected to reach 8.29 million in 2029.

Another type of zero emissions vehicle operates on fuel cells powered by hydrogen, producing only water vapor and warm air through its tailpipe.

The use of hydrogen fuel cell vehicles, meanwhile, is not expected to reach 100,000 until 2024.

But the public infrastructure for EVs has been limited.

The U.S. Department of Energyestimates there currently are 22,059 public charging stations across the nation for electric vehicles, boasting 65,565 outlets.

Only four states have more than 1,000 public charging stations for EVs. California tops the list with 5,258 followed by New York with 1,386, Florida with 1,214 and Texas with 1,155.

There only are 46 charging stations for hydrogen power vehicles with 41 of them located in California.

In comparison, there were 114,474 gasoline stations in the U.S. according to the last decennial Economic Census in 2012. Gas stations almost always have multiple pumps and in some cases have two dozen or more.

Former Vice President Joe Biden, one of the 23 Democrats seeking their party’s 2020 nomination for president, said last month during a televised candidate debate that if he’s elected to the White

House he would build 500,000 EV charging stations.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 07/08/19 02:32 PM EDT

U.S. Not-For-Profit Health Care Pensions: 2018 Funded Ratios Remain Solid And Benefit From The Increase To Bond Rate

The U.S. not-for-profit health care sector has benefited from an increase in the median funded status of its pension plans in fiscal 2018. This boost is primarily due to an increase in the discount rate used to measure pension liabilities, which reduced those liabilities.

Continue Reading

Jul. 11, 2019

SEC Charges Municipal Advisor with Breach of Fiduciary Duty.

The SEC charged a municipal advisor with breaching its fiduciary duty by failing to provide its promised services to a public library client.

According to the complaint, filed in the Northern District of Illinois, Comer Capital Group, LLC ("Comer") did not provide its promised level of advisory services to its client, but instead effectively left all decisions regarding the sale and pricing of the client's bonds to the underwriter. Allegedly, the underwriter did not have adequate experience to lead an underwriting for this type, and the SEC further stated that the underwriter made multiple mistakes at the client's expense, including (i) making insufficient marketing efforts, (ii) failing to contact appropriate buyers for the bonds and (iii) mismanaging the order period for the sale of the bonds. These actions ultimately led to the bonds being sold at an unfair price that will require the issuer to pay at least $500,000 in additional interest over the life of the bonds, according to the SEC.

The SEC is seeking (i) a Court determination of the alleged violations by the municipal adviser, (ii) permanent enjoinment from engaging in violations of Exchange Act Section 15B(c)(1), (iii) disgorgement of ill-gotten gains and (iv) civil money penalties.

In a related action, the underwriter settled SEC charges for violating the MSRB's "fair dealing" rule (MSRB Rule G-17) and SEA Section 15B(c)(1) for marketing and selling failures pursuant to its role as the sole underwriter of the bond offering. The underwriter agreed to pay a civil penalty of $50,000 to the SEC, of which $12,500 will be transferred to the MSRB.

Commentary / Steven Lofchie
This is an interesting case, particularly in light of the SEC's recent interpretation regarding the duties of an investment adviser to its client, as it is one of the few cases that turns upon the existence of a duty of care, in addition to a duty of loyalty (although both failures are alleged to be present in this case).

July 12 2019

by Steven D. Lofchie

Cadwalader, Wickersham & Taft LLP

Pressure Builds on Congress to Raise Debt Limit, Which Would Reopen SLGS Window.

The Treasury window for trading State and Local Government Securities will not reopen to the municipal bond market, though pressure is building on Congress to raise the federal debt limit before its August recess.

The SLGS window has been closed since March 1 when Treasury began taking extraordinary measures to avoid breaching the debt limit, and an increase would reopen it.

The deadline for avoiding a potential default on the nation's debt obligations has not been expected to be until early October, but the Bipartisan Policy Center said Monday the risk has moved up to early September.

The Washington-based think tank said the most likely deadline remains early October but it cannot rule out a September date because federal revenue growth has run lower than earlier expectations.

That leaves the House with only three weeks to act prior to its plan for a seven-week legislative break that would begin July 26, while the Senate is planning to end its legislative session a week later.

Both chambers plan to return for legislative work on Sept. 9, but that might be too late to avoid the disruption to financial markets and other cascading effects that a default would cause.

Senate Appropriations Chairman Richard C. Shelby, R-Ala., acknowledged the new urgency to act on Monday.

"That could change the dynamic," Shelby told The Washington Post. "We cannot default. That would send chaos through the financial markets."

Shelby told The Wall Street Journal, "It's time now for a serious conversation."

Senate Majority Leader Mitch McConnell, R-Ky., told reporters Tuesday he is "in close communication" with Treasury Secretary Steven Mnuchin on the deadline for acting. "I don't think there is any question that we won't default," McConnell said.

SLGS are typically used by state and local governments and other entities that issue tax-exempt municipal bonds because of yield restrictions and arbitrage rebate requirements under the Internal Revenue Code.

The role of SLGS has been significantly diminished by the termination of advance refundings on Jan. 1, 2018, under the Tax Cuts and Jobs Act, with the amount of SLGS outstanding declining more than 49%.

There were 13,147 SLGS bonds and notes with a combined value of $47.9 billion at the end of June

compared to 21,015 SLGS bonds and notes valued at $94.4 billion at the end of 2017, according to the Treasury.

There still are three uses for SLGS.

First, they are sometimes used for escrows in current refundings.

They are also sometimes used for equity defeasance escrows which are yield restricted.

The third use is for longstanding advance refunding escrows.

Michael Cullers, a public finance tax lawyer and partner at Squire Patton Boggs in Cleveland, said that based on what he's seen the closing of the SLGS window "hasn't created a lot of difficulties."

Because advance refunding of tax-exempt bonds is no longer allowed, a lot of the pressure to use SLGS has been alleviated, Cullers said.

"I would say it's now definitely more a bump in the road," said Cullers. "Even if you use them to refund taxable bonds, and you end up with positive arbitrage, you can make a yield reduction payment. It's really made it a lot less difficult."

Cullers noted that Treasury regulations on yield reduction payments were modified a few years ago to allow the use of yield reduction payments to comply with yield restriction where a defeasance escrow funded with proceeds of an advance refunding bond issue have a materially higher yield than the yield of the advance refunding issue, and the issuer was unable to subscribe for SLGS on the date that it entered into the agreement to purchase the escrow investments because the Bureau of Fiscal Service had suspended the sale of SLGS.

An agreement on raising the debt limit is expected to be part of a larger deal that would raise defense and domestic spending limits for the 2020 fiscal year that begins Oct. 1.

Without an agreement, budget caps would force onerous spending reductions.

CBO reported Monday the federal budget deficit was $746 billion for the first nine months of the 2019 fiscal year that began Oct. 1.

The deficit through June 30 was $139 billion more than the deficit recorded during the same period the previous year, CBO said. Outlays were $208 billion higher than during the first nine months of fiscal 2018 while revenues were only $69 billion higher.

Over the first nine months of the fiscal year total receipts have increased by 3%. The $69 billion increase in receipts included an additional $37 billion in payroll withholding for workers and a $20 billion decline in income tax refunds.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 07/09/19 02:52 PM EDT

Carbon Capture Legislation – Potential for a New Type of Exempt Facility

Bond: Squire Patton Boggs

On June 10, 2019, Senators Michael Bennet (D-CO) and Rob Portman (R-OH) introduced Senate Bill 1763 (the "Carbon Capture Bill"), which, if passed, would allow the issuance of exempt facility bonds for "qualified carbon dioxide capture facilities." The Carbon Capture Bill has bipartisan support as this bill encourages continued use of carbon-generating natural resources by providing a new tax-exempt financing option for capital expenditures related to a green countermeasure – carbon capture and sequestration. If this sounds like Groundhog Day, that is because it is – this bill was also proposed in 2017. During its last time at bat, the bill was up for consideration while tax-exempt private activity bonds were also on the chopping block – so it was highly unlikely that it was going to pass. Now, with infrastructure and climate change on Congress' mind, the Carbon Capture Bill seems like it might be a viable candidate. For more on how this would work, read on.

Continue Reading

By Taylor Klavan on July 10, 2019

The Public Finance Tax Blog

Squire Patton Boggs

Bridging Public Pension Funds and Infrastructure Investing: Nossaman

Nossaman attorneys Yuliya Oryol, Peter Mixon and Allan Ickowitz provided feedback and comments on drafts of "Bridging Public Pension Funds and Infrastructure Investing," a white paper co-authored by Clive Lipshitz and Ingo Walter (NYU Stern School of Business).

The paper is a thoughtful evaluation of the sustainability of the largest public pension systems in the United States and the role of infrastructure investing in their portfolios. Lipshitz and Walter argue that infrastructure should become more central to pension portfolios despite the existing challenges for infrastructure development in the United States. In order for public pension plans to benefit from the gains of infrastructure investing, they discuss the importance of improved efficiencies and increased supply of deals – likely through public-private partnerships and other greenfield or repurposed brownfield investing opportunities.

Click here to download and read the paper

Nossaman LLP

By Yuliya Oryol on July 11, 2019

First Circuit Provides 'Guidance' on Challenging Puerto Rico's Debt Restructuring Statute: Nelson Mullins

At the very end of a recent opinion, the First Circuit seemingly provided guidance on how bondholders can attack the constitutionality of Puerto Rico's debt restricting act, PROMESA (The Puerto Rico Oversight, Management, and Economic Stability Act). However, the apparent guidance

offered by the First Circuit may only be fool's gold.

PROMESA was adopted by Congress in 2016 in response to a Supreme Court ruling that Puerto Rico's instrumentalities were ineligible for municipal debt adjustment under chapter 9 of the United States Bankruptcy Code ("Bankruptcy Code"); PROMESA in turn provides statutory municipal debt provisions similar to chapter 9.

The First Circuit case began when guarantors of certain highway bonds filed suit in a special Puerto Rico District Court for PROMESA proceedings (the "PROMESA Court"), essentially challenging the constitutionality of PROMESA and attempting to undo the diversion of pledged oil and tax revenue that would have otherwise been paid to the highway bondholders. PROMESA allowed Puerto Rico to divert the pledged revenues to the payment of general obligation bonds if other revenue sources were insufficient to cover the general bonds. The PROMESA Court dismissed the bondholders' case, and the First Circuit affirmed.

The First Circuit first held that the constitutionality of PROMESA could not be attacked in the PROMESA Court. However, the First Circuit went on to state that the bondholders could attempt to obtain the same relief through two separate alternatives. First, they could seek relief from the automatic stay from the PROMESA Court under PROMESA provisions similar to Section 362 of the Bankruptcy Code, and then begin a separate proceeding in another court. Second, and similarly, they could initiate separate lawsuit in "regular" district court.

Legal scholars doubt that the bondholders would be successful under either alternative offered by the First Circuit, as the bondholders are not being deprived of their right to payment permanently, and therefore it's unlikely a court would find a violation of the bondholders' constitutional rights. Also, courts within the First Circuit have already rejected attempts by other bondholders to evade the requirements of PROMESA and obtain payment of diverted funds.

by Graham Mitchell

July 9 2019

Nelson Mullins Riley & Scarborough LLP

Multi-Asset Funds, Aggregating, Gentrification And Abuse: IRS Still Has A Lot On Its OZ Regs Plate.

The second and likely final public hearing for the opportunity zone program showed that the program's staunchest advocates are still hoping the federal government makes some changes to the rules before they are finalized.

The program allows investors to place capital gains into a qualified opportunity fund — referred to during Tuesday's hearing as QOFs and pronounced like "quaffs" — and avoid paying taxes on that money if it is invested into a property or business in an opportunity zone.

Across the country there are more than 8,000 opportunity zones, census tracts encompassing or adjacent to distressed communities, chosen by each state's governor and Washington, D.C.'s mayor.

While the regulations were written as part of the Tax Cuts and Jobs Act of 2017 to incentivize investors to pour their money into developments and businesses in underprivileged areas, speakers

at the hearing outlined ways the current language has helped keep investors on the sidelines.

The most recent draft was released in April, after a previous public hearing in February. This week's hearing, held in the New Carrollton Federal Building in Lanham, Maryland, featured 19 speakers, none of whom represented any state or local government entity, a change from the last hearing.

Instead, the group was made up largely of attorneys, accountants and developers who are trying to make use of the program. Many of them testified that some of the language in the last set of regulations is slowing them down.

"Investors are extremely reluctant to commit dollars today without having certainty of the rules that apply at the end of their investment," Javelin 19 President Jill Homan said at the hearing.

Homan has already raised and deployed money from a QOF.

One of the main issues still at hand is the exit strategy for a QOF that has invested in multiple assets. One of the hiccups, speakers said, is the regulations state that the only way to achieve the full tax benefit is if the entire QOF is sold after the 10-year investment timeline. If property owned by a QOF is sold, but the QOF doesn't trade — in other words, if there is a typical real estate deal — it has a smaller tax benefit.

What's more, most QOFs — as is typical in a real estate transaction — establish LLCs that operate as Qualified Opportunity Zone Businesses. If that LLC sells after 10 years, it is treated with a third type of tax benefit.

"This incredibly important point is lost on many investors," Homan told *Bisnow* after the hearing. "The consensus in the industry is you don't get the OZ tax benefits if you just sell the real estate. If you sell the property LLC, you get some but not all of the tax benefits.

"We need to synthesize these three different outcomes," Homan added. "Most investors think this is a great tax incentive and want to take advantage of it, and this nuance is completely lost on them."

Most sections of the most recent IRS guidance told investors that they could use the regulations to make investment decisions with confidence that the rules wouldn't change. When it came to exits from multi-asset funds, Develop LLC founder Steve Glickman said, the IRS stipulated that investors shouldn't consider the language final.

"What I've been told in private conversations with the IRS is the reason they did that is to give themselves flexibility to create a better framework, if they wanted to, around those exits because the exits wouldn't happen for years," Glickman told *Bisnow* after the hearing.

"Any type of funds, investors and fund managers ask right now, 'How are we going to exit out of these vehicles?' … That's holding up some of the market, more of the risk-averse network of investors and wealth managers who want to see that become final."

If that piece of the regulation is not changed, it could significantly depress the overall impact of the program, Glickman said. Billions of dollars in multi-asset opportunity funds have already been raised, but those funds would have to be restructured or sold all at once.

"The status quo concern was the only way to exit from a multi-asset fund is you have to sell the whole portfolio. That depresses the price because it's harder to find someone to buy it," Glickman said. "It's also going to depress these communities, because it's going to decrease the value of the asset appreciating. It makes it less likely for people to invest because of those reasons."

Another issue that was repeatedly raised was the language in the regulations implying that property had to be substantially improved to realize the tax benefits of an opportunity zone. The issue potential investors have with the current regulations — it is unclear when they will be finalized — is that each improvement appears measured on an asset-by-asset basis.

"The whole industry of opportunity zones has been evolving. And we've been learning together," Homan said. "A lot of that learning comes through fact patterns. It's through all these fact patterns that you realize, 'Whoa, now what do we do?' Is the expenditure for the substantial improvement, can you aggregate it or do you have to substantially improve every asset?"

Essentially, if a developer improves an apartment building, builds amenities and adds some shops, rather than measuring the overall benefit to the entire property of the apartment building, each asset would have its benefit assessed differently, and not all would qualify for the tax break, Homan said.

"That's called aggregating, and that's not considered a substantial improvement," Homan said. "I have to only substantially improve the residential and I get no credit for the other stuff."

The panel that listened and asked questions of the speakers was led by Treasury Associate Tax Legislative Counsel Michael Novey and IRS Special Counsel Julie Hanlon Bolton. While Congress passed the bill with the opportunity zone program, their teams are the ones receiving input and tweaking the regulations to implement the law as intended.

Novey was receptive to the comments on the aggregation and multi-asset exit issues, and pressed most of the speakers to propose fixes, rather than just point out the problems.

More than one speaker stated concern over the program's potential to be an accelerant for gentrification in neighborhoods that are already seeing displacement and active development.

"We're concerned about the negative externalities that a program like this will impose on black and brown people," said William Cunningham, the first speaker of the day.

Cunningham is an economist, the founder of Creative Investment Research and an adjunct professor at Georgetown University.

Novey said later in the hearing that he is conscious of the fact that more money will be going into the more affluent opportunity zones.

"A lot of people have criticized designations by governors of census tracts that are already gentrified," Novey said.

While it is not definite that Tuesday's hearing was the last the IRS and Treasury will hold on the topic, the only next steps being publicly discussed are the final changes that will be made to the regulations after the hearing and thousands of pages of testimony submitted online or by mail.

"It may or may not be the last hearing on opportunity zones, it depends on whether the IRS wants to do a third round," said Glickman, who was an architect of the program and has worked with the agencies in crafting the regulations. "Some people have suggested they might do that around abuse prevention and penalties and safe harbors and other aspects of the compliance and enforcement side. They've indicated publicly that they expect this to be their last round."

The U.S. Impact Investing Alliance Executive Director Fran Seegull asked the panel to more clearly state penalties for abuse, as well as ways to track data to measure the program's impact. Novey

pushed back on whether the IRS or Treasury could collect the data based on the law, but seemed intrigued by the abuse issue.

“It would help for you to give us some examples of abuses you think we ought to write into the regs and what the consequences of those abuses should be for the investors,” Novey told Seegull. “We need some help.”

Bisnow

by Ethan Rothstein

July 10, 2019

Puerto Rico’s Bankruptcy Plan Is Almost Done, and It Could Start a Fight.

After three years of negotiations, Puerto Rico’s federal overseers are at last finishing up a plan to complete the restructuring of the island’s roughly $124 billion in debt. To resolve the biggest government financial collapse in United States history, they have had to untangle the island’s thorny finances, negotiate with creditors and figure out how to do it without endangering the livelihoods of retirees who rely solely on their pensions.

That may have been the easy part.

Some of the island’s creditors — including the hedge fund Aurelius Capital Management, which held up Argentina’s debt settlement for years for a better deal — will almost certainly challenge the plan on the ground that it violates the territory’s 1952 Constitution.

Continue reading.

The New York Times

By Mary Williams Walsh

July 14, 2019

Complete recap of the July 9 IRS Public Hearing on Opportunity Zones.

On Tuesday, July 9, approximately 100 people attended the auditorium at the IRS New Carrollton Federal Building just outside of…

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Opportunity Db

July 11, 2019

July 9 IRS Hearing: Podcast Episode Recap.

Who spoke at the July 9 IRS public hearing on Investing in Qualified Opportunity Funds? And what are some of…

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Opportunity Db

July 12, 2019

Capital Square Launches New Opportunity Zone Platform.

RICHMOND, Va., July 10, 2019 /PRNewswire/ — Capital Square, a leading sponsor of tax-advantaged real estate investments, announced today its launch of a new opportunity zone platform that specializes in the sponsorship of project-specific qualified opportunity zone funds. To lead its opportunity zone developments, the company has hired seasoned veterans Adam Stifel and Jake Baum.

Opportunity zone funds are designed for investors seeking a reduction or permanent elimination of taxes on capital gains from an investment in a qualified opportunity zone. The company will initially focus on project specific-funds throughout the Mid-Atlantic region and Washington, D.C.

"As a leading sponsor of Delaware statutory trusts and a national commercial property manager with more than $1.3 billion in transaction volume, Capital Square's expansion into tax-advantaged opportunity zone funds is a natural progression," said Louis Rogers, founder and chief executive officer. "As one of the most active buyers of multifamily properties in the Mid-Atlantic, it is logical for Capital Square to develop communities in the region as well. The substantial tax benefits for investing and developing in opportunity zones is the icing on the cake."

Rogers added, "I am thrilled to welcome Adam Stifel and Jake Baum to Capital Square as we expand into commercial real estate development and add to our broad range of real estate services. The duo's comprehensive development knowledge and in-depth understanding of the marketplace will serve our projects well."

Stifel will lead Capital Square's development team as executive vice president. Prior to joining the firm, he founded CAS Riegler Companies (now known as May Riegler Companies) and Hook Properties, both full-service real estate development and asset management companies. Since 2009, Stifel has sponsored more than $500 million in multifamily development and retail and commercial office acquisitions. He brings experience in developing Class A and B, market-rate apartments and condominium projects as well as the creation and syndication of low-income housing tax credits (LIHTC) and historic tax credits (HTC).

Baum will serve as development manager at Capital Square, responsible for leading all aspects of the development process from acquisition through stabilization. Prior to joining Capital Square, he served as development manager at Hook Properties, where he developed multifamily projects in the Mid-Atlantic. Baum also worked with Stifel at CAS Riegler Companies and ComfortSystems USA in construction management, where he completed a range of projects from infill multifamily and mixed-

use to institutional laboratory and classroom buildings. An active member of the Urban Land Institute (ULI), Baum earned a bachelor's degree in mechanical engineering from the University of Virginia and a master's degree in real estate from Georgetown University.

Opportunity zones were created to stimulate long-term private investments in low-income urban and rural communities nationwide. Conceived as part of the Tax Cuts and Jobs Act of 2017, opportunity zone fund investments seek to foster economic growth in distressed areas by providing tax benefits to incentivize private investments in designated opportunity zones.

The Tool That Local Economic Developers Should Rely On.

A cost-benefit model is the best route to creating fiscally prudent incentive packages.

There's little doubt that the use of taxpayer-funded incentives will remain the subject of intense disagreement among public officials, researchers and the public. Regardless of the larger debate, however, local economic developers are often expected to offer incentives to attract and retain businesses. How can you provide them in a fiscally responsible way?

The local government's elected body sets a vision for the type of economic activity the community desires. Policies then need to be written stating when and what types of incentives can be used. At this point, economic developers need a good fiscal tool to ensure that incentives are being offered wisely.

There are three types of fiscal tools that can be used to look at economic projects: an economic-impact model, a fiscal-impact model and a cost-benefit model.

An economic-impact model, such as the ones produced by the federal Bureau of Economic Analysis as well as private companies, estimates the impact on taxes, jobs, wages and economic activity should a business move into a community. However, it often overlooks additional costs associated with this business, such as project-specific capital expenditures or increased demand for services from local governments, resulting in overstated benefits.

Conversely, a fiscal-impact model focuses on costs associated with business activity. However, it doesn't look at indirect revenues very well and tends to overstate costs. When reviewing a fiscal-impact study for La Plata County, Colo., for example, we found that the report did not credit any sales-tax revenue attributable to increased residential housing, even though half of all retail sales were from residents. It also did not account for property tax revenue from machinery and equipment for manufacturers and wholesalers, which comprise more than half of all property tax from these businesses.

A cost-benefit model balances the approaches of economic- and fiscal-impact modeling. It evaluates the change in economic activity, government revenues and costs for a new project, as well as the cost of any incentives offered, and it measures these impacts over several years.

One key element in a cost-benefit model is identifying both the fixed costs and variable costs to the governing body's budget. As a business generates new jobs and housing, there will be an increase in some public costs, such as police calls, as well as revenues, such as activity fees for a community recreation center. Other parts of the budget, such as the costs of city administration, may not change when a new business moves in. In Lawrence, Kan., we identified these fixed and variable portions of the city budget internally. Other communities, such as Lee's Summit, Mo., hired a

consultant to create this analysis.

A good cost-benefit model allows you to more accurately assess the risk associated with the project, giving you answers to questions such as what happens if a project creates fewer jobs than forecast. In Lawrence, this proved quite helpful in responding to questions from residents about whether proposed projects would perform according to the company's projections.

For a cost-benefit model to be effective, policy should require a "coverage ratio" similar to what banks use for issuing loans. For instance, the policy we had in Lawrence required that a project generate $1.25 in new revenue for every $1 in new incentives and costs.

Finally, the cost-benefit model should be managed in-house. This allows staff to be the experts and respond to questions from elected officials, city management or the public, and to provide more detail as needed.

When we built our cost-benefit model in Lawrence, two of biggest challenges we found were learning to negotiate and balancing the model's flexibility with ease of use.

City leadership can be nervous about negotiating with businesses. However, most businesses are used to negotiating and are willing to yield a little in their requests, if you can explain why you can't meet a request and what you can do as an alternative. Using negotiations, Lawrence was able to craft an incentive package that met the city's fiscal requirements and still allowed for a critical expansion for one of its largest employers.

Cost-benefit models also have trade-offs between ease of use and flexibility. Typically, the more flexibility you want, the more complicated the model is to use. Flexibility became a challenge in Lawrence, and after almost a decade with the same cost-benefit model, a new one needed to be found. Finding a balance between flexibility and ease of use and creating quality training documents are important for the longevity of the model.

Every economic-development project carries risk. However, with a solid vision, good policy and a quality cost-benefit model, local economic-development professionals can provide fiscally prudent incentive packages that increase the benefit to the community overall.

GOVERNING.COM

By Roger Zalneraitis

JULY 8, 2019 AT 4:00 AM

S&P: Marijuana Taxes Are Unlikely To Be A Long-Term Fiscal Solution For U.S. States.

More and more U.S. states are considering legalizing marijuana, whether it be for medical or recreational purposes. Currently, 11 states have fully legalized marijuana use, while 34 have legalized it in some capacity. Support for marijuana legalization crosses party lines at both the state and federal levels.

Continue Reading

Jul. 2, 2019

New Michigan Initiative Looks to Change State Revenue Sharing.

ELKTON — Officials from the Michigan Municipal League were in the area this week to brief village officials of a program aimed at fixing what it says is Michigan's broken system for funding municipalities.

SaveMICity is an initiative started by the Michigan Municipal League (MML) to help communities understand and reform municipal finance at the state level.

Monica Galloway, MML member and ambassador of SaveMICity, said the MML is working in an effort to work with the state to talk about the broken financial structure. The group says the way the state has diverted dollars away from local services has cost Michigan's cities, villages and townships over $8 billion since 2002.

Continue reading.

The Huron Daily Tribune

by Seth Stapleton

July 13, 2019

Municipal Bonds: Investing In Our Communities

As municipal bond investors, we sometimes get so caught up in where interest rates are headed or if the yield curve is flattening or rising, we lose track of the most important aspect of municipals bonds: how the projects they finance help the community.

At their best, bonds fund projects deliver essential public services to the community. The benefits can be both immediate and last long into the future. Schools get built, highways paved, water and sewer systems expanded, bridges and tunnels maintained, hospitals upgraded,and a host of other projects created or improved. Few other investment vehicles so positively affect our lives in such tangible ways. It's the reason municipal bonds are generally a credit-stable asset class.

While that's an important point for investors to keep in mind, it sometimes leaves the impression that municipal bonds are, well, a little dull.

Continue reading.

Forbes

by Barnet Sherman

July 9, 2019

Jaffray Will Soon Disappear From the Piper Jaffray Name.

The Piper Jaffray name has been a vital part of Minnesota business history for more than 100 years. But before that name emerged as one of the leading finance companies in Minneapolis, there was George Lane.

Lane formed George B. Lane, Commercial Paper & Collateral Loans & Co. in 1895 to help finance the growth of the Minneapolis milling and grain-elevator businesses.

In 1913, two Yale classmates, H.C. Piper and C. Palmer Jaffray, put their names to a new Minneapolis company, Piper Jaffray & Co., that also provided short-term debt known as commercial paper.

Four years later, the two companies combined to form Lane, Piper & Jaffray. In the 1920s, it expanded services beyond commercial paper to advise companies on mergers and raise public and private capital.

In 1932, it combined with another Minneapolis firm the Hopwood Investment Co., started in 1914 by the father and son team of F.P. and Robert Gaddis Hopwood.

As Piper Jaffray & Hopwood, the firm grew steadily through the next four decades.

In the late 1960s, Harry Piper Jr., son of H.C. Piper, became head of the growing company. Under Harry Piper's leadership, the company converted from a partnership to a corporation and in 1971 became the first regional brokerage firm to become publicly listed. His son, Addison Piper, succeeded him in 1983.

To fuel further growth, a holding company was formed in 1974 as simply Piper Jaffray Inc. In the early 1990s, the Hopwood name was dropped.

In 1998, Piper Jaffray was acquired by Minneapolis-based U.S. Bancorp for $730 million and became an operating subsidiary of that firm, known best for its main operating unit, U.S. Bank.

Five years later, U.S. Bancorp spun off Piper Jaffray as an independent public company.

After the spinoff and under the leadership of chairman and CEO Andrew Duff, who had succeeded Addison Piper, the company evolved through a series of acquisitions and divestitures into an investment-services company.

In January 2018, Chad Abraham succeed Duff as CEO. He became chairman last May.

By Patrick Kennedy Star Tribune JULY 9, 2019 — 7:50PM

The Importance of Monitoring Municipal Bonds.

The municipal bond market may not be as fast-moving as the equity or futures markets, but that doesn't mean that investors should stop monitoring bonds after they are purchased. In addition to the handful of high-profile defaults, investors must be mindful of smaller changes in credit and liquidity risk that can impact how they build and maintain their overall portfolio.

Let's take a look at why it's important to monitor muni bonds and what metrics to watch.

Why Monitor Muni Bonds?

Most investors do their due diligence before buying municipal bonds by assessing the financial health of the issuer and the bond's specific characteristics. However, many investors fail to monitor bonds once they become part of their portfolio, despite potential changes in risk over time. These changes can have a significant impact on their overall portfolio risk.

Continue reading.

municipalbonds.com

Justin Kuepper

Jul 12, 2019

Socking Away Money for the Bad Times Requires Strategic State Practices.

The Volcker Alliance report grades states on their reserve fund balances and policies and makes 10 recommendations for how states can control withdrawals from rainy day funds, replenish spent funds, and address revenue volatility.

From requiring specific financial conditions be met in order to withdraw money from a rainy day fund to setting a replenishment plan to pay back those drawdowns, a new report outlines some best practices for state governments to save money for an economic downturn.

The Volcker Alliance report, released Thursday, examined the practices of all 50 states and makes 10 best-practice recommendations that states can borrow from to strengthen their own fiscal stability.

The report details best practices in three areas: making withdrawals from rainy day funds, replenishing of funds, and addressing revenue volatility. It also grades states based on their reserve fund balances and policies.

Continue reading.

Route Fifty

By Andrea Noble

JULY 11, 2019

Are U.S. Cities Fiscally Insolvent?

Some Municipal Balance Sheets Raise Concerns, but Most Cities Are Okay.

When Detroit went bankrupt in 2013, it was a basis for pundits to make negative projections on

urban America. After all, a city with decades of Democratic rule and left-wing policy had declared itself insolvent. It was just a matter of time, the thinking went, before politically-similar cities followed.

Six years later, the specter of mass municipal insolvency still holds sway for some. Famed investor Warren Buffett has warned about purchasing municipal bonds or opening companies in states with excessive debt. Strong Towns, an urban affairs non-profit, makes similar claims. But these warnings do not reflect any broader condition about U.S. cities. Rather, the threat of fiscal insolvency is a problem in specific cities, for specific reasons, and have very specific solutions.

First, let's look at the general outlook of U.S. cities: are they fiscally insolvent? Existing data and market signals suggest no. Muni bonds – which represent city-issued debt that investors buy on the open market – have long been considered among the safest investments. City governments generally have bond ratings listed as high quality or better, because they have a history of paying debts. Municipal default is extremely rare, and bankruptcy is almost non-existent. During the Recession, 1 in 1,668 general-purpose local governments filed for bankruptcy.; and there have only been 600 bankruptcies in U.S. history, out of 90,000 municipalities.

Continue reading.

Catalyst

By Scott Beyer

July 9, 2019

Municipal CUSIP Request Volume Increases for Sixth Straight Month.

NEW YORK, NY, JULY 10, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for June 2019. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a sixth consecutive increase in requests for new municipal debt identifiers, while other major asset classes were flat in June.

Read Report.

What Is a CUSIP Number and What Does It Mean?

A CUSIP number is Wall Street's bar code for security identification. Here's how it works.

A CUSIP number is Wall Street's way of identifying an investment security, like a stock, bond or mutual fund.

Officially, a CUSIP number (more formally known as the Committee on Uniform Securities Identification Procedures) identifies all registered U.S. publicly-traded companies and all U.S. government and municipal bonds. A CUSIP also identifies less traditional investment securities, including preferred stock; funds; certificates of deposit; syndicated loans; and U.S. and Canadian listed options.

The CUSIP number is a powerful aid in helping investment companies, investors, and government regulators track a security, and is especially helpful in managing an efficient trade clearance and settlement process.

Continue reading.

thestreet.com

by Brian O'Connell

Jul 8, 2019 7:20 PM EDT

How a Blockchain Could Help Roll Out Berkeley's Next Fire Truck.

LAST YEAR, BEN Bartlett, a member of the Berkeley City Council, proposed an unusual idea to his colleagues: putting affordable housing on the blockchain. The city was facing an unprecedented housing crisis and the prospect of cuts to federal housing assistance. Why not turn to local residents to help fund a solution? The city would issue bonds, as governments often do when they need to finance big-ticket projects, and break them up into small pieces called "minibonds." City residents could invest as little as $25. In return, they'd get a small amount of interest and perhaps a dash of civic pride, too.

The idea behind such tiny bonds, Bartlett says, is to "let the poor rebuild the country and profit from it." The trouble is, issuing a $25 minibond involves a mess of paperwork and middlemen that can cost more than $25. That's where he and Berkeley mayor Jesse Arreguin believe blockchain could help. The idea is to automate the financing process, keeping track of all the minibonds in a secure ledger and issuing interest payments in digital tokens.

At first, the idea met with skepticism, not least because Bartlett and Arreguin called their plan an "ICO." That stood for an "initial community offering," Bartlett clarifies—not an "initial coin offering," the fund-raising mechanism often associated with cryptocurrency scams, hype, and regulation dodging. Bartlett says Berkeley's ICO remained a mundane municipal bond at heart, even if it was to be divvied up into digital tokens. But some of his colleagues encouraged the city to slow down, and the council voted to have city staff examine if it would be feasible. Now, 13 months later, the city plans to seek a vendor for a minibond pilot. The city finance director suggested starting with a fire truck, financed by selling up to $4 million in bonds.

Continue reading.

WIRED

GREGORY BARBER

07.09.1907:00 AM

Fitch Downgrades Vermont's IDR to 'AA+'; Rates $125MM GOS 'AA+';

Outlook Stable

Fitch Ratings-New York-10 July 2019: Fitch Ratings has assigned a ‘AA+’ rating to the following State of Vermont general obligation (GO) bonds:

–$84 million GO bonds, 2019 series A (competitive);
–$41 million GO refunding bonds, 2019 series B (Vermont Citizens Bonds) (negotiated).

The bonds are expected to sell the week of July 22, 2019; the series A bonds through competitive bid and the series B bonds through negotiated bid.

In addition, Fitch has downgraded the following ratings for the state of Vermont:

–Issuer Default Rating (IDR) to ‘AA+’ from ‘AAA’;
–Outstanding GO bonds to ‘AA+’ from ‘AAA’;
–Outstanding Vermont Municipal Bond Bank (VMBB) bonds issued under the 1988 general resolution rated by Fitch to ‘AA-‘ from ‘AA’.

The Rating Outlook is Stable.

SECURITY

The bonds are general obligations of the state of Vermont backed by the state’s full faith and credit.

ANALYTICAL CONCLUSION

The downgrade of Vermont’s IDR and GO rating to ‘AA+’ from ‘AAA’ reflects Fitch’s lowered assessment of the state’s revenue framework, in particular, an expectation of slower growth prospects going forward. Fitch considers Vermont’s growth prospects to be more consistent with most of its New England peers, which generally face similar economic and demographic headwinds.

The ‘AA+’ IDR and GO rating also reflects conservative financial management, including prompt action to address projected budget gaps as they emerge, and maintenance of sound reserves. The moderate long-term liability burden, measured as a percentage of personal income, is above the states’ median but should remain relatively stable given Vermont’s close oversight and management of debt issuance, and policy changes to improve pension sustainability over time.

The downgrade of the rating on the Vermont Municipal Bond Bank’s 1988 General Resolution bonds to ‘AA-‘ from ‘AA’ is due to the linkage with the state’s IDR. The rating reflects the enhancement provided by Vermont’s moral obligation pledge. The two-notch distinction is warranted by the broad state purposes served by the bonds and the state’s involvement in the program as evidenced by the makeup of the board of directors (including the state treasurer and gubernatorial appointees) and a related state aid intercept provision.

Economic Resource Base
Vermont’s small and modestly growing economy has a larger-than-average reliance on health and educational services, manufacturing, and tourism and remains exposed to several key large employers. During the Great Recession, Vermont’s peak-to-trough monthly employment loss of 4.8% (seasonally adjusted levels) was less severe than the national 6.3% decline. But the state’s jobs recovery has trailed the national trend. Vermont’s population is older than most states and growth has been relatively limited. The state’s labor force has been flat to declining over the past decade, in contrast to slow growth at the national level. As with several other New England states, high educational attainment levels provide some potential for economic gains, but Vermont has not fully

benefited from that potential to date.

KEY RATING DRIVERS

Revenue Framework: ‘aa’
Fitch anticipates Vermont’s revenues used for state operations will grow at a modest pace, consistent with our expectations for the state’s economy. Property taxes represent the largest component of state revenues and have grown at a robust rate, but these revenues do not drive the state’s overall revenue framework. Property tax revenues are essentially passed through to school districts, and are adjusted annually based on multiple factors including decisions of voters in those school districts. The state has complete legal control over its revenues.

Expenditure Framework: ‘aaa’
The state maintains ample expenditure flexibility with a low burden of carrying costs for liabilities and the broad expense-cutting ability common to most U.S. states. Vermont has been particularly focused on addressing healthcare spending, including Medicaid, which is a key expense driver.

Long-Term Liability Burden: ‘aa’
Vermont’s long-term liabilities burden is moderate and above the median for U.S. states.

Operating Performance: ‘aaa’
Fitch anticipates Vermont will utilize its broad gap-closing capacity to manage through economic downturns while maintaining a high level of fundamental financial flexibility. The state has taken steps during the expansion to expand its flexibility and position itself well for the next downturn.

RATING SENSITIVITIES

FISCAL MANAGEMENT: Vermont’s IDR is sensitive to the state’s demonstrated commitment to improving its fiscal resilience and carefully managing its long-term liability burden, particularly in the context of modest revenue growth expectations.

ECONOMIC GROWTH: The IDR is also sensitive to changes in the state’s fundamental economic growth trajectory. Material and sustained improvement in the state’s demographic profile, such as through consistent population and labor force gains, could support stronger revenue growth prospects and a more robust revenue framework assessment.

IDR LINKAGE: The rating on the Vermont Municipal Bond Bank’s 1998 General Resolution bonds is linked to the state’s IDR.

CREDIT PROFILE

Vermont’s population has been largely unchanged since the turn of the century, falling off the national trend of slow and steady growth. Since 2012 the state had actually been in a slight decline. But over the past two years, population and labor force declines leveled off. While the state’s unemployment rate is the lowest in New England and amongst the lowest nationally, labor force weakness has been the primary factor. Vermont’s government remains focused on addressing its demographic challenges with multiple policy efforts to enhance the state’s attractiveness for new residents and businesses including a grant program for remote workers relocating to Vermont. These efforts, along with economic improvement in the state, may have played a role in fostering the recent stabilization.

However, given Vermont’s small population of 626,299 as of July 2018 (second lowest amongst the states), even minor shifts in migration trends could again lead to population and workforce declines.

Fitch considers the state's economic growth trajectory modest and in the middle relative to its New England peers.

Revenue Framework
The state's revenues used for direct state operations consist primarily of personal and corporate income taxes, sales and use taxes, and a meals and rooms tax meant to export a share of the tax burden to visiting tourists. Vermont also levies a state property tax for education, an unusual feature for state governments, which is the largest source of total state revenues. Since Vermont essentially passes through property tax collections to local school districts, Fitch discounts the importance of this stream in the revenue framework assessment. There are no legal limitations on the state's ability to raise revenues.

Fitch anticipates limited growth in Vermont's revenues, relatively in line with inflation, given the state's modest economic growth prospects. Vermont's historical total tax revenue growth, adjusted for policy changes, has been slightly negative on a real basis over the past decade, which includes an extended multi-year decline during the Great Recession. Recent Fitch analyses of states' economic trends and likely trajectories (A Visualization of Demographic Strength and Stability Trends, July 2018 and U.S. States and the Growth Implications of an Aging Population, October 2018) illustrate some of the state's ongoing and anticipated constraints on economic and revenue growth.

Vermont has no legal limitations on its ability to raise revenues through base broadenings, rate increases, or the assessment of new taxes or fees.

Expenditure Framework
Education is the state's largest expenditure from own-source revenues, driven by the unique funding system in Vermont with the state covering the full cost for locally administered K-12 schools primarily through the property tax, and the sales and use tax. Health and human services, primarily Medicaid, is the second-largest expenditure area.

Spending growth, absent policy actions, will likely be slightly ahead of revenue growth, driven primarily by Medicaid, requiring regular budget measures to ensure ongoing balance. The fiscal challenge of Medicaid is common to all U.S. states, and the nature of the program as well as federal government rules limit the states' options in managing the pace of spending growth. Federal action to revise Medicaid's programmatic and financial structure appears less likely in the near term given divided control in Congress.

Vermont has been particularly aggressive in addressing the long-term national trend of steadily rising healthcare costs (including Medicaid), with the most recent effort being a shift towards outcome-based care under an 'all-payer' system, rather than the traditional fee-for-service model. Under terms of agreements with the federal government for the all-payer system, Vermont is transitioning Medicare and Medicaid to an outcome-based accountable care organization model, with the goal of getting participation from private insurers and providers as well over the program's initial five-year period. The state began an initial all-payer pilot program with Medicaid patients in January 2017.

MEDICAID SPENDING LEVELLING OUT
Healthcare spending in recent years has leveled off with the state reporting that actual expenditures for the Agency for Human Services (AHS, responsible for Medicaid in the state) and acute care spending specifically are seeing either declines or essentially no growth since fiscal 2016. The state also reports that Medicaid enrollment declined sharply in this period (by 21% between fiscals 2016 and 2019), a trend seen by many other states as well given the ongoing economic expansion, and a key factor in slower Medicaid spending growth. Between fiscal years 2003 and 2016 AHS spending

increased at nearly 6% annually. Fitch notes Vermont's change in spending trajectory has been particularly sharp, even relative to other states seeing enrollment declines, which may reflect benefits of the policy efforts such as the all-payer model.

EDUCATION FUNDING CHANGES
For education, state spending growth pressure is somewhat offset by the funding structure as school districts' homestead property tax rates (collected by localities on behalf of the state) increase when voter-approved school district budgets increase. Revenue growth does not fully mitigate spending increases though, exposing the state to a level of ongoing expenditure growth which had been reflected in the steadily growing annual state general fund appropriation to the education fund.

In 2018, the legislature revised funding mechanisms and replaced the general fund appropriations with full dedication of the state's sales and use tax and a portion of the meals and rooms tax to the education fund and away from the general fund beginning in fiscal 2019.

LAKE CHAMPLAIN CLEANUP COSTS
Following a June 2016 agreement between the EPA and the state to address pollution issues in Lake Champlain, Vermont's legislature enacted legislation (S.96) this year in an effort to address a federal requirement to establish an ongoing source of funding for cleanup efforts. S. 96 dedicates 6% of the meals and room tax (MRT) collections to a clean water fund, which in combination with other allocated revenues the state estimates will have $50 million available in fiscal 2020. The EPA is reviewing the legislation and will make a final determination on whether it addresses the requirement.

Fitch notes that the MRT allocation to the clean water fund modestly reduces the share for the general fund; in fiscal 2020 the shift will cost $7.5 million and will grow to an estimated $10 million – $11 million in fiscal 2021. These amounts are very small relative to estimated general fund tax revenues that exceed $1.2 billion in both years, but they will require offsetting growth from existing general fund revenues, enactment of new revenue sources, or matching expenditure cuts. For fiscal 2020, the state anticipates recent upticks in general fund revenue performance discussed further below will cover the $7.5 million allocation.

Vermont's fixed carrying cost burden is low and Fitch anticipates it will remain stable given the state's commitment to at least full actuarial contributions to its pension systems and careful management of debt issuance. The state has regularly contributed in excess of actuarially determined amounts for pensions in an effort to manage and reduce the net pension liabilities. Overall, the state retains ample flexibility to adjust main expenditure items.

Long-Term Liability Burden
On a combined basis, Vermont's debt and net pension liabilities as of Fitch's 2018 state pension update report ("2018 State Pension Update", dated November 2018) totaled 11.9% of 2017 personal income, compared with a statewide median of 6.0%. Based on the most recently available data, Fitch calculates a long-term liability burden of 11.5%. This ratio includes special obligation transportation infrastructure bonds (TIBs) supported by a dedicated share of Vermont's gasoline and diesel taxes. Fitch notes that Vermont considers the TIBs as self-supporting from the dedicated tax revenues as part of its legal and policy calculations for tax-supported debt.

Debt levels remain modest at just 2% and are closely monitored through the state's Capital Debt Affordability Advisory Committee (CDAAC). The governor and legislature consistently stay within CDAAC's recommendations for annual bond issuance.

Net pension liabilities are more significant with Fitch-adjusted net pension liabilities representing

approximately 10% of personal income. The pension liability calculations include essentially 100% of the liability in the Vermont State Retirement System and the State Teachers' Retirement System, for which the state makes the full actuarial contribution. Market losses during the last two recessions contributed to recent growth in net liabilities for both systems.

Since the Great Recession the state has negotiated with employee groups and implemented multiple changes including to benefits, contributions, and actuarial methods to improve pension sustainability over time. Given recent shifts to somewhat more conservative actuarial assumptions, including a decrease in the investment return assumption to 7.5% from 7.95%, Fitch anticipates Vermont's long-term liability burden will remain consistent with a 'aa' assessment over the long term.

OPEB liabilities are also significant with the reported 2018 net OPEB liability equal to approximately 7% of the state's personal income. Fitch notes positively that the state has taken some modest steps towards pre-funding OPEB liabilities and has also made some progress in reducing liabilities through collective bargaining with unions. The state has also benefitted from recent favorable health care claims experience.

Operating Performance
Vermont's exceptionally strong gap-closing capacity derives from institutional and statutory mechanisms, and a demonstrated ability to prudently manage through economic downturns. Official revenue forecasts are updated at minimum twice a year through the Emergency Board, a consensus process involving the administration and legislature. During the Great Recession, the state moved to quarterly updates to enhance its ability to respond to rapidly changing fiscal circumstances.

The governor can implement a spending reduction plan unilaterally (if a revenue forecast lowers revenues less than one percent from the prior forecast), or with approval of the legislature's Joint Fiscal Committee (a bipartisan and bicameral committee of legislative fiscal leaders) for larger forecast revenue shortfalls. During the Great Recession, and again in a more recent shortfall, the governor, legislature, and other key stakeholders including employee unions, worked quickly to develop spending rescission plans to address emerging deficits. The state's recent trend has been to focus on expenditure cuts, such as negotiated wage reductions or programmatic cuts, rather than revenue increases.

Vermont maintains multiple budget reserves including fully-funded budget stabilization reserves (5% of prior year appropriations) in each of its three primary operating funds (general, education and transportation), and separate, fund-specific reserves or unreserved balances of lesser amounts. At fiscal year-end 2018, the various general fund reserves totaled $133 million, representing approximately 9% of total general fund uses. Education fund reserves of $79 million were approximately 5% of total education fund uses. On a combined basis, total general and education fund reserves at the end of fiscal 2018 of $212 million covered approximately 7% of total general and education fund uses. Fitch considers the transportation fund, reliant primarily on dedicated fuel and motor vehicle related taxes as relatively distinct from the general and education fund. As detailed below, Fitch anticipates general fund reserves will increase in the near-term, providing further financial resilience.

The state's budgeting practices tend to be conservative in forecasting and proactive through the fiscal year, with most fiscal years ending with at least a modest general fund budget surplus despite the lack of a statutory or constitutional balanced budget requirement. Through the economic expansion Vermont has maintained its primary budget reserves. Recently, the state has taken steps to build in additional fiscal capacity through additional reserves including the general fund balance reserve (established in 2012 to replace the revenue shortfall reserve), a human services caseload reserve (established in 2017 and primarily for Medicaid), and a 27/53 reserve (established in 2016 to

address years with a 27th biweekly payroll or a 53rd week of Medicaid disbursements).

CURRENT DEVELOPMENTS
Based on the January 2019 emergency board forecast and mid-year budget adjustments under the 2019 Budget Adjustment Act (BAA), Vermont projects a sizable increase to general fund reserves for the year that just ended on June 30. Under this current law scenario, the state estimates total general fund reserves will increase to approximately $209 million, or 13% of total general fund uses as of June 30, 2019. Education fund reserves are on track to remain stable while combined general and education fund reserves are projected to total roughly $278 million or 9% of total general and education fund uses.

These projected general fund reserve gains largely reflect transfers of funds from the Global Commitment Waiver fund, totaling nearly $80 million at the end of fiscal 2018, to the general fund in fiscal 2019. The funds will be reserved in the general fund’s human services caseload reserve and 27/53 reserve, which are both related to Medicaid which the Global Commitment Waiver Fund was also intended to support. Excluding those specific reserves, the current law forecast indicates the broader general fund budget stabilization and general fund balance reserves will remain relatively stable at $94 million, or 6% of total general fund uses as of June 30, 2019.

Robust revenue performance in the second half of fiscal 2019 has improved the revenue outlook and the administration now estimates a roughly $50 million general fund surplus will result in a $15 million contribution to the general fund balance reserve, leading to a combined budget stabilization and balance reserve total of $109 million, or 7% of total general fund uses.

General fund revenue for fiscal 2019 is tracking ahead of the January 2019 estimate by approximately $50 million, or 4%, through May, and 6% up over the prior year. These estimates adjust both years for the full allocation of the sales and use tax (SUT) to the education fund as of fiscal 2019. Personal income tax (PIT) and corporate income tax (CIT) have been particularly strong, up $43 million and $11 million respectively from forecast, and 5% and 43% respectively from the prior year. PIT also increased sharply in fiscal 2018, up 10% over 2017.

In developing its revenue forecasts, the emergency board noted that, as in many other states, effects of the December 2017 federal tax changes (commonly referred to as the Tax Cuts and Jobs Act, or TCJA) heavily influenced PIT and CIT collections in 2018 and 2019. The next emergency board forecast due by the end of July will assess what portion of the 2019 PIT and CIT increases are sustainable and recurring. While economic performance in the state remains positive, Fitch anticipates the bulk of the above-forecast PIT and CIT revenue performance in fiscal 2019 was one-time or otherwise short-lived. SUT collections, now captured solely in the education fund, are up just under 4% for the year through May, essentially in line with the January 2019 forecast implying economic growth has been largely within expectations.

In addition to the anticipated $15 million contribution to the general fund balance reserve, the state anticipates allocating approximately $9.4 million of the estimated fiscal 2019 surplus as carry-forward resources for fiscal 2020 and $25 million to the state employees OPEB trust fund. In fiscal 2019, the state used a portion of the surplus revenue to help fully retire an interfund loan to the teachers OPEB trust fund ahead of schedule, and set the state up for pre-funding in future years.

FISCAL 2020 BUDGET OVERVIEW
Vermont enacted its fiscal 2020 budget in mid-June when the Governor signed H. 542 into law. The tone of budget negotiations differed considerably from last year. Last June, a dispute over the governor’s push to use surplus revenues to keep state property tax rates flat versus legislator’s push for competing priorities including pay down of teachers’ pension system liabilities led to two

gubernatorial vetoes and just a day before the start of the new fiscal year, the governor allowed the legislature's budget to become effective without signing or vetoing it.

For fiscal 2020 the budget uses a portion of undesignated education fund reserves to limit state property tax rate increases, while maintaining a modest $5 million cushion beyond the $38 million education fund budget stabilization reserve. The education fund enacted budget also reflects a bill passed by the legislature to expand SUT provisions to online marketplace facilitators, building off last year's U.S. Supreme Court Wayfair decision, to generate an estimated $13.4 million in new revenue. The current estimate calls for robust nearly 7% growth in the SUT in fiscal 2020 based on the new law.

In the general fund, the enacted budget includes only modest tax code changes including a medical expense deduction for the PIT ($2 million loss to the general fund) and a new limit on the capital gains exclusion ($2 million gain). As noted, to address Lake Champlain cleanup efforts, the budget also dedicates a modest portion of the meals and rooms tax (MRT, and roughly $8 million) to the clean water fund, away from the general fund. The MRT diversion requires sustaining a portion of the anticipated revenue surplus in fiscal 2019 into fiscal 2020 to backfill the re-allocated tax revenue. The dedicated portion of the MRT will grow to $10 million-$11 million annually in future years, according to the administration.

The enacted budget also permanently shifts recognition of nearly $300 million in State Health Care Resources Fund (SHCRF) revenues to the general fund. The change, first implemented in the fiscal 2019 BAA, is essentially an accounting change.

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

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Activists Try to Stop a Huge Chicago Development Over $1.3 Billion in Tax Incentives.

Site of former steel mill wedged between wealthy neighborhoods isn't 'blighted,' they say

CHICAGO—The site of a former steel mill on the city's prosperous North Side has become a battleground over an economic development tool critics say is reinforcing the city's economic divide and robbing the treasury of hundreds of millions of dollars a year.

Activists are suing the city to stop developer Sterling Bay from proceeding with its Lincoln Yards development, one of the largest urban mixed-use projects in the country. They argue the city improperly handed out $1.3 billion in tax incentives as part of the deal.

The lawsuit is playing out amid increased scrutiny of tax-incentive packages for businesses, such as the billions offered to Amazon.com Inc. in its second- headquarters search and a giant planned development for Apple Inc. supplier Foxconn Technology Group in Wisconsin. The Chicago dispute highlights problems with a popular economic development tool known as tax increment financing, or TIF. It allows cities to use future property tax revenue—generated by increased assessments as the area improves—to help developers finance a project.

Continue reading.

The Wall Street Journal

By Shayndi Raice

Updated July 11, 2019 5:19 pm ET

House Financial Services Subcommittee Hearing on Environmental, Social, and Governance Disclosure (ESG) Proposals.

House Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets

"Building a Sustainable and Competitive Economy: An Examination of Proposals to Improve Environmental, Social and Governance Disclosures"

Key Topics & Takeaways

- **Future of ESG Disclosures for Public Companies:** Mohin said that environmental, social and governance (ESG) disclosures will help support ongoing efforts by organizations to reach sustainable growth and profits. Wright stated that risk can be hard to measure for investors due to the lack of disclosed information available in the economy.
- **ESG Disclosures Impact Regarding Investors:** Andrus said that financial reporting disclosures allow providers of capital to make informed decisions whether to buy, sell, or hold certain securities. Atkins said that the SEC generally should focus on disclosures that are truly relevant to the investor. He also stated that the cost of disclosures are a significant problem for the investor.

Continue reading.

Wednesday, July 10, 2019

GFOA's Federal Liaison Center Releases New Advocacy Resources.

GFOA's Federal Liaison Center has released two new advocacy resources in the campaign to modernize laws that govern municipal bonds. In a full production effort, the two educational videos detail the importance of restoring advance refunding to the federal tax code, and updating the laws behind bank qualified debt.

These informative videos take on the task of explaining the current status of laws governing municipal bonds while simultaneously promoting needed changes that will help public issuers remain capable of providing vital services for their stakeholders. This significant effort is supported by several members of the Public Finance Network (PFN), a coalition united in support of public finance, and was introduced during the "Unlocking Municipal Bond Potential – How Modernization Can Drive Local Investment" event.

Sponsored by the PFN and held at the U.S. Capitol, the event was attended by both leaders of the House Municipal Finance Caucus and members of the House Ways and Means Committee. The event featured remarks from leaders of public finance and members of Congress.

The educational videos can be viewed through the following links:

- Advance Refunding
- Small Issuer Exception

The Federal Liaison Center will continue to advocate for the interests of GFOA members and those serving the interest of the public.

Wednesday, July 10, 2019

MSRB Course on Order Periods and Syndicate Practices.

New Course on Order Periods and Syndicate Practices

Take our latest MuniEdPro® course to learn about the roles and activities of the issuer and underwriting syndicate in a primary offering.

Click here to learn more.

- **Ed. Note:** It has come to our attention that we somehow managed to completely skip Issue 26 of the newsletter and, rather, went directly from Issue 25 – published on 6/25 – to Issue 27 – published on 7/2. Preliminary findings from our investigation into this incident are as follows: We're idiots.

- **Ed. Note II:** We have officially (It's official when we say it's official!) entered the traditional summer financial market doldrums and, consequently, won't have much to report in the coming weeks. We invite you to take this extra time to contemplate your poor choices w/r/t weekly subscription-based public finance products. Wait! No! More time with your families! More time with your families! Always screw that one up.
- Unanswered Questions from the April Regulatory Guidance on Opportunity Zones: Pepper Hamilton.
- How Federal Tax Reform Is Changing Government Borrowing.
- Bank Not Covered for Claims Over Alleged Bond Market Manipulation.
- And finally, A Firm Grasp of the Obvious is brought to us this week by *Fiano v. Old Saybrook Fire Company No. 1, Inc.*, in which the Captain of the local fire department testified that, "Depending on the incident, it can be advantageous for firefighters to be at the firehouse so that they are available to respond immediately to any calls that come in." You're in good hands, Old Saybrook.

BALLOT INITIATIVES - COLORADO

Matter of Title, Ballot Title and Submission Clause for 2019–2020 #3

Supreme Court of Colorado - June 17, 2019 - P.3d - 2019 WL 2495651 - 2019 CO 57

Proponents of initiative to repeal Taxpayer's Bill of Rights petitioned for review of Title Board decision that initiative did not constitute single subject.

Initiative to repeal constitution's Taxpayer's Bill of Rights in its entirety satisfied single-subject requirement, although Bill of Rights contained multiple subjects; initiative effectuated one and only one general objective or purpose and did not treat incongruous subjects in same measure, subject matter was necessarily and properly connected, nothing in initiative could be deemed to be surreptitious or hidden, and it would not pose risk of surprise or fraud on voters; disapproving *In re Proposed Initiative 1996-4*, 916 P.2d 528; *In re Title, Ballot Title & Submission Clause & Summary for 1999–2000 #104*, 987 P.2d 249; *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001–02 #43*, 46 P.3d 438; *In re Title, Ballot Title & Submission Clause for 2013–2014 #76,* 333 P.3d 76.

LIABILITY - CONNECTICUT

Fiano v. Old Saybrook Fire Company No. 1, Inc.

Supreme Court of Connecticut - June 25, 2019 - A.3d - 332 Conn. 93 - 2019 WL 2571251

Motorcyclist brought action against volunteer firefighter, fire department, and town, alleging that firefighter, while driving a motor vehicle, collided with motorcyclist, that motorcyclist was injured as result of firefighter's negligent operation of his motor vehicle, and that fire department and town were vicariously liable for firefighter's negligence.

Fire department and town moved for summary judgment, alleging that because firefighter had left firehouse and was on his way home to attend to personal matters when collision occurred there was no genuine issue of material fact as to whether firefighter was acting within scope of his employment.

The Superior Court granted motion. Motorcyclist appealed. The Appellate Court affirmed. The Supreme Court then granted motorcyclist's petition for certification to appeal.

The Supreme Court held that:

- Volunteer firefighter was not acting within scope of his employment when his motor vehicle collided with motorcyclist, and thus fire department and town were not vicariously liable for firefighter's alleged negligence under doctrine of respondeat superior, where firefighter had left firehouse premises, entered his own personal vehicle, and driven vehicle away from premises with intent of attending to his own personal affairs when collision occurred, and nothing that occurred after he embarked on pursuit of purely personal affairs and before collision brought him back under fire department's control, and
- Assuming that volunteer firefighter was acting within scope of his employment for purposes of workers' compensation law at time firefighter, who was driving his personal vehicle, collided with motorcyclist, he was not acting within scope of his employment for purposes of establishing that fire department and town were vicariously liable for his alleged negligence, since he was engaged in pursuit of purely personal affairs and was not acting for benefit of or under control of the fire department when collision occurred.

HISTORIC LANDMARKS - FLORIDA

Cascar, LLC v. City of Coral Gables

District Court of Appeal of Florida, Third District - June 26, 2019 - So.3d - 2019 WL 2607425

Historic building owner brought action against city under the Bert J. Harris, Jr., Private Property Rights Protection Act seeking to recover for diminution of value allegedly caused by city's refusal to allow demolition of building.

The Circuit Court granted summary judgment for city. Owner appealed.

The District Court of Appeal held that grandfather provision of Harris Act barred owner's claim.

Grandfather provision of Bert J. Harris, Jr., Private Property Rights Protection Act, which stated that the remedy the Act provided to owners of property inordinately burdened by government action did not apply "to the application of any law enacted," or ordinance adopted, on or before a particular date, barred owner of historic residence from maintaining claim against city under the Act arising out of city's refusal to allow historic residence to be demolished, even though building was designated a landmark after the relevant date and city denied permission to demolish after such date, where ordinance pursuant to which city designated residence a landmark, and pursuant to which it denied owner's request for a demolition permit, was enacted prior to such date.

POLITICAL SUBDIVISIONS - GEORGIA

City of College Park v. Clayton County

Supreme Court of Georgia - June 24, 2019 - S.E.2d - 2019 WL 2571781

City brought action against county and taxpayers, seeking injunctive and declaratory relief regarding division and collection of alcoholic beverage taxes and asserting claims for an accounting, unjust enrichment, attorney fees, and damages.

The Superior Court denied county's motion for judgment on the pleadings and granted city's motion

for partial summary judgment. County appealed. The Supreme Court vacated and remanded. On remand, the Superior Court granted county's second motion for judgment on the pleadings. City appealed.

The Supreme Court held that:

- Sovereign immunity does not bar suits between political subdivisions of the state, such as counties and cities, disapproving of *City of Union Point v. Greene County*, 303 Ga. 449, 812 S.E.2d 278;
- Sovereign immunity did not apply to bar action;
- Mandamus claims brought by city against county public officials in their official capacities were not barred by sovereign immunity;
- City's claims against county public officials in their individual capacities were not barred by sovereign immunity; and
- Trial court was not permitted to grant interpleader claim brought by taxpayer prior to reaching final decision on issue of sovereign immunity.

Sovereign immunity did not apply to bar action by city against county and taxpayers, seeking injunctive and declaratory relief regarding division and collection of alcoholic beverage taxes; city and county were exercising their own respective home rule powers by collecting tax revenues for their own purposes, neither city nor county were acting on behalf of state, and neither entity retained superior authority over other that would prevent it from being haled into court of law by other.

Mandamus claims brought by city against county public officials in their official capacities were not barred by sovereign immunity in city's action seeking injunctive and declaratory relief regarding division and collection of alcoholic beverage taxes and asserting claims for accounting, unjust enrichment, attorney fees, and damages; mandamus statute expressly authorized claimants to seek relief against public official whenever defect of legal justice would ensure from official's failure to perform or from improper performance of official duties, which amounted to specific waiver of sovereign immunity when public officials were sued in their official capacities.

City's claims against county public officials in their individual capacities were not barred by sovereign immunity in city's action seeking injunctive and declaratory relief regarding division and collection of alcoholic beverage taxes and asserting claims for accounting, unjust enrichment, attorney fees, and damages; while city characterized claims as requests for mandamus, mandamus was by definition claim against officials in their official capacities, and, while qualified immunity might limit availability of relief against officers in their individual capacities, sovereign immunity generally posed no bar.

Trial court was not permitted to grant interpleader claim brought by taxpayer prior to reaching final decision on issue of sovereign immunity in city's action against county and taxpayers seeking injunctive and declaratory relief regarding division and collection of alcoholic beverage taxes and asserting claims for accounting, unjust enrichment, attorney fees, and damages; sovereign immunity was jurisdictional issue, and, thus, court was required to address issue prior to making any decision on interpleader claim.

EMINENT DOMAIN - MISSISSIPPI

[Young v. Board of Supervisors of Humphreys County, Mississippi]

United States Court of Appeals, Fifth Circuit - June 21, 2019 - F.3d - 2019 WL 2559794

Landowner brought § 1983 action in state court against county Board of Supervisors and its president, alleging violations of landowner's Fifth and Fourteenth Amendment rights by instructing county building inspector to post a condemnation notice on one of landowner's properties, declaring each of the properties unsafe and ordering all persons to keep out as long as the notice remained posted.

Following removal to federal court, and a jury verdict in favor of landowner, the United States District Court denied Board's motion for judgment as a matter of law (JMOL), or in the alternative, a new trial. Board appealed.

The Court of Appeals held that:

- Evidence was sufficient for a reasonable jury to conclude that the Board ratified the unlawful initiation of condemnation proceedings, and thus that Board was subject to § 1983 municipal liability;
- Instruction permitting jury to decide whether the Board gave president final policymaking authority was harmless;
- Instruction that jury could find Board liable if it found that the Board ratified the actions of the Board's president after the fact did not warrant a new trial;
- Jury instruction that landowner had to prove that he was deprived of his property rights in an arbitrary and capricious manner, rather than in a deliberately indifferent manner, could not have affected the outcome of case; and
- District court's refusal to give Board's proffered jury instruction, that landowner needed to prove an official policy or widespread custom to support landowner's § 1983 municipal liability claim, did not warrant a new trial.

BALLOT INITIATIVES - TEXAS

Bryant v. Parker

Court of Appeals of Texas, Houston (1st Dist.) - June 25, 2019 - S.W.3d - 2019 WL 2588107

Voters filed election contest, claiming that amendment to city charter providing for changes to city term limits was invalid due to use of misleading proposition on the ballot.

The District Court denied voters' motion for summary judgment and entered summary judgment in city's favor. Voters appealed.

The Court of Appeals held that ballot proposition was not misleading to voters and it stated with sufficient definiteness and certainty the chief features and purpose of the proposed city charter amendment.

Ballot proposition to amend city charter to limit elective officials to serve no more than two four-year terms in same office was not misleading to voters, and it stated with sufficient definiteness and certainty the chief features and purpose of the proposed amendment, though proposition stated amendment would limit length for "all terms" of office to four years, rather than stating "each term," proposition mentioned transition period only in generalized manner, and there was evidence of voters' subjective confusion; city's discretionary choice of wording did not materially impact substance of measure being conveyed, and omission of specific provisions addressing transition to newly-proposed term limits was not material since these details were not chief feature of the amendment.

NLC Federal Advocacy Update: Week of July 2, 2019

In this issue:

- SCOTUS Throws Out Citizenship Question…For Now
- July 9 Housing Task Force Panel and Report
- Senate Introduces Companion Bill to Overturn FCC Small Cell Order
- EPA, Army Corps Seek Comments on Potential Revisions to Mitigation Rule
- Local Government Lawsuit Against FCC Small Cell Order Moves Forward
- Federal Advocacy Committees SBLM Recaps

National League of Cities

July 02, 2019

Outcomes-Based Project Assessment Tool.

Abstract

As funders and providers of social services seek to improve program impact through new funding models which tie outcomes to funding, they may ask, what makes a strong outcomes-based project? Building off of an existing tool designed specifically for Pay for Success projects, this Outcomes-Based Project Assessment Tool is designed to help stakeholders building any kind of outcomes-based project do so in a way that places evidence and data at the center and ensures partners have the appropriate levels of capacity and commitment. Launching an outcomes-based project can be a winding road. Use this tool to help navigate your course, figure out the critical points along the way, and ultimately arrive at your destination of improving social services and the public good.

Read the Full Report.

The Urban Institute

by Justin Milner, Matthew Eldridge & Kelly Walsh

June 28, 2019

Fitch Webcast: U.S. Housing Finance Agency (HFA) Loan Program Rating Criteria.

Date: July 11, 2019
Time: 11:00 AM EDT

Join Laura Porter and Mikiyon Alexander for a summary of Fitch’s consolidated master criteria report titled ‘U.S. Housing Finance Agency (HFA) Loan Program Rating Criteria’.

Speakers:

Laura Porter – MD, Regional Group Head, US Public Finance
Mikiyon Alexander – Director, US Public Finance

Register Now

Fitch Publishes State HFAs: Mortgage Insurance or Guarantee Fund Program Rating Criteria

Link to Fitch Ratings' Report(s): U.S. State Housing Finance Agencies: Mortgage Insurance or Guarantee Fund Program Rating Criteria

Fitch Ratings-New York-02 July 2019: Fitch Ratings has published an updated criteria report titled "U.S. State Housing Finance Agencies: Mortgage Insurance or Guarantee Fund Program Rating Criteria." The report replaces the existing criteria of the same title published on June 28, 2018.

There have been no material changes to Fitch's underlying methodology and no rating actions are expected as a result of the application of the updated criteria. The criteria will be used in conjunction with the master criteria "U.S. Housing Finance Agency Loan Program Rating Criteria" published on June 27, 2019.

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Nuveen Had 'Zero Tolerance' for Banks Dealing With Bond Rival.

- **Unsealed court filings show Preston Hollow target of boycott**
- **Companies are waging antitrust fight in Delaware state court**

Nuveen LLC created a "zero-tolerance policy'' for doing business with banks or bond traders who signed deals with rival Preston Hollow Capital LLC, according to unsealed transcripts of calls Nuveen employees made to those financial institutions.

Preston Hollow Capital said audio recordings it got as part of a lawsuit show Nuveen used its market

power as one of the biggest buyers of U.S. state and local government bonds to organize a boycott of the Dallas-based lender, whose role in financing risky projects posed a competitive threat.

John Miller, co-head of Nuveen's fixed income unit, is "going to every single major bank and broker-dealer that we do business with and telling them, 'If you choose to do business with Preston Hollow, we will not be conducting business with you," an unidentified Nuveen employee said in an undated transcript.

The documents were made public in Delaware Chancery Court, where Preston Hollow filed a complaint in March accusing Chicago-based Nuveen of running an intimidation campaign to keep the smaller rival from competing with it for debt deals. Nuveen manages more than $140 billion of municipal bonds.

Preston Hollow alleged that Miller and his staff threatened to use their power to pull tens of millions of dollars in business from banks that underwrote limited offerings with Preston Hollow and financed the loans.

Nuveen is accused in the suit of violating antitrust laws by organizing the boycott and pressuring big banks, such as Wells Fargo & Co., JPMorgan Chase & Co., Goldman Sachs Group Inc. and Citigroup Inc. to shun the Texas bond fund. Preston Hollow has loaned $2 billion to finance hospitals, real estate developments and student housing.

'Distorted View'

"The selected passages from the transcripts, as presented, offer a distorted view of how we engage with broker-dealers on a day-to-day basis and therefore don't reflect our overall approach to the municipal bond market on behalf of our clients and all investors," Stewart Lewack, a Nuveen spokesman, said Monday in an emailed statement.

"Nothing about these recordings changes Nuveen's view of the case,'' Lewack added. "Nuveen continues to maintain the claims have no merit and will vigorously defend itself.''

Nuveen, which had almost $1 trillion in assets under management as of March 31, is the investment manager of TIAA, which is known for offering financial products to teachers.

In transcripts of Nuveen's calls unsealed June 28, Nuveen accused Preston Hollow of misleading investors about the bond firm's practices and charging exorbitant rates for deals that don't "pass the sniff test.'' Officials also said Preston Hollow engaged in "predatory lending."

That prompted the Nuveen to launch its unprecedented effort to get the rest of the bond market to ostracize Preston Hollow, according to the transcripts. "It's a business policy shift for us to do this," one Nuveen executive said on a call, according to a transcript of the conversation.

Preston Hollow quotes Miller as saying he had obtained agreements from 90% of major Wall Street dealers and banks to stop working with Preston Hollow and was working on 100%. "I feel my chances are pretty good at getting there," according to the transcripts.

A long-time colleague of Miller's said in a call with officials of Deutsche Bank AG –- which provided financing to Preston Hollow — that he'd never seen the executive "so serious about anything. I mean, nothing gets him more upset than these Preston Hollow deals that pull supply away."

Miller's pique centered on Curtis Erickson, the head of capital markets at Preston Hollow who allegedly told an unidentified issuer that Nuveen wouldn't agree to certain bond covenants and

“would rather put you through bankruptcy,” according to the transcript.

The Nuveen executive also claimed in the transcript that Erickson had said the same thing about Nuveen when he worked at Mesirow Financial Inc., a Chicago-based bond dealer.

“Nothing makes John madder to know that this guy is still out there doing that,” an unidentified Nuveen employee said, according to the transcripts. “When Wells Fargo told us exactly what Preston Hollow said, it just set him off.” Erickson declined to comment Monday on the allegations.

Wells Fargo worked with Preston Hollow to underwrite a private placement for a project in Chicago. After the deal closed, Preston Hollow marked up the bonds and attempted to sell the securities to Nuveen, according to the transcripts made public in Delaware.

While Preston Hollow accuses its rival of leaning on Deutsche Bank to yank Preston Hollow’s financing, Nuveen counters it was trying to protect the bond market rather than kill a competitor.

‘Consistent Stance’

“This is not about penalizing Deutsche Bank,’’ the unidentified Nuveen official said in an undated call. “This is about a consistent stance about certain market practices that we think are harmful to not only Nuveen, but the market as a whole.”

In that call, a Deutsche Bank employee noted Nuveen’s blackballing of Preston Hollow was “devastating news.” Another official complained the effort to put the competing bond firm on the shelf had more immediate adverse consequences for the Frankfurt-based bank than other financial institutions.

“We’re getting the bigger punch in the stomach rather than Wells Fargo or BAML or Morgan Stanley,” the female employee said, according to the transcript. “We’re losing business, ongoing, you know.”

“The recordings demonstrate Nuveen was not just pressuring broker dealers to supply Nuveen with bonds rather than’’ Preston Hollow, according to court filings. “Nuveen was trying to choke off PHC’s liquidity from Deutsche Bank and any other sources of liquidity that Nuveen could identify.’’

The case is Preston Hollow Capital LLC v. Nuveen LLC, 2019-0169, Delaware Court of Chancery (Georgetown).

Bloomberg Business

By Jef Feeley and Martin Z Braun

July 1, 2019, 11:05 AM PDT Updated on July 1, 2019, 2:11 PM PDT

Ripples From Puerto Rico’s Debt Crisis Reach the Mainland.

A lawsuit to invalidate $14 billion of Illinois bonds draws inspiration from the island’s restructuring.

Joe Mysak, Bloomberg News’s foremost expert on the $3.8 trillion municipal-bond market, has a saying about Puerto Rico: It was technically “in” the market for state and local government debt, but

not “of” it. That is to say, for a number of reasons, it has always been considered an outlier.

Indeed, munis are off to a blistering pace in 2019, with mutual and exchange-traded funds focused on the debt on track to pull in a record amount of cash this year. Investors are buying even though a closely watched gauge of relative value would suggest the bonds are a screaming sell. Never mind that at the start of the year, a federal oversight board argued that more than $6 billion of Puerto Rico’s general-obligation bonds should be declared null and void because issuing them in the first place breached the island’s constitutional debt limit. It’s just an outlier, after all.

Or is it?

Continue reading.

Bloomberg Markets

By Brian Chappatta

July 2, 2019, 4:00 AM PDT

Recession, Recovery, Rivalry: 10 Years Of U.S. Higher Education Medians - S&P

Since the Great Recession ended 10 years ago, the higher education industry has experienced periods of recovery, increasing competition, and growing inequality. In the years following the recession, colleges and universities found themselves in a new, more competitive setting, and at the same time in a more constrained operating and budgetary environment.

Continue Reading

Jul. 2, 2019

Improving Transit Through Lyft and Uber? More Agencies Are Paying for Ride-Hailing Rides.

Experts and transit leaders say that there could be real benefits to working with ride-hailing companies. But data is needed to assess how successful these programs really are.

Transit agencies are increasingly partnering with ride-hailing companies to expand transportation options for residents, including by offering discounted rides home for late night workers or last-mile transportation to transit hubs.

But whether partnerships work has not always been easy to figure out. Pilot partnerships have gotten off the ground in cities ranging from Philadelphia to Monrovia, California—with Washington, D.C.’s transit agency becoming the latest to announce a program providing discounted rides to late-night workers. And while some local leaders say the experiments are successes, others say they don’t have the data necessary to fully assess the programs.

Yet transit experts don’t see the trend fading anytime soon, particularly in small municipalities.

Continue reading.

Route Fifty

By Andrea Noble

JULY 3, 2019

Bank Not Covered for Claims Over Alleged Bond Market Manipulation.

Defense costs incurred by UBS Group AG over litigation allegedly linked to securities law violations in 2009 are not covered by an insurance policy the Swiss banking giant later bought, a U.S. appeals court ruled, upholding a lower court ruling.

The liability policy, issued by XL Specialty Insurance Co. and supported by excess policies issued by units of Axis Capital Holdings Ltd. and Hartford Financial Services Group Inc., specifically excluded legal expense claims related to subsequent litigation, the 1st U.S. Circuit Court of Appeals, which is based in Boston, ruled on Wednesday.

The case pits giants from the banking and insurance industries against each other, Judge Juan R. Torruella wrote in *UBS Financial Services Inc. of Puerto Rico and UBS Trust Co. of Puerto Rico v. XL Specialty Insurance Co., Axis Reinsurance Co. and Hartford Fire Insurance Co.*

"In this case, titans of their respective industries clash as to the interpretation of an exclusion clause in an insurance policy representing millions of dollars in potential coverage. In the process of deciding this appeal, we are granted a glimpse into the ethics that apparently prevail in some sectors of the financial industry," the judge wrote in the ruling.

The case involves allegations against UBS related to its handling of Puerto Rican municipal bond investments. UBS, through its various units, was an underwriter for the bonds and sold shares in closed-end funds containing municipal bonds and was involved in managing 23 closed-end funds.

According to court papers, the U.S. Securities and Exchange Commission began investigating UBS in 2009 for violations of securities laws. The SEC ultimately concluded that UBS misrepresented risks associated with shares in the funds and effectively controlled the prices of the shares by controlling sales in the secondary market for the shares, among other things. UBS paid $26 million to settle the SEC charges.

In 2010, investors from the funds sued UBS claiming the bank operated on all sides of the fund transactions and manipulated the bond market to the detriment of investors and used the funds as a "dumping ground" for "toxic pension bonds," court papers say.

In 2011, UBS sought new insurance coverage for legal disputes through its broker Marsh LLC. XL, which is now a unit of Axa SA, provided primary coverage with a $10 million limit, Axis provided $5 million in coverage on the first excess layer and Hartford provided another $5 million in coverage on a second excess layer.

In the coverage negotiations, UBS requested numerous wording changes, many of which XL agreed to, but it did not agree to changes to the "specific litigation exclusion," court papers say.

The exclusion barred coverage for claims connected to the 2009 SEC investigation and the 2010 investor lawsuit or "in any way" involving the proceedings, the ruling states.

"Crucially, during negotiations, UBS attempted to narrow the scope of the specific litigation exclusion, but XL rejected the proposed changes," the ruling states.

After the coverage was purchased, UBS faced additional lawsuits, arbitration proceedings and another SEC investigation related to its activities in the Puerto Rico bond market.

In 2013, UBS notified XL of expected claims related to the later litigation, but XL denied coverage of defense costs citing the specific litigation exclusion.

UBS and the insurers both filed for summary judgment in 2017. UBS argued the insurers interpreted the exclusion too broadly and that the later legal costs were covered and that claims that occurred after the policy period were "interrelated" with claims during the period the policy was in force. The district court in Puerto Rico ruled for the insurers.

On appeal, UBS argued among other things that the exclusion only applied when there was "substantial overlap" of relevant facts between the prior and current cases.

The appeals court ruled, however, that the terms of the policy are broad "and do not require that the overlap be substantial."

"Although the language is undoubtedly broad, it was the language UBS bargained for," the ruling states.

A spokesman for UBS declined to comment on the litigation.

Business Insurance

by Gavin Souter

July 05, 2019

How Federal Tax Reform Is Changing Government Borrowing.

Fearing more changes from Congress, states and cities are turning less and less to the municipal bond market.

While the most direct effects of the 2017 federal tax overhaul have been on tax revenue, the law has also impacted the way governments borrow money.

With banks making fewer direct loans to governments, many expected them to turn to the municipal bond market. But that hasn't happened.

Governments have continued to be reluctant to increase their debt, a trend that started following the Great Recession. According to the latest report from Moody's Investors Service, the total net tax supported debt issued by all 50 states in 2018 was essentially flat for the eighth straight year with just $523 billion issued. This puts average annual state debt growth since 2011 at just 0.6 percent.

Moody's said in its analysis that lagging infrastructure investment has contributed to limited growth

in state debt. “State governments are remaining cautious when it comes to bond issuance,” the report continued, “and are increasingly relying on operating revenue to meet their transportation infrastructure needs.”

As a result of this quiet market, the cost of borrowing has dropped — saving governments millions even as interest rates are rising.

Governments have been reluctant to issue municipal bonds in part because officials fear that Congress may once again meddle with the bonds’ tax-exempt status, says Hilltop Securities analyst Tom Kozlik. The 2017 law already eliminated the federal tax-exempt status of advanced refunding bonds, which effectively killed them. Advanced refunding bonds allowed governments to refinance debt earlier and thus take advantage of lower interest rates years sooner.

Koxlik warns that Congress will be looking for more ways to save money this fall because it will likely face another debate about how to reduce the deficit. “Time could be running out on the municipal bond tax exemption,” he says, “and it’s possible that the advanced refunding repeal is just the beginning.”

Other Programs at Risk

Ksenia Koban, vice president and municipal strategist at the investment firm Payden & Rygel, is more worried that Congress will do away with grant or matching fund programs.

State and local governments use the money from these programs in two main ways. They can use grant money to directly pay back bonds they have issued. Matching funds, on the other hand, offer an incentive for states and localities because money raised by issuing bonds can be at least partially matched by the federal government.

Municipal bonds are commonly used to finance infrastructure projects. Combined with tax reform, Koban says the uncertainty around the federal government’s commitment to infrastructure funding is also creating uncertainty in the municipal bond market. “It’s definitely changing the landscape,” she says. “We’re already seeing a lot more hybrid projects or public-private partnerships while local governments are stepping back from traditional types of projects.”

Banks Bowing Out

Meanwhile, the 2017 tax law gave banks less of an incentive to invest in municipal bonds. The law slashed the corporate income tax rate from 35 percent to 21 percent. That, combined with rising interest rates, has made low-interest-rate munis less attractive to banks.

Bank holdings of municipal bond debt in 2018 were down $40.9 billion for the year, reports George Friedlander, a managing partner of the Court Street Group.

At the same time, banks’ direct loans to governments have also drastically declined. The loans spiked to $40.2 billion in 2017 but are on pace to total just under $7 billion this year.

The severity of this development has been masked by the lack of investment in the municipal bond market. “The implications of this shift would be far greater in a ‘normal’ muni market, with more total issuance,” Friedlander says.

Low Supply, High Demand

2018 was one of the slowest years for municipal bond issuance in the past decade. The market

hasn't picked up this year, either.

Through the first half of this year, government issuers have sold more than $166 billion in bonds. That's nearly identical to the $165 billion sold halfway through 2018, according to figures compiled by The Bond Buyer.

But even though governments aren't issuing as many bonds, the demand for them hasn't changed. In some places, such as California, demand has increased because of the federal tax overhaul's cap on state and local tax deductions. Taxpayers are looking to shelter more of their income in municipal bonds.

All these events have led to lower interest rates for governments that are selling bonds — despite the fact that the Federal Open Market Committee has raised interest rates by a percentage point since early 2018.

"There's so much more demand than supply," says Koban, "the market's actually sort of behaving unintellectually. It's just not pricing uncertainty and risk the way it should. It shows there's not a whole lot of other places to go if you're looking for quality-adjusted, positive-yield instruments."

GOVERNING.COM

BY LIZ FARMER | JULY 3, 2019 AT 4:00 AM

The 7 States That Started the New Fiscal Year Without a Final Budget.

Gov. Gina Raimondo's unwillingness so far to sign to sign the proposed new $9.9-billion budget for the year that began on July 1 has landed Rhode Island on Moody's list of states with "weak governance."

The national credit-rating agency — Moody's Investors Service — issued a special report on Wednesday titled: "Late budgets reflect governance weaknesses."

The seven states that slipped into the new fiscal year on July 1 without a full year budget include: Massachusetts (Aa1 stable), New Hampshire (Aa1 stable), North Carolina (Aaa stable), Ohio (Aa1 stable), Oregon (Aa1 stable), Rhode Island (Aa2 stable) and Wisconsin (Aa1 stable).

Moody's notes that some states have "continuing appropriation bills" — or laws, as Rhode Island does — that allow spending until a permanent budget is enacted. Those laws "together with state bond laws make it unlikely that the delays will pose any risk of missed debt payments."

"Nonetheless, late budgets are a sign of governance weakness which, in extreme cases, can be negative for state credit quality. Late budgets can also expose local governments and other downstream entities to an interruption in state payment," the rating agency said.

Two of the late budgets were vetoed in their entirety, Moody's said. North Carolina's governor vetoed the legislature's budget due to insufficient funding for Medicaid expansion and teacher salaries, while New Hampshire's governor vetoed a spending package due, in part, to increased education funding.

In Rhode Island's case, Raimondo has simply — and without explanation — let days go by without

signing the budget bill the Rhode Island House of Representatives approved June 22, the Senate approved unchanged on June 27, and the Senate leadership "transmitted" to the governor last Sunday, June 30.

If Democrat Raimondo does not sign — or veto — the budget bill by midnight Saturday, it will become law without her signature.

Her press team has not answered Journal questions about the reasons Raimondo has not signed the budget bill, except to say her staff is still reviewing the legislation. On Wednesday, her spokesman Josh Block said again: "The Governor is continuing to review the budget with her staff."

He acknowledged, however, that Raimondo is concerned about the ability lawmakers gave the state controller to refuse to "authorize payments for additional staff, contracts, or purchases for any department or agency not projected to end a fiscal year within amounts appropriated unless necessitated by immediate health and safety reasons."

Frustrated lawmakers approved $173,613,232 in over-budget spending for the year that ended June 30, and while most of that was covered by federal dollars, it included $25 million in additional state dollars to cover deficit spending..

"While I support better tools to help control spending, it's also critical that we have flexibility to address increases in the number of children and families we serve and other unforeseen circumstances," Raimondo said in a statement released by Block.

"We have made efforts to fill our frontline vacancies in order to meet our legal and moral obligations to care for all Rhode Islanders," she said. "But I am concerned that new provisions added to the budget could further limit our ability to care for these vulnerable populations and could also create wait lists for these critical services. Over the past four years we've made significant progress, and these budget changes could not only put that progress at risk, but halt services for people who rely on them."

By Katherine Gregg

BY TRIBUNE NEWS SERVICE | JULY 8, 2019 AT 7:49 AM

(c)2019 The Providence Journal (Providence, R.I.)

NASBO: States Finalize Fiscal 2020 Budgets

As of July 5, five states with a July 1 fiscal year start date have not yet completed a full-year budget for fiscal 2020. Of the five, one state is awaiting the governor to complete action on the budget bills (Oregon), two governors have vetoed the budget (New Hampshire and North Carolina), and two are awaiting legislative completion (Massachusetts and Ohio). Michigan's legislature has not yet finalized the budget but the state's fiscal year does not begin until October 1. Below is additional information on the states that have yet to enact a full-year budget for fiscal 2020:

- Massachusetts – House and Senate members are trying to iron out differences in a conference committee. An interim budget has been signed that authorizes spending through July 30.
- Michigan – The legislature has not finalized the budget yet. However, the state fiscal year does not begin until October 1.

- New Hampshire – The governor vetoed the budget on June 28. A continuing resolution has been approved through October 1.
- North Carolina – The governor vetoed the budget on June 28. State law allows spending to continue at current levels until a new budget is enacted.
- Ohio – House and Senate members are meeting in a conference committee. An interim budget has been signed that authorizes spending through July 17.
- Oregon – Oregon legislature's completed action on budget bills on June 30. The governor is currently reviewing the various budget bills. A continuity resolution was approved that authorizes spending through September 15, or until an agency's budget is signed.46 states begin their fiscal year on July 1 (New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1). Governors in 47 states proposed new budgets for fiscal 2020 (30 states will enact an annual budget, while 17 states will enact a biennial budget covering both fiscal 2020 and fiscal 2021). Last year, 3 states enacted budgets covering both fiscal 2019 and fiscal 2020.

Please click here for links to proposed and enacted budgets, as well as budget summaries.

State Savings Policies Evolve Amid a Decade of Economic Growth.

The amount states have in reserve is at a high mark and savings practices have become more sophisticated. But lawmakers are at times still drawn to tap the large pots of money.

When Myron Frans came on the job as Minnesota's revenue commissioner, the state's finances were stretched thin. It was 2011, less than two years after the official end of the Great Recession and the state was facing a $6 billion budget deficit.

"Those were tough times," recalled Frans, who now leads the Minnesota Management and Budget office.

Disagreements between Republican lawmakers and then-Gov. Mark Dayton, a Democrat elected the prior year, over how to contend with that shortfall would contribute to a state government shutdown that lasted about three weeks.

Continue reading.

Route Fifty

By Bill Lucia

JULY 5, 2019

Report Highlights US Pension Shortfall.

Funding shortfalls for state and local pension funds are a key source of fiscal fragility in the United States.

Research by IMF economists indicates that government employee pension fund assets are significantly smaller than their rapidly growing liabilities.

A severe shock in the future could affect resources significantly, making fiscal adjustment necessary, the research indicates.

In the IMF working paper, *Public Wealth in the United States*, economists Fabien Gonguet and Klaus-Peter Hellwig analyse the evolution of the US public sector balance sheet between 1945 and 2016.

They conclude that the country faces "large fiscal adjustment needs" that will require policy changes in the long-term either to raise public revenues in order to keep social promises – or to cut in other areas.

"Under our baseline assumptions, we find that current fiscal policies in the US are not viable in the long-term," write Gonguet and Hellwig.

Continue reading.

Public Finance International

by Gavin O'Toole

4 Jul 19

Gap Grows Between Well-Off and Troubled State Public Pension Plans.

The findings from The Pew Charitable Trusts come as the U.S. enters a record phase of economic expansion.

Poorly funded pension plans for state and local public employees saw their finances erode in recent years despite strong investment returns, as the gulf between states with better and worse-off retirement systems has grown wider.

These findings are presented in a new report from The Pew Charitable Trusts that surveys the health of state-run public pension systems.

The current economic expansion in the U.S., which began in June 2009, is now the longest on record at about 121 months. It has unfolded in the wake of the Great Recession, which took a heavy toll on state and local budgets and the financial health of their pension systems.

Investment losses for the 230 pension plans in Pew's data caused the value of assets held by those plans to drop by 24% during 2008.

In general, public pension plans generate the money they use to pay retiree benefits from employee contributions, taxpayer dollars that flow from state and local agencies in the form of employer contributions, and returns gained from investing this money.

The extended growth cycle has given state and local governments about a decade to rebuild their finances.

But overall in 2017 the pension plans the Pew researchers examined only had about 69% of the assets they needed to fully fund their anticipated pension costs in the coming years.

That level is down from around 86% before the recession.

States in 2017 reported $4.1 trillion in benefits owed to workers and retirees but just $2.9 trillion set aside to cover those costs, leaving a shortfall of $1.28 trillion, the report says.

It adds that the pension funding gap is down from $1.35 trillion in 2016, but this marks only the second time since the recession that the shortfall has decreased.

Illinois, Kentucky and New Jersey, well known for their pension funding woes, reported an average 15 percent decrease in the funded ratios for their retirement systems between 2012 and 2017—even though investment returns were generally strong during that time.

The Pew report emphasizes that these states' pension plans are troubled in part because policy makers did not regularly set aside the amount of money that actuaries estimated would be required to cover the cost of providing promised benefits to retirees.

Shortchanging a pension fund in this way tends to increase costs in the long run.

The report points out that from 2007 to 2017, pension contributions went up 424% in Illinois, 267% in Kentucky, and more than 100% percent in New Jersey.

But the states together still faced an $11.5 billion shortfall to keep their pension debts from growing, the researchers add.

To help put that figure in proportion: total general fund spending in Kentucky during fiscal year 2018 was around $11 billion. And Illinois and New Jersey each reported about $35 billion, according to figures compiled by the National Association of State Budget Officers.

Colorado and Connecticut had less than 50% of the assets in 2017 needed to cover their pension costs, while another 15 states had less than two-thirds of the assets needed to do so.

Other state pension systems are performing quite well. For instance, South Dakota, Tennessee and Wisconsin all have systems that were between 97% to 103% funded in 2017 and that have not fallen below a funded level of 89% in the past two decades.

The Pew researchers note that these states have followed practices like regularly making the full recommended contributions to their funds, automatically lowering benefits or increasing contributions during market downturns and planning based on conservative assumptions.

State and local pension debt as a share of the nation's gross domestic product was roughly in the 1% to 3% range in the years leading up to the recession. But around the time of the downturn it shot upwards, and has been in the ballpark of 8% to 10% in the past few years.

When pension costs rise as a share of state and local government spending, it can reduce the amount of money that lawmakers have available to devote to other priorities.

A full copy of the Pew report can be found here.

Route Fifty

By Bill Lucia,

JULY 2, 2019

Wall Street Beware: The Public Banking Movement Is Coming for You

It may not come as a surprise to hear that the majority of Americans don't trust the banking system in this country. Only 27 percent of those surveyed in a 2016 Gallup poll said they had "a great deal" or "quite a lot" of confidence in the institution — less than half of the record high set in 1979. And the lack of trust is spread relatively evenly across the political spectrum — it's not just liberals or those on the left: Almost everyone is fed up with the banks.

And if banking institutions don't exactly spark joy, their lead characters — morally bankrupt investment bankers whose greed and arrogance almost singlehandedly collapsed the entire country's economy — certainly don't spark joy either. It's an old story: Bankers made obscene amounts of money destroying the economy, we bailed them out, they walked away from it all without a shred of accountability and there's nothing anyone can do about it. But that's not where the story has to end. Spurred by the need for an alternative to the for-profit, extractive model of finance exemplified by Wall Street, there is a budding movement in the United States that is working to reimagine banking as an institution that truly serves the public.

Public banking is an old idea, but it has never been very common in the United States. The first and only public bank in the country was founded exactly 100 years ago in North Dakota, and it wasn't until relatively recently that the idea has begun to find new life in cities and states across the country. Growing largely out of the need for more democratic ownership over capital, the aim of this budding movement is to create a robust public banking infrastructure across the nation that is rooted in the principles of economic, environmental, racial and social justice.

Continue reading.

Truthout

by Robert R. Raymond

July 5, 2019

Hedge Fund Challenges $14 Billion in Illinois Debt as Unconstitutional.

New lawsuit mirrors tactics by Puerto Rico's financial oversight board to drive down public debt

A hedge-fund manager claiming Illinois has piled up more debt than its constitution permits is suing Gov. J.B. Pritzker and other state officials in an effort to wipe out $14.3 billion in municipal bonds.

New York-based Warlander Asset Management LP and John Tillman, chief executive of the conservative Illinois Policy Institute think tank, said Illinois broke a state rule prohibiting deficit financing by selling debt in 2003 to close a pension gap and in 2017 to pay down government vendors.

Warlander, which holds $25 million in other Illinois bonds, said the outstanding portions of the 2003 and 2017 debt sales should be declared "unconstitutional and unenforceable." The Illinois constitution bars the state from taking out long-term debt except for "specific purposes" or to

refinance longer-term debt, according to the complaint filed Monday in Sangamon County Circuit Court.

Illinois instead borrowed to bridge deficits and to speculate on financial markets, the lawsuit said, lowering the state's creditworthiness and heightening the likelihood of default.

No U.S. state has failed to pay bondholders since Arkansas in 1933, although the U.S. island territory of Puerto Rico defaulted in 2016 and was later placed under a court-supervised bankruptcy.

Emily Bittner, a spokeswoman for Mr. Pritzker, said the lawsuit "is simply a new tactic from the extreme right to interfere in capital markets." Several layers of bond attorneys and former Attorney General Lisa Madigan signed off on the bond offerings, Ms. Bittner said.

The complaint mirrors ongoing efforts by the board overseeing Puerto Rico's tattered public finances to drive down bondholder claims. In January, the board filed court papers arguing that $6 billion in general obligation bonds should be considered worthless because they layered more debt on Puerto Rico than its constitution allowed.

While no court has ruled on those arguments, a bankruptcy-exit framework proposed by the board last month takes them into account and offers a comparatively lower recovery to investors whose claims have been challenged.

Unlike Puerto Rico, Illinois lacks a bankruptcy mechanism to push bondholders into a centralized court proceeding to hammer out restructuring terms. But the state's finances have been stressed for years, pushing its bond rating to the lowest among U.S. states as pension obligations ballooned and a budget stalemate under former Gov. Bruce Rauner from 2015 to 2017 racked up billions of dollars in unpaid bills.

Illinois Comptroller Susana Mendoza, who was also named as a defendant in Monday's lawsuit, said in a statement that the 2017 bond sale helped pay down vendor bills stemming from the budget stalemate and lowered the state's interest rate on that debt to 3.5% from 12%, saving taxpayers billions of dollars. She said the complaint was meant "to scare investors in the bond market for political ends."

While state and local governments nationwide are grappling with how to cover bond payments, pension benefits and infrastructure needs, few are as strained as Illinois, where state courts have largely barred lawmakers from scaling back retirement obligations.

Illinois has found willing lenders despite its precarious finances, demonstrating how investors' appetite for returns can help governments borrow even with credit ratings teetering on junk territory.

Yet analysts have questioned how long the municipal market will continue lending to Illinois at reasonable rates, especially if the economy dips into recession and the state's tax base shrinks. Warlander said interest and principal payments on the 2003 and 2017 bonds will eat up $20 billion over the next 14 years, roughly half the state's overall scheduled debt service.

"Debt service payments on unconstitutional debt like the challenged bonds are an unconstitutional misuse of public funds that will cause irreparable harm to Illinois taxpayers," the lawsuit said.

The 2003 bond sale, still the largest ever by any city or state, generated $10 billion for the Illinois pension systems but didn't solve their funding problem. The persistent shortfall prompted discussion last year of another pension bond more than 10 times as large, though the proposal didn't gain

momentum.

The Wall Street Journal

By Andrew Scurria

July 1, 2019

—Gunjan Banerji and Heather Gillers contributed to this article.

Traders Shrug Off Suit Challenging $14 Billion of Illinois Debt.

- **Citigroup calls the legal challenge by hedge fund unjustified**
- **State bond prices dipped slightly, but then bounced back**

A lawsuit Monday seeking to have $14.3 billion of Illinois bonds thrown out by a court lit up the phone lines of Wall Street trading desks, where analysts fielded calls from investors worried about the odds their investment in the state's debt could be worthless.

But trading prices show bondholders see little chance that the legal challenge will succeed.

Taxable Illinois debt issued in 2003, which was targeted in the lawsuit, slipped early Tuesday, when a customer sold $5 million worth for about 103 cents on the dollar, down from an average of 104.5 cents Monday. They swiftly rebounded, however, rising back to 103.8 cents by mid-morning to yield 4.73 percent.

That yield is nearly a full percentage point less than what it was at the start of the year, before Illinois bonds rallied as Democratic Governor J.B. Pritzker paved the way for an income tax increase on the highest earners and ended the political gridlock that dogged his Republican predecessor.

"Illinois had rallied very hard, it was more sensitive to downside recently, but the show of support once it did gap wider also shows the market's lack of belief that this has legs," said Gabe Diederich, municipal-bond fund manager for Wells Fargo Asset Management, which holds Illinois debt among its investments.

Pritzker and Illinois Comptroller Susana Mendoza dismissed the lawsuit as a political tactic by John Tillman, the chief executive officer of the Illinois Policy Institute, a conservative think tank, that will be tossed out of court. The case, also filed by New York hedge fund Warlander Asset Management claims the state's record pension bond sale in 2003 and debt issued in 2017 to pay a backlog of unpaid bills were deficit financings prohibited by the constitution.

Warlander owns $25 million Illinois general-obligation bonds issued in 2001, 2014, 2017 and 2018. Those bonds would be more secure if the firm succeeded in having the other securities invalidated, since there would be more money available to service the debt.

The Illinois Constitution says the state may issue long-term debt only to finance "specific purposes" if approved by three-fifths of the legislature or by popular referendum. Warlander and Tillman argue that deficit financing isn't a "specific purpose" and doesn't encompass the general purposes for incurring debt discussed in the constitution, such as refinancings or short-term borrowing to paper over temporary cash shortfalls until tax revenue comes in.

Analysts are skeptical. Citigroup Inc.'s Vikram Rai and Jack Muller published a note on the case after the bank was inundated with calls. They said the lawsuit is unjustified because the Illinois Constitution allows debt to be incurred as long as the law details the specific purpose of the debt and how it will be repaid. Even if it did succeed, they said, the government would likely find a way to repay the debt to avoid being penalized in the bond market.

"The state will not want to pay zero to the bond holders as it was never their intent to harm the investors," Rai and Muller wrote. "They are more likely to want to make the bond holders whole even if that entails amending the constitution."

Jason Appleson, a portfolio manager at PT Asset Management LLC, said he believed market consensus is that the lawsuit was frivolous.

"I was somewhat surprised to see the initial market reaction that spreads widened out, I would have expected the reaction to be a bit more muted," he said.

Appleson attributed the initial widening to "a couple of scared buyers" affecting a light trading day in a slow market. "If this moves forward in court, I think we could see some more widening but if it's shut down we could see a snap-back in spreads given the market conditions."

Bloomberg Markets

By Martin Z Braun and Danielle Moran

July 2, 2019, 10:50 AM PDT

Hedge Fund Sues Pritzker to Void $14 Billion of State Debt.

- **Joins with conservative think tank chief to challenge bonds**
- **Governor's office sees 'new tactic from the extreme right'**

A hedge fund run by a protege of Appaloosa Management's David Tepper and the chief executive officer of a conservative think tank sued Illinois Governor J.B. Pritzker, saying $14.3 billion of bonds should be invalidated because their issuance violated the state constitution.

Warlander Asset Management, a New York-based hedge fund formed by Eric Cole, and John Tillman, the CEO of the Illinois Policy Institute, said the state's record pension bond sale in 2003 and debt issued in 2017 to pay a backlog of unpaid bills were deficit financings prohibited by the constitution. The lawsuit was filed Monday in Sangamon County circuit court.

The goal of the debt limits in the state constitution "was to ensure that the state's elected officials would act in a fiscally responsible manner — that they would cut spending or make structural reforms when needed, rather than continually using deficit financing to 'kick the can down the road' for future generations to resolve," the complaint said.

"The state's elected officials have done just the opposite. They have mortgaged the state's future to pay for the present."

The lawsuit comes two months after the federal board overseeing Puerto Rico's bankruptcy and a group of hedge funds sought to have more than $6 billion of the island's bonds declared null and void and shows how the island's effort to cut its debts is reverberating in the $3.8 trillion U.S.

municipal-bond market. The Puerto Rico overseers want to have the debt tossed out on the grounds that it was sold after the territory breached its debt limits, a step that some analysts said could undermine confidence in a market that's seen as a haven.

Illinois officials dismissed the lawsuit, saying it was a politically motivated maneuver by small-government advocates that won't advance in court.

"It was meant to generate headlines to scare investors in the bond market for political ends before the filing is laughed out of court,'' Comptroller Susana Mendoza, who was named in the suit, said in an emailed statement. "The markets should see this as nothing more than garbage.''

Tillman's Illinois Policy Institute has been at the forefront of legal challenges to public employee unions and progressive taxation. The institute backed an Illinois employee named Mark Janus in his challenge to the constitutionality of mandatory union fees. In 2018 the U.S. Supreme Court ruled in Janus's favor, dealing a heavy blow to the labor movement.

In 2014, the institute helped defeat a movement to amend the Illinois Constitution and replace the state's flat income tax with a progressive income tax. Pritzker, a Democrat who took office this year, persuaded lawmakers to put a progressive income tax back on the ballot in 2020.

Several layers of bond counsel and the Attorney General signed off on the 2003 and 2017 bond offerings, Emily Bittner, Pritzker's Deputy Chief of Staff for Communications, said in an email.

"This is simply a new tactic from the extreme right to interfere in capital markets," said Bittner. "We're done with the far right's dangerous financial games to pull Illinois underwater. We saw this repeatedly under Bruce Rauner, who funded and executed on John Tillman's pathological focus to drive Illinois into bankruptcy."

Swelling Debts

In addition to Pritzker, the lawsuit names as defendants state Treasurer Michael Frerichs and Mendoza. Warlander owns $25 million Illinois general-obligation bonds issued in 2001, 2014, 2017 and 2018. Those bonds would be more secure if the firm succeeded in having the other securities invalidated, since there would be more money available to service the debt.

In a statement, Treasurer Frerichs called the suit a "political stunt." The governor and lawmakers passed a budget that begins to undo the financial harm done during Rauner's term, he said.

"I intend to let Attorney General Kwame Raoul do his job and ask the court to reject this absurd request from Mr. Tillman and the Illinois Policy Institute to have the courts entertain the extremist agenda that the legislature and the voting public have already overwhelmingly rejected."

Illinois has struggled for years with its debts and swelling obligations to its employee retirement system even after it sold $10 billion of bonds in 2003 in an ill-fated bid to pay down some of its obligations. Since 2000, the state's unfunded pension liability and bond debt have grown more than 600% to more than $168 billion, according to a copy of the complaint. Its credit rating is one-level above junk by Moody's Investors Service and S&P Global Ratings Inc., the worst among U.S. states.

Matt Fabian, a partner at Municipal Market Analytics, said investors shouldn't trade based on the lawsuit. Some of the pension bonds due in 2033 were little changed Monday, yielding about 4.6 percent, according to data compiled by Bloomberg.

"It's when the issuer wants to invalidate the bonds where things get worrisome," he said. "The last

thing the state wants to do is default on bondholders. So even if, post-miracle, this hedge fund wins its lawsuit, the state is most likely going to do right by its lenders so as to preserve market access."

Article nine, section nine of the Illinois Constitution says the state may issue long-term debt only to finance "specific purposes" if approved by three-fifths of the legislature or by popular referendum.

The state may borrow a limited amount in anticipation of revenue or to meet unanticipated shortfalls only through short-term debt, according to the constitution. In addition, the state can refinance higher-cost debt, but only if the refunding debt matures within the term of the debt that's being retired.

In 2003, Illinois used more than $2 billion of the proceeds of its pension bond issue to reimburse the state for its required contributions in 2003 and 2004, which the lawsuit says was "simply a gimmick to mask the fact that the state was using GO bond debt to fill operating deficits."

About $8.85 billion of the pension bonds remain outstanding and they're among the most actively traded Illinois securities. Major owners include Samsung Life Insurance Co., Capital Group Cos. and Dodge & Cox, according to data compiled by Bloomberg. If the state ceases making principal and interest payments on the debt it could contribute an additional $13 billion to its pensions over the next 14 years, according to the complaint.

In 2017, the state issued $6 billion of of general-obligation debt backed by income taxes to pay off a portion of a $15.2 billion backlog of unpaid bills that had accumulated during the previous two years, when then-Governor Bruce Rauner and the legislature failed to pass a budget.

Using bond money to cover general expenses, speculate in the market, or pay past-due bills isn't a "specific purpose" for incurring state debt, but rather another name for deficit financing, the complaint said.

"The burden of servicing this unconstitutional debt fall on the taxpayers of Illinois, including Plaintiff John Tillman" and harms holders of other GO debt like Warlander by reducing the state's ability to service the debt.

Bloomberg Markets

By Martin Z Braun

July 1, 2019, 7:52 AM PDT Updated on July 1, 2019, 3:15 PM PDT

— With assistance by Boris Korby

Cyberattack Forces Georgia Agency to Shut Down Websites.

ATLANTA — A Georgia state agency says a cyberattack has forced it to shut down some court websites.

News outlets report hackers demanding a ransom infected computers with malware at the Georgia Administrative Office of the Courts. Agency spokesman Bruce Shaw said Monday that officials have "quarantined our servers and shut off our network to the outside."

It wasn't immediately clear how many Georgia courts were affected, or to what degree their

operations were interrupted. The agency's website, www.georgiacourts.org , was offline Monday. Websites for the Georgia Supreme Court and court clerks in the state's larger counties appeared to be operating.

The Georgia Administrative Office of the Courts provides computer applications to some local probate and municipal courts. Shaw said the agency doesn't store private information aside from what's in public court documents.

By The Associated Press

July 1, 2019

Mastercard, Mercator Advisory and NASACT Release Report on New York Payment Operations.

Click to view the report, State of Payments: Study of the Payments of the State of New York – Project Findings.

Federal Government Demands Part of Oklahoma's $270M Opioid Settlement.

The federal government is seeking a portion of Oklahoma's $270 million settlement with opioid maker Purdue Pharma.

In a June 12 letter to Oklahoma's Medicaid director, an official from the U.S. Centers for Medicare and Medicaid wrote that he was aware of the state's landmark settlement with the maker of OxyContin and "the federal government is entitled to a portion of that amount."

In the two-page letter, Bill Brooks, the director of Centers for Medicaid and CHIP Services, does not specify how much of the $270 million settlement the state might owe to the federal government.

He did, however, ask Oklahoma Medicaid Director Becky Pasternik-Ikard to respond with an explanation of what the state believes to be Medicaid's portion of the settlement.

Gov. Kevin Stitt hinted Thursday he disagrees with the idea that Oklahoma owes part of the settlement funds to the federal government.

"We're aware of that letter," he said. "We're talking to our counsel about it. We obviously disagree and we'll be making further comments."

Stitt declined to elaborate on what exactly he disagrees with, saying he will hold off commenting further to avoid say anything that could hurt the state's position in ongoing litigation against opioid manufacturers.

Brooks also asked for a wide swath of documents, including those that show the amount of Medicaid funds expended to purchase opioids in any way associated with the settlement, to treat Medicaid recipients for substance use disorder caused by opioids and related to the settlement and to pay for diversion programs in conjunction with the settlement.

Also requested was the 20 years of Medicaid claims data that Oklahoma used to “help determine the amount of damages” to claim in the lawsuit. The Oklahoma Health Care Authority provided the data to Attorney General Mike Hunter’s office.

When Hunter initially filed the lawsuit against opioid manufacturers, he accused them of creating a public nuisance, fraud, unjust enrichment and violating Oklahoma’s Medicaid False Claims Act, Medicaid Program Integrity Act and Consumer Protection Act.

The letter from the federal government specifically cites the Medicaid False Claims Act and Medicaid Program Integrity Act. Typically, when states are awarded funds in Medicaid fraud cases, they reimburse the federal government for its share.

Hunter said he’s unconcerned about the letter.

“I’ve got a lot of things I’m worried about, but this is not one of them,” he said.

Hunter spokesman Alex Gerszewski elaborated, saying this will not affect state revenue.

The letter also includes a stiff warning that the federal government could withhold future Medicaid payments if Oklahoma officials do not return its share of the settlement.

The state could have a problem paying the federal government because none of the $270 million in settlement funds went into state coffers.

The settlement stipulates $200 million, or the bulk of the settlement, must go toward establishing a national center for addiction treatment at the Oklahoma State University Center for Wellness and Recovery in Tulsa. The remainder will go to local governments or will be used to pay legal fees.

In light of the letter from CMS, Stitt said it could be a good thing that Hunter structured the settlement so that the money went to a nonprofit instead of the state treasury.

“I think this actually helps us in this case because that settlement money was sent to a national center for opioid research,” he said. “In this case, that is probably to our benefit because the state did not receive that money.”

Stitt did not speculate on where the money would come from if the state does end up owing a portion of the settlement funds to CMS.

The unusual settlement rankled state lawmakers, who then passed a law requiring settlement funds to go into the state treasury.

Cleveland County District Judge Thad Balkman recently settled a squabble Stitt and prominent lawmakers had with the attorney general’s office over what to do with an $85 million windfall from the state’s settlement with drugmaker Teva Pharmaceuticals.

It’s unclear if the federal government feels it is owed a portion of that settlement, the bulk of which went into a special fund in the state treasury.

The letter may also pave the way for the federal government to try to claim a portion of what, if any, windfall may come from the ongoing opioid trial against drugmaker Johnson & Johnson.

Johnson & Johnson has been accused of creating a public nuisance that helped cause the opioid epidemic through false and misleading marketing efforts that downplayed the addictive and

overdose risks of opioids.

The state is not going after the company on complaints of violating Oklahoma's Medicaid False Claims Act or Medicaid Program Integrity Act, which could reduce the federal government's claim to any windfall that may result from the trial.

Brooks requested the state respond by July 12, but Pasternik-Ikard requested a 90-day extension giving state officials until Oct. 12 to respond.

By Carmen Forman

BY TRIBUNE NEWS SERVICE | JULY 1, 2019 AT 7:46 AM

The Education Opportunity in Opportunity Zones.

Can incentivized investment in distressed communities close the prosperity gap?

More than 8,700 newly created Opportunity Zones are now racing to attract a portion of the $6 trillion in capital that may flow under a provision of the new tax law enacted in 2017. The law uses a package of tax incentives to jumpstart economic development in distressed communities by financing local startups, building small businesses, or developing properties—but there are also opportunities for education institutions and workforce-development programs.

A lack of investment in distressed communities

A growing body of research has revealed geographic prosperity gaps across the United States. Recent economic growth is concentrated in large, metropolitan areas with populations of over 1 million, which have experienced 72 percent of the nation's job growth since the financial crisis. Nearly half of the net increase in business establishments from 2007 to 2016 took place in just two cities: Washington, D.C., and New York City.

Millions of Americans now live in distressed communities characterized by higher rates of poverty and lower levels of income, educational attainment, and workforce participation. Pockets of the country also struggle with higher rates of "deaths of despair" due to suicide, drugs, and alcohol—symptomatic of a larger sense of lost opportunity.

Continue reading.

Education Next

By John Bailey 07/02/2019

'Drag This Out as Long as Possible': Former Official Faces Rare Criminal Charges Under Open-Records Law

ATLANTA — When he was mayor of Atlanta, Kasim Reed's relationship with the news media was notoriously contentious.

He was the kind of politician who punched back when he felt punched. He was well known for blocking reporters on Twitter, and his office regularly criticized journalists by name and issued news releases that vigorously pushed back against negative coverage.

Once, at a February 2017 news conference, Mr. Reed responded to reporters' requests for records by simultaneously releasing more than 1.4 million pages of documents on paper, stuffed into more than 400 boxes, some of them filled with blank sheets and minuscule spreadsheet printouts — a gesture interpreted by many in the local press corps as a dramatic act of nose-thumbing.

Continue reading.

The New York Times

By Richard Fausset

July 8, 2019

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

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

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

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

We are grateful for the support of the Council of Development Finance Agencies (CDFA), who lent their insight and experience to assembling the playbook.

And we are indebted to the Ford Foundation for their support of this work.

Read the playbook.

Unanswered Questions from the April Regulatory Guidance on Opportunity Zones: Pepper Hamilton.

Qualified Opportunity Zones: Additional Regulatory Guidance – TAX UPDATE Volume 2019,

Issue 3

In April, the Department of the Treasury released the much-anticipated second round of Treasury Regulations under section 1400Z-2 of the Internal Revenue Code (April Regulations). This article provides certain highlights of the regulations and notes some questions that remain unanswered.

In general, the benefits of investing in a Qualified Opportunity Fund (QOF) are available to an investor that (1) recognizes capital gain from the sale of property to an unrelated person, (2) timely invests in a QOF in an amount equal to or lesser than the amount of the gain (generally within 180 days recognizing the gain), and (3) makes a timely election with respect to its investment in the QOF, thus making a "Qualifying Investment" in the QOF. The tax benefits available with respect to a Qualifying Investment are (1) deferral of tax on the amount of the capital gain invested until December 31, 2026 (unless there is an earlier triggering event); (2) if an investor holds its interest in the QOF for at least five or seven years, 10 percent or 15 percent, respectively, of the gain invested in the QOF is permanently excluded from income; and (3) if an investor holds its interest in the QOF for at least 10 years, any gain on the appreciation of its investment in the QOF generally will not be subject to U.S. federal income tax upon the disposition of the investment.

Exiting QOFs and 'Churning'

In the April Regulations, one of the most important changes provides that taxpayers that invest in a QOF that is a partnership and that have held their interests for at least 10 years may make an election to exclude from income a certain amount of the capital gain that is realized by the partnership from the disposition of qualified opportunity zone property (QOZP) and reported on the investors' Schedule K-1 of the QOF. An additional benefit is that, in specific circumstances, although the income for which the election is made is excluded, the taxpayer will still receive a basis "step-up" corresponding to the amount of gain. This ensures that, if the cash proceeds of the sale are distributed to investors in the QOF, there typically will be no additional tax.1

This election is important because it may eliminate the need for single-asset QOFs by allowing the QOF to dispose of a variety of assets directly, after the investors have held their interests for more than 10 years. It also affords investors in a QOF the flexibility to dispose of their interests in the QOZP (through the QOF) while recognizing the 10-year appreciation exclusion without having to sell their interest in the QOF.

If a partnership QOF or partnership subsidiary qualified as an opportunity zone business (QOZB) disposes of QOZP before the investors have held their interests for 10 years, the income from that sale would flow through to the investors and would be subject to tax under the normal partnership rules. The preamble to the April Regulations noted that the Treasury Department and the IRS were not able to find authority to issue regulations permitting QOFs or their investors to avoid recognizing gain on the sale or disposition of QOZP if the investors had not held their interests for more than 10 years. Comments were requested in that regard. This means that QOFs likely will be incentivized to hold large investment assets (e.g., real estate) for more than 10 years if investors are hoping to recognize the full QOF tax benefits.

In addition, although the gain from a disposition of QOZP must be realized by investors if they have not held their interests for more than 10 years, the proceeds of that sale generally will not be treated as a "bad" asset for the purposes of the QOF's 90 percent asset test if they are retained by the QOF as cash or certain listed cash equivalents.

Working Capital Safe Harbor for Operating Businesses

Under the April Regulations, the working capital safe harbor still can only be used by a QOZB. Thus, it is likely that QOFs may seek to retain a multiple-tier structure. The safe harbor has now been expanded to include cash designated in writing for the development of a trade or business in a qualified opportunity zone, in addition to the existing acquisition, construction and/or substantial improvement of tangible property in such a zone. This provision accommodates operating businesses. The proposed regulations also clarify that delays due to waiting for government action (e.g., zoning approval) will not cause a failure of the safe harbor if the relevant applications to the government are complete. Further, although the level of detail necessary in a written plan is not specified in the April Regulations, an example in the regulations suggests that a general business plan, without identification of a site of the business, may be sufficient to meet the requirement.

QOF Interests Received for Services

Prior regulations left the door open to the possibility that an investor that invested capital gain in exchange for an interest and also provided services in exchange for an interest might be able to treat their entire interest in the QOF as a Qualifying Investment. The April Regulations clarify that, if an investor receives an investment in a QOF in exchange for both services rendered to the QOF and capital gain contributions, then the interest in the QOF that the investor/service provider receives in exchange for services is not a Qualifying Investment.

All Uses of the Term ‘Substantially All’ Defined

For property to be qualified opportunity zone business property (QOZBP), during **substantially all** of the QOF’s holding period for such property, **substantially all** of the use of such property must be in a qualified opportunity zone. The April Regulations tell us that “substantially all” for purposes of the holding period means 90 percent and for use means 70 percent.

The 90 percent holding period requirement also applies to the requirement that, during **substantially all** of the QOF’s holding period for QOZB stock or partnership interests, the corporation or partnership must qualify as a QOZB. It is not clear, however, how this 90 percent holding period requirement for QOZBs interacts with the 90 percent asset test at the QOF level. The IRS has informally suggested that the 90 percent holding period requirement is applied on a year-b--year basis (testing whether the QOZB qualified as such for 90 percent of each taxable year). However, the April Regulations suggest that the 90 percent holding period should only be evaluated either once the complete holding period for the interest in the QOZB is known or based on the holding period on a relevant testing date.

Pepper Perspective

Although the April Regulations offer further guidance with respect to investments in QOFs, certain questions remain unanswered. The timing and extent of additional guidance that may be forthcoming from the IRS is not clear. Thus, investors should work with their tax advisors to develop the required structures and follow the appropriate procedures to invest in a QOF in a way most likely to allow them to qualify for the tax benefits associated with a Qualifying Investment.

Endnotes

1 This is because the basis step-up in an investor’s interest in the QOF still applies with respect to the gain excluded; distributions from a partnership are generally tax-free to the extent of an investor’s tax basis in its partnership interest.

by Thomas Phelan

July 1, 2019

Pepper Hamilton LLP

S&P Extra Credit Podcast: All Things Texas

Lisa Schroeer talks with Texas experts Andy Hobbs, Josh Travis and Oscar Padilla. Hear about recent legislation and the impact on locals and school districts, and get a state overview.

Listen to Audio

Jul. 1, 2019

S&P Charter School Brief: Nevada

As of June 28, 2019, S&P Global Ratings maintains eight public ratings on Nevada charter schools and charter networks. Nevada legislature first approved the state's charter school law in 1997. An estimated 52,300 students were enrolled in 48 Nevada charter schools during the 2018-2019 school year and the Nevada State Public Charter School Authority has reported plans to increase that number to 60,

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Jun. 28, 2019

Quinn Palomino: The First Opportunity Zone Fund, One Year Later

It's been one year since Virtua Partners launched the very first Qualified Opportunity Fund. Since then, they have raised $100….

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Opportunity Db

July 2, 2019

TAX - GEORGIA

City of Dublin School District v. MMT Holdings, LLC

Court of Appeals of Georgia - June 26, 2019 - S.E.2d - 2019 WL 2610349

Taxpayer brought putative class action against city and school district, seeking refund and claiming that ad valorem tax was not authorized.

The grant of partial summary judgment to taxpayer was reversed on appeal. On remand, the trial court granted summary judgment to school district, but denied school district's motion to disburse tax proceeds collected by city. School district appealed.

The Court of Appeals held that the trial court's order was not appealable.

Order granting summary judgment to school district on basis of sovereign immunity was not a final order in taxpayer's action against school district and city challenging validity of ad valorem taxes, and thus order was not appealable as final judgment; taxpayer's claim against city was still pending, as trial court had granted taxpayer's request for class certification and was required to adjudicate any claims by class once requisite notice period had passed, and court had not yet entered permanent injunction or final order directing city to disburse funds to taxpayer or any other class members.

New Michigan Road-Funding Scheme: Issue $10B in Teacher Pension Debt to Free Up Cash.

The latest idea to fix Michigan's crumbling roads is to float $10 billion in bonds to pay down the state's long-term liability for school employee pensions, freeing up $1 billion in the state's School Aid Fund that's currently diverted from classrooms to pensions.

Then, the newfound savings there would allow lawmakers to remove the sales tax on gasoline without impacting school funding, and raise the per-gallon gas tax by the same amount the sales tax generated — roughly 16 cents on a gallon of $2.65 gas — so that the price at the pump doesn't noticeably increase for motorists.

Some of Michigan's most powerful businessmen came up with this scheme.

What could go wrong?

Continue reading.

Crain's Detroit Business

by Chad Livengood

July 07, 2019

The Week in Tech: What Should Your City Do if It's Hit by Ransomware?

Hi, I'm Jamie Condliffe. Greetings from London. Here's a look at the week's tech news:

Imagine you're a mayor trying to spend your city's money wisely. You've heard about ransomware attacks, where hackers locking I.T. systems using encryption and demanding money for their release. But what should you do about them?

Ideally, you'd ensure systems are up-to-date and properly backed up. But it's "unrealistic" to expect many cities to afford big security overhauls, according to Gregory Falco, a cybersecurity

entrepreneur who teaches at Columbia, Harvard and M.I.T. as well as researching at Stanford.

And it might never happen, right?

Continue reading.

The New York Times

By Jamie Condliffe

July 5, 2019

A City Paid a Hefty Ransom to Hackers. But Its Pains Are Far From Over.

LAKE CITY, Fla. — Audrey Sikes, city clerk of Lake City, Fla., has a thing for documents: She does not like losing them.

It falls to Ms. Sikes, as official custodian of records for this city of 12,000 people about an hour west of Jacksonville, to maintain Lake City's archives. She keeps a log of public record requests and has spreadsheets that track things like property deeds and building permits. She spent years digitizing all the papers of a city that incorporated before the Civil War.

"It's everything I do," Ms. Sikes said.

Did.

Continue reading.

The New York Times

By Frances Robles

July 7, 2019

- GASB Proposes Guidance On Internal Revenue Code Section 457 Deferred Compensation Plans.
- SEC Approves Amendments Aimed At New Issue Transparency.
- BDA Submits Response to SEC Regarding Recent PFM Request for Interpretative Relief.
- BDA Submits Letter in Support of Recent FIMSAC Proposal.
- Governmental Accounting Standards Board Proposes Updated P3 Guidelines: Ballard Spahr
- Supreme Court Removes Obstacle For Plaintiffs Asserting Takings Claim In Federal Court: Day Pitney
- *Knick v. Township of Scott, Pennsylvania* – Supreme Court of the United States holds that a property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it, and therefore may bring his claim in federal court under § 1983 at that time.
- And finally, Post-Apocalypse Dystopian City of Brunswick, Department of Public Works is brought to us this week by *City of Brunswick v. Smith*, in which the court ruled that there was, "no

evidence to demonstrate that the pothole was created, concealed, or maintained willfully or wantonly." Quoi? Say again. Our day was brightened immeasurably via imagining scenarios in which a pothole could/would be willfully and wantonly created, concealed, and maintained. Enjoy!

GOVERNMENTAL SUBDIVISIONS - ALABAMA

W.R. Meriwether, Factors and Drayage, LLC v. Pike Road Volunteer Fire Protection Authority

Supreme Court of Alabama - June 14, 2019 - So.3d - 2019 WL 2482324

Landowners whose parcels adjoined parcel owned by volunteer fire protection authority brought action against fire authority and other defendants in which landowners sought a judgment that the fire authority was subject to a zoning ordinance restricting development on the parcels to low density, single-family residential development, and landowners sought a judgment declaring that fire authority's construction of a fire station on its parcel would violate the ordinance.

The Circuit Court granted motion filed by some defendants for judgment on the pleadings and granted motion filed by rest of defendants to dismiss. Landowners appealed.

The Supreme Court held that fire authority did not qualify as a governing body or political subdivision that, if engaged in governmental functions, was exempt from zoning ordinances.

Volunteer fire protection authority did not qualify as a governing body or political subdivision that, if engaged in governmental functions, was exempt from zoning ordinances, as was relevant to landowners' action for a judgment declaring that fire authority's construction of a fire station would violate ordinance restricting parcel owned by authority, as well as parcels owned by landowners, to low density, single-family residential development.

REFERENDA - CALIFORNIA

Howard Jarvis Taxpayers Association v. Amador Water Agency

Court of Appeal, Third District, California - June 14, 2019 - Cal.Rptr.3d - 2019 WL 2482624 - 19 Cal. Daily Op. Serv. 5597 - 2019 Daily Journal D.A.R. 5362

Voters' association brought petition for peremptory writ of mandate against water agency, challenging agency's rejection of referendum petition and refusal to place it on election ballot.

The Superior Court, Amador County denied petition. Association appealed.

The Court of Appeal held that:

- Water agency clerk's belief that referendum petition had been circulated without resolution attached did not provide basis for clerk to reject referendum petition, but
- Water agency resolution adopting new water service rates was a tax levy, and thus, under general referendum provision of constitution, voters lacked referendum power to approve or reject resolution.

Water agency clerk's belief, based on fact that pages of text of resolution did not have crease marks like the referendum petition signature pages did, that referendum petition had been circulated

without resolution attached did not provide basis for clerk to reject referendum petition; reasonable minds could differ as to what inference was to be drawn from fact that signature pages showed more signs of wear than copies of resolution text.

Local water agency resolution adopting new water service rates was a tax levy, and thus, under general referendum provision of constitution, voters lacked referendum power to approve or reject resolution; rate were adopted to keep providing water services, which were essential government functions, and an inclusive definition of tax was consistent with general purpose of constitutional exceptions of general referendum provision, seeking to avoid implementation delays that could disrupt essential governmental operations.

EMINENT DOMAIN - FEDERAL

Knick v. Township of Scott, Pennsylvania

Supreme Court of the United States - June 21, 2019 - S.Ct. - 2019 WL 2552486 - 19 Cal. Daily Op. Serv. 5784

Property owner brought § 1983 action against township, alleging that ordinance authorizing officials to enter upon any property within the township to determine existence and location of cemetery violated her Fifth Amendment rights.

The United States District Court dismissed without prejudice, and, following property owner's filing of second amended complaint dismissed claims alleging that ordinance took the owner's property without just compensation, in violation of the Fifth Amendment, and claims for declaratory and injunctive relief, without prejudice pending exhaustion of state law remedies. Owner appealed. The United States Court of Appeals affirmed. Certiorari was granted.

The Supreme Court held that property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it, and therefore may bring his claim in federal court under § 1983 at that time; overruling *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126.

EMINENT DOMAIN - FEDERAL

Welty v. United States

United States Court of Appeals, Federal Circuit - June 14, 2019 - F.3d - 2019 WL 2479594

Landowners filed suit against United States, claiming taking of their property for public use through inverse condemnation, without exercising power of eminent domain and without providing just compensation, by approving construction and maintenance of levee on conservation easement on adjacent property downstream from landowners' farm that resulted in frequent and severe upstream flooding damaging landowners' property and permanently preventing all beneficial use of landowners' farm as productive agricultural land.

The United States Court of Federal Claims granted government's motion to dismiss for failure to state a claim. Landowners appealed.

The Court of Appeals held that:

- Landowners failed to plead facts plausibly establishing either that adjacent property owner was acting as an agent of the government or that actions of adjacent property owner related to the levee were the product of coercion by the United States Department of Agriculture (USDA), and thus landowners failed to state a takings claim;
- Alleged receipt of financial compensation by adjacent property owner for participating in conservation reserve program (CRP) was insufficient, standing alone, to show that property owner was acting as an agent of the United States; and
- Fact that USDA provided financial incentive for participating in CRP was insufficient, standing alone, to show that construction and maintenance of levee was the product of government coercion.

LIABILITY - GEORGIA

City of Brunswick v. Smith

Court of Appeals of Georgia - June 17, 2019 - S.E.2d - 2019 WL 2497797

Bicyclist brought premises liability action against city alleging city was liable for injuries sustained when he hit a pothole and fell from bicycle.

The trial court denied city’s motion for summary judgment, and city appealed.

The Court of Appeals held that:

- Bicyclist was a “licensee,” and thus, under general premises liability principles, city owed only a duty not to willfully and wantonly injure him;
- No evidence to demonstrate that pothole was created, concealed, or maintained wilfully or wantonly, that is, with an intent to injure or with any conscious indifference as to infer an intent to injure, as required to support bicyclist’s premises liability claim; and
- Photographic evidence of a pothole, taken sometime before bicyclist hit pothole and fell from his bicycle, did not establish, on motion for summary judgment, that city’s notice of defect may have been superior to that of bicyclist, as required to support allegation that city was liable for damages for failing to maintain a public roadway.

EMINENT DOMAIN - IOWA

ChemSol, LLC v. City of Sibley

United States District Court, N.D. Iowa, Western Division - June 4, 2019 - F.Supp.3d - 2019 WL 2357066

Limited liability companies (LLC) that owned and operated a facility used to dry biological liquids brought action against city under § 1983 and Iowa law, alleging due process violations, inverse condemnation, and tortious interference with expected business advantage, arising from city’s enactment and enforcement of an odor ordinance.

City moved for summary judgment.

The District Court held that:

- LLC that transferred its ownership in the facility did not have standing to bring claims for inverse condemnation and for tortious interference with expected business advantage;

- LLC that transferred its ownership in the facility had standing to bring claims against city alleging odor ordinance was void for vagueness;
- City's odor ordinance was not unconstitutionally vague;
- City was not estopped from enforcing the ordinance against the facility;
- City's enforcement of the ordinance could not support class-of-one equal protection claim;
- City's enforcement of the odor ordinance did not violate due process;
- City did not effect a regulatory taking under the Fifth and Fourteenth Amendments by enforcing the odor ordinance; and
- Iowa's discretionary function immunity protected city from claim for tortious interference with expected business advantage.

City's odor ordinance, which made unlawful the creation of offensive or unreasonably offensive smells that were "injurious or dangerous to the health, comfort or property of individuals or the public," was sufficiently definite for due process purposes and thus was not unconstitutionally vague; the requirement that a smell be injurious or dangerous transformed the ordinance from one that could punish any smell to one that prohibited only public nuisances, the ordinance was nearly identical to Iowa's public nuisance statute, which had not been held to be unconstitutionally vague, and the terms "offensive" and "unreasonably offensive" in the public nuisance context were defined objectively under Iowa law, and so it was entirely possible to know what conduct was prohibited by the ordinance.

City did not effect a regulatory taking under the Fifth and Fourteenth Amendments by enforcing, against a facility used to dry biological liquids, the city's odor ordinance, which prohibited, as a public nuisance, the creation of offensive or unreasonably offensive smells that were injurious or dangerous to the health, comfort or property of individuals or the public.

PUBLIC UTILITIES - MINNESOTA

In re Enbridge Energy, Limited Partnership

Court of Appeals of Minnesota - June 3, 2019 - N.W.2d - 2019 WL 2333920

Oil transportation company filed application for certificate of need and routing permit to build new pipeline, and the Public Utilities Commission found the final environmental impact statement (FEIS) required for the certificate and permit to be adequate.

Environmental organizations and tribal bands filed three certiorari appeals, which were consolidated.

The Court of Appeals held that:

- Commission's definition of the purpose of and the need for oil pipeline project was reasonable;
- Analysis of the "no action" alternative was reasonable;
- Failure to address the environmental impact of an oil spill on the Lake Superior watershed was arbitrary and capricious;
- FEIS adequately analyzed potential resource impacts of an oil spill, potential impacts to greenhouse-gas emissions, comparative impacts to historic and cultural resources, and the potential environmental impact of alternative routes; and
- There were no "danger signals" that Commission was not genuinely engaged in reasoned decision-making.

Public Utilities Commission's decision to define the purpose of and the need for oil pipeline project with reference to oil transportation company's stated purpose of replacing an existing line in poor condition connecting two terminals was reasonable, and thus Commission was not required to consider alternatives that did not connect the terminals; existing line had been in operation since the 1960's, suffered a high amount of corrosion and long-seam cracking, had been operating at a decreased pressure, and was required to be replaced under a consent decree.

Public Utilities Commission analysis of the "no action" alternative in final environmental impact study (FEIS) for proposed oil pipeline was reasonable based on the record; there was no evidence that any upgrades to the existing pipeline would meet the capacity provided by the project, and agency's analysis of different routes for rail alternative was supported by information the agency had in hand about oil transportation.

Public Utilities Commission's failure to address the environmental impact of an oil spill on the Lake Superior watershed in final environmental impact statement (FEIS) for proposed oil pipeline was arbitrary and capricious; although the effect of an oil spill on Lake Superior and the Great Lakes was identified as a concern in final scoping decision document (FSDD), and raised in public comments, none of the seven sites analyzed were located in the Lake Superior watershed, and neither the agency response to comments nor FEIS addressed this issue.

Final environmental impact study (FEIS) for proposed oil pipeline reasonably focused on analyzing the potential resource impacts of an oil spill at all locations along the applicant's preferred route (APR) and alternatives, rather than specific impacts that would result from an oil spill originating from a particular location, where the impact of any particular spill depended on multiple variables, many of which were subject to chance.

Final environmental impact study (FEIS) for oil transportation company's proposed pipeline project adequately analyzed potential impacts to upstream and downstream greenhouse-gas (GHG) emissions, where FEIS relied on recent information, summarized market forecasts, and estimated the range of impacts the project could have to GHG emissions.

Final environmental impact study (FEIS) for oil transportation company's proposed pipeline project adequately analyzed comparative impacts to historic and cultural resources, and thus did not require completion of National Historic Preservation Act (NHPA) survey, where FEIS contained extensive analysis of the potential impacts to traditional cultural properties and other cultural resources along the route of the proposed pipeline, in compliance with the Minnesota Environmental Policy Act (MEPA), and included a summary of all known cultural resources located in each of the route alternatives.

Final environmental impact study (FEIS) for oil transportation company's proposed pipeline project adequately analyzed the potential environmental impact of alternative routes, when clarifications to FEIS requested by Public Utilities Commission included information on additive or incremental impacts where the alternative route included an existing pipeline, and the Commission determined that the requested revisions were sufficient.

Public Utilities Commission's assignment of environmental impact statement (EIS) for oil transportation company's proposed pipeline project to the Department of Commerce's Energy Environmental Review and Analysis division (DOC-EERA), rather than Department of Natural Resources (DNR) or Minnesota Pollution Control Agency (MPCA), was not a "danger signal" that Commission was not genuinely engaged in reasoned decision-making, so as to require Court of Appeals to intervene; Commission had authority to request assistance from another governmental unit, and DOC-EERA was statutorily obligated to provide technical expertise related to pipeline-

routing matters.

PUBLIC UTILITIES - OHIO

[In re Ohio Edison Company]

Supreme Court of Ohio - June 19, 2019 - N.E.3d - 2019 WL 2517837 - 2019 -Ohio- 2401

Energy management and environmental advocacy groups and Office of Ohio Consumers' Counsel (OCC) sought judicial review of order of the Public Utilities Commission, No. 14-1297-EL-SSO, modifying and approving after rehearing an electric-security plan (ESP).

Electric utilities intervened as appellees in support of Commission's decision.

The Supreme Court held that:

- Distribution modernization rider (DMR) did not qualify as incentive under ESP statute;
- Conditions placed on recovery of DMR revenue were insufficient to protect ratepayers;
- Commission properly excluded rider allowing recovery of government mandated costs in evaluating whether ESP was more favorable than market-rate offer;
- Commission properly approved rider allowing recovery of government mandated costs;
- Commission properly approved rider allowing utilities to accelerate recovery of distribution investments;
- Utilities' allegations were sufficient for rehearing as to changes to retail rate stability rider; and
- Commission properly allowed new evidence in support of utilities' challenge to changes on rehearing.

Distribution modernization rider (DMR) added to electric-security plan (ESP) did not qualify as proper incentive for electric utilities to modernize their distribution systems, as required for addition of the DMR under ESP statute; utilities were not required to make investments to modernize distribution grid in exchange for DMR revenues, DMR included no directives or timelines regarding specific distribution-modernization projects, and intention of Public Utilities Commission's staff that the DMR jump-start grid-modernization efforts did not explain how DMR would encourage utilities to invest in distribution modernization.

Conditions placed on recovery of revenue under distribution modernization rider (DMR), as component of electric-security plan (ESP), regarding location of electric utilities' headquarters and operations, control of utilities, and progress in implementing grid-modernization programs were insufficient to protect ratepayers, as required for addition of the DMR under ESP statute; DMR was not subject to refund if utilities failed to meet the conditions, it was unclear what remedy was available if Public Utilities Commission determined that utilities misused DMR funds, and Commission's initiative for future of electric distribution utility service would delay utilities' grid-modernization plan, thereby nullifying condition that progress be made in implementing modernization programs.

Public Utilities Commission properly excluded rider allowing recovery of future unforeseen costs required by federal or state mandates in evaluating whether electric-security plan (ESP) was more favorable than expected result of market-rate offer, as required for ESP approval, where no costs were to be included in the rider until electric utilities incurred actual costs for complying with government mandates and Commission deemed the costs were prudently incurred in a separate proceeding.

Public Utilities Commission properly approved rider allowing recovery of future unforeseen costs required by federal or state mandates, as component of electric-security plan (ESP), where no other mechanism existed to recover such costs, and utilities were operating under eight-year base distribution rate freeze, so the rider was approved as mechanism to allow recovery of future government mandated costs.

Public Utilities Commission properly approved rider allowing electric utilities to accelerate recovery of distribution investments when compared to recovery through a distribution-base-rate case, as component of electric-security plan (ESP), where Commission cited evidence in support of the approval, and there was no evidence that utilities were recovering general-maintenance expenses under the rider, as opposed to only capital investments.

Electric utilities sufficiently alleged grounds on which retail rate stability rider was unlawful or unreasonable, as required for Public Utilities Commission to consider on rehearing utilities' challenge of changes to the rider, as component of electric-stability plan (ESP), where utilities alleged that a transfer of risk due to prohibition of recovery of certain costs was unreasonable, unsupported by the record, and upset the balance of interest, and utilities further alleged that the rider had been rendered unreasonable by recent order of the Federal Energy Regulatory Commission requiring review of power-purchase agreements underlying the rider.

Public Utilities Commission properly allowed electric utilities to introduce new evidence on rehearing in support of an alternative proposal for a retail rate stability rider, as component of electric-security plan (ESP), where Commission modified the rider on rehearing, which prompted utilities to offer the new evidence in support of alternative rider proposal, and, with respect to prejudice to manufacturers' association in responding to the alternative proposal, association would have had to expend additional time and resources if the Commission had opened a new ESP case, which is what association claimed the Commission should have done instead of considering the modified rider proposal.

ZONING & PLANNING - PENNSYLVANIA

East Rockhill Township v. Richard E. Pierson Materials Corp.

United States District Court, E.D. Pennsylvania - June 4, 2019 - F.Supp.3d - 2019 WL 2357589

Township brought action in state court to enjoin quarry owner and lessee-operator from installing an asphalt plant on quarry located in a residential area.

Owner and lessee-operator removed the action and asserted counterclaims against township and local officials, seeking injunctive relief to permit their operations and asserting denial of substantive due process and tortious interference with contract. Township and officials moved to dismiss.

The District Court held that:

- Defendants' actions did not shock the conscience, as required for substantive due process violation, and
- Defendants' efforts to regulate reactivation of quarry and asphalt plant were privileged and justified.

Township and local officials' efforts to regulate quarry and a planned asphalt plant by denying owner and lessee-operator a zoning permit and demanding compliance with additional requirements did

not shock the conscience, as required for quarry owner and lessee-operator to state a claim for violation of their Fourteenth Amendment substantive due process rights, where such actions were not unrelated to any legitimate government goal, as township and officials were responding to citizen concerns about maintaining land use in face of proposed changes, and there were no allegations of any corruption, self-dealing, bias, or intent to interfere with constitutionally-protected activity.

Township officials' efforts to regulate reactivation of dormant quarry, including an asphalt plant, were privileged and justified, and thus, lessee-operator failed to state claim against officials for tortious interference with contract under Pennsylvania law arising from allegations that officials' denial of permit to operate plant and quarry and demand for compliance with various zoning requirements before production could begin interfered with lessee-operator's contract for a turnpike extension project, where allegations set forth by lessee-operator did not suffice to establish that officials knew their decisions were totally without any colorable legal foundation, or that they acted with corrupt motives.

IMMUNITY - WISCONSIN

Pinter v. Village of Stetsonville

Supreme Court of Wisconsin - June 20, 2019 - N.W.2d - 2019 WL 2529056 - 2019 WI 74

Property owner brought claims of negligence and private nuisance against village after wastewater backed up into his basement.

The Circuit Court granted summary judgment to village. Owner appealed. The Court of Appeals affirmed. Owner sought review.

The Supreme Court held that:

- Village was entitled to governmental immunity, and
- Owner's failure to present expert testimony was fatal to his nuisance claim.

Village's oral policy to pump water out of lift station when it reached certain level was discretionary, rather than ministerial, and thus village was immune from claims of negligence and private nuisance brought by property owner after wastewater backed up into his basement; village's "rule of thumb" to pump wastewater directly into ditch when it reached certain height in lift station had mixed interpretations, policy was shared orally but not written down, and decision to bypass lift station involved consideration of number of variables.

Property owner's failure to present expert testimony to demonstrate that village's failure to maintain wastewater disposal system caused backup in owner's basement was fatal to his nuisance claim against village; determination of whether water infiltrated system, how much water infiltrated system, whether amount was unreasonable, and whether infiltration contributed to backup was beyond ordinary experience and lay comprehension.

Post Platte Default: Sell All Your Appropriation-Backed Municipal Bonds?

The failure of Platte County, Missouri to appropriate funds to pay debt service on the Zona Rosa

Retail Project raised questions as to the enforceability of the security pledge of appropriation bonds in general in the municipal bond market.

Appropriate Appropriation

Municipal borrowers' issue annual appropriation-secured debt to fund various projects for numerous reasons. The central reason is that annual appropriation debt is not general obligation debt. It doesn't count against the general obligation debt caps, constitutional, or statutory limits most municipalities have. Not being directly secured by property taxes, there is no immediate economic consequence to residents.

Equally, there may be other revenues pledged to pay debt service. In Platte County, it was expected the sales taxes from the Zona Rosa shopping area would cover debt service. The appropriation was viewed as a back-stop security.

Continue reading.

Forbes

by Barnet Sherman

June 26, 2019

California 'Public Banks' Legislation Could Upend Local Government Finance, Backers Say.

Should banks exist to make a profit, a difference, or both?

A bill in the California Legislature allowing municipalities to create their own banks could upend how they handle their money and finance long-term projects. It also has the potential to squeeze out larger financial institutions, replacing them with these so-called "public banks."

The legislation, Assembly Bill 857, could also have a resounding impact on the North Bay.

Cities and counties could combine to found a bank that would replace larger institutions in underwriting "participation loans" made to projects in partnership with local banks and credit unions, according to Susan Harman of the Public Bank East Bay advocacy group, part of the statewide California Public Bank Alliance.

Continue reading.

by CHASE DIFELICIANTONIO

NORTH BAY BUSINESS JOURNAL | June 27, 2019, 9:23AM

Philadelphia City Controller's Office Identifies Significant Financial Errors.

A report released by the Office of the Controller has found significant weaknesses in Philadelphia's

internal control over its financial reporting.

“Weakness in internal controls are important because they indicate a higher likelihood that fraud could occur,” City Controller Rebecca Rhynhart said during a press conference held Wednesday at the Municipal Services Building.

“Internal controls are financial safeguards designed to protect taxpayer money from management and fraud. The findings in this audit are red flags for potentially serious issues with the city’s finances. They are warning signs that the city is putting your tax dollars at risk.”

Rhynhart called for Mayor Jim Kenney and the finance director to address these issues with urgency.

Continue reading.

by Ayana Jones Tribune Staff Writer Jun 26, 2019

The Far-Reaching Effects if Puerto Rico Snubs Precedent and the Rule of Law.

‘Oversight Board ignores U.S. Supreme Court precedent, dating back to the 19th century’

Editor’s note: The following is a commentary by Dominic Frederico, CEO of bond insurer Assured Guaranty.

The current Financial Oversight and Management Board for Puerto Rico (Oversight Board) is attempting to invalidate more than $6 billion of general obligation bonds and to initiate clawbacks of principal and interest payments to bondholders. It claims that the bonds were issued in excess of a Puerto Rico constitutional debt limit, notwithstanding the Commonwealth’s specific representations to the contrary when the bonds were issued. In taking these actions, the Oversight Board ignores U.S. Supreme Court precedent, dating back to the 19th century, that if an issuer specifically represents the validity of its bonds to investors at the time of issuance, it is barred from later denying repayment based on a claim of invalidity. The actions also violate the basic tenets of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which the U.S. Congress enacted in June 2016 to provide a formal process for Puerto Rico’s debt restructuring, restoration of its capital market access and to provide supervision of its financial management by the Oversight Board.

Dubious legal assertions aside, how does trying to repudiate previous debt issued and approved by the duly authorized Puerto Rico government help to restore its capital markets access? This illustrates how far the current Oversight Board has strayed from the purpose of PROMESA.

The Oversight Board has initiated multiple lawsuits not just against bondholders to invalidate liens, but also against hundreds of vendors and contractors who worked for the Puerto Rico Government, in an attempt to claw back billions in payments. In fact, it has allocated $1.5 billion of Puerto Rico taxpayers’ money towards litigation and consultant fees.

Rather than continue to deny valid legal obligations, invalidate lawful liens, and ignore decades of municipal finance custom and practice, the Oversight Board should join with other parties to work in good faith to end costly adversarial legal proceedings. If Puerto Rico does not emerge from Title III bankruptcy proceeding soon and instead remains mired in decades of litigation, it will hurt Puerto Rico’s economy and its residents. This will also raise borrowing costs for local and state

governments across the U.S. as concern about contagion from Puerto Rico's unresolved debt crisis spreads.

On February 15, 2019, the U.S. Court of Appeals for the First Circuit held that PROMESA's procedure for appointing Oversight Board members is unconstitutional. The appeals court allowed 90 days for President Trump and the Senate to appoint and confirm a new board or reappoint some or all of the current board, later extending the deadline to July 15. The U.S. Supreme Court has agreed to hear arguments as to the constitutionality of the Oversight Board appointments later this year.

This First Circuit decision creates an opportunity for a newly reappointed board to fulfill PROMESA's stated goals for Puerto Rico: achieving fiscal responsibility and regaining access to the capital markets. By improving transparency and fiscal governance, and by promoting consensual agreements between creditors and the government, the Oversight Board can create the conditions for swiftly resolving the debt restructuring process, achieving long-term economic growth and restoring the capital markets access that is critical for a vibrant economic future for Puerto Rico and the modernization of its infrastructure.

Restoring the Commonwealth's credit access through adherence to the rule of law is essential for ensuring that municipal bond investors, U.S. municipal officials, U.S. taxpayers – and all Americans who benefit from lower-cost financing for the construction of utilities, hospitals, bridges, schools and other public works – have confidence that even in tough situations, the laws governing the municipal bond markets function as they should.

Caribbean Business

June 26, 2019

—The views expressed in the Opinion section are the writers' own and not necessarily the view of Caribbean Business.

Cyberattacks On Municipalities Can Tank Your Bond Portfolio.

When you think of cyberattacks you probably assume attacks on your bank account, your credit cards, or your brokerage accounts. There's a new risk. Now, when you hear of such breaches add your municipal bond issuers to the victim list.

Ransomware—the weapon of choice

Cyberattacks use ransomware viruses as the preferred infection vector. This is now an enormous risk to municipalities that issue bonds. These include cities, water districts, wastewater facilities, hospitals, utilities—really any entities that issue municipal bonds.

Don't for one minute think that such attacks are only inflicted on small cities or systems. The city of Atlanta was hacked and it affected nearly 6,000,000 people.

Hackers recently stole the infamous Stuxnet cyber worm developed and deployed to attack Iran's nuclear centrifuges. Somehow this cyber-weapon got out into the wild and is now among the hacker's tool of choice. Hackers have breached the city of Baltimore's computers. Erie County Medical Center in New York was hacked, bringing down the computer that ran their level one

trauma center for six weeks.

The thread of commonality is simple: cyber criminals hack a facility, disable it, demand a ransom often in untraceable bitcoin, then promise to release the data after payment. That may or may not happen.

Municipalities as cyber-attack targets

Cyber criminals hack large and small systems, creating total chaos. It’s easy to understand the necessity for computer assistance at hospitals. Cities, on the other hand, are more difficult. In the Baltimore hack residents couldn’t pay water bills or parking tickets. Permits of all kinds were held up. There were no government emails nor emergency services deployed via the automated dispatch system. In other words, things ground to a halt. Baltimore’s cost of recovery was around $18 million—money for which the city hadn’t budgeted.

The small city of Riviera Beach, Florida (population 35,000) was hacked with a ransom demand of $600,000 payable in bitcoin. Riviera Beach had cyber ransom insurance. Still, like any policy questions arose of how quickly the insurance company would pay the ransom. In general, insurance payoffs take weeks. There may also be protracted litigation. Not a good thing when critical systems are down.

Now mix into all these cyberattacks the very real risk that even if the hospital, utility, city, or water district pays the ransom, will the frozen data be released. Maybe, maybe not. Cybercriminals have proven themselves totally untrustworthy.

Risk to investor’s bond portfolios

At Envision Capital we once had a client who transferred into his account municipal bonds issued by a city that was hacked. The city paid the outsized ransom. Still, questions arose as to what this will do to that city’s finances and to its credit rating.

It’s imperative that you connect the dots regarding your individual municipal bonds. If a city council, hospital board, or utility commission does not have updated cybersecurity then your investment is on borrowed time. Disabling any of the aforementioned entities means lost revenue, ransom they probably cannot pay, insurance that may or may not pay, uncollected bills, missed payroll—the falling dominos can be numerous.

Protecting your bond portfolio

The only way to protect yourself as a municipal bond investor is to keep your allocations between 3%-5% in any single large or medium-sized hospital, utility, city, water district, or other municipal issuer. Over-allocating beyond that maximum range allows a cyber hack that kidnaps the issuer’s computer systems and holds them for ransom to have a worse effect on your bond portfolio than it should.

As hackers test vulnerabilities of cities, municipal systems, infrastructures, and facilities the underlying municipal bonds are in jeopardy. It’s a bond investor best practice to add cyberattacks to your list of municipal credit risks.

Forbes

by Marilyn Cohen

Jun 25, 2019

MSRB Rule G-37: Balancing Market Integrity with First Amendment Rights

Last week, a federal appeals court decision forcefully and thoroughly reaffirmed the MSRB's pay-t--play rule, which was first upheld under the First Amendment a quarter century ago. The case involved a challenge to a pay-to-play rule adopted by the Financial Industry Regulatory Authority (FINRA) in 2016, but the case has important implications for the promotion of the integrity of the municipal securities market.

On June 18, 2019, the U.S. Court of Appeals for the D.C. Circuit rejected a First Amendment challenge to the U.S. Securities and Exchange Commission's (SEC) approval of FINRA Rule 2030. That rule, with some exceptions, limits the ability of broker-dealers and certain of their personnel to solicit municipal entities for business when they have made political contributions to relevant municipal officials. FINRA openly modeled the rule on the MSRB's Rule G-37, which the MSRB adopted in 1994, and FINRA supported the new rule's constitutionality according to the same rationale underlying Rule G-37.

Rule G-37, with some exceptions, imposes a two-year ban on business with a municipal entity when municipal securities dealers or municipal advisors, or certain of their personnel, make political contributions to relevant municipal officials. The rule excepts contributions of up to $250 by municipal finance professional to candidates for whom they are entitled to vote. The MSRB carefully crafted the rule to sever even the appearance of a connection between political contributions by municipal bond dealers and the award of municipal securities business. After the MSRB's jurisdiction was expanded by the Dodd-Frank Act in 2010 to regulate municipal advisors, the MSRB amended Rule G-37 to cover them as well.

When the MSRB adopted Rule G-37 in 1994, a market participant challenged it as an unconstitutional abridgment of political speech, in a case called *Blount v. SEC*. The same D.C. Circuit upheld Rule G-37, in a 1995 decision finding that the rule served an important interest in preventing the appearance of political corruption and was well tailored to serve that interest.

The recent challengers to the FINRA rule argued, as a major thrust of their case, that the controlling law of the Supreme Court had since changed. The MSRB filed an *amicus brief* in the case to help answer that charge. The D.C. Circuit agreed with the SEC's and MSRB's position, and made clear that the court's prior decision on Rule G-37 is just as sound today as it was in 1995.

Rule G-37 is widely regarded as having been a highly effective measure that has well promoted the integrity of the municipal securities market for some 25 years. Not only has FINRA modeled a rule on Rule G-37, but so have the SEC and Commodities Futures Trading Commission. Last week's important D.C. Circuit decision is a welcome vindication of the MSRB's approach to balancing the need to promote market integrity with vital First Amendment rights.

by Lynnette Kelly

President and CEO at Municipal Securities Rulemaking Board

Published on June 27, 2019

GASB Proposes Guidance On Internal Revenue Code Section 457 Deferred Compensation Plans.

Norwalk, CT, June 28, 2019 — The Governmental Accounting Standards Board (GASB) has proposed new accounting and financial reporting guidance on Internal Revenue Code Section 457 deferred compensation plans (Section 457 plans).

The Exposure Draft, *Internal Revenue Code Section 457 Deferred Compensation Plans That Meet the Definition of a Pension Plan and Supersession of GASB Statement 32*, proposes that if a Section 457 plan meets the definition of a pension plan in GASB guidance, the appropriate GASB pension standards should be applied to the financial reporting for that plan and for the benefits provided through that plan. Under existing guidance, Section 457 plans are explicitly excluded from the pension standards.

The Exposure Draft would enhance the relevance, consistency, and comparability of accounting and financial reporting by pension plans, including Section 457 plans, and by the governments that provide benefits through those plans.

The proposed Statement also would supersede the remaining provisions of Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, as amended, regarding investment valuation requirements for Section 457 plans. The proposal would require investments of all Section 457 plans to be valued as of the end of the plan's reporting period in all circumstances, as is required for all other postemployment benefit plans.

Provisions of the proposed Statement would be effective for fiscal years beginning after December 15, 2020, and all reporting periods thereafter. Early application would be encouraged.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by September 27, 2019.

BDA Submits Response to SEC Regarding Recent PFM Request for Interpretative Relief.

After extensive feedback from BDA membership and consultation with various Committees, the BDA has submitted a letter to the SEC in response to a fall 2018 Request for Interpretative Relief from the municipal advisory firm PFM regarding private placements.

The letter can be viewed here.

BDA Response

The letter submitted addresses directly the problems that would arise from the request for interpretative guidance if granted, including rolling back decades of settled law on what constitutes broker-dealer activity. The BDA strongly disagrees with the request and works to address both the legal and factual misstatements.

The letter focuses on:

- The Current State of the Direct Placement Market;
- The Extent of Municipal Advisor Activity in the Municipal Securities Market;
- The Problematic Rollback of Essential Protections for Investors;
- The Failure to Establish Need that Guidance is Essential for Issuers; and
- The Exacerbation of a Long-Standing Competitive Imbalance Between Non-Dealer and Dealer Municipal Advisor.

Background

PFM, the municipal advisory firm, sent a letter to the SEC last fall asking that the firm "not be required to register as a broker dealer" when conducting certain placement agent activity. They requested guidance exempting them from BD registration, which they argued "is essential for PFM and other MAs to fulfill their statutory mandate to protect [municipal entity] issuers, and to provide clarity and transparency regarding the role of the MA in municipal financing transactions."

Shortly after learning about the letter, BDA staff met with the SEC and the conversation with SEC staff focused on concerns we have with the request, including that it would negate the substantial regulatory protections under BD regulations in place to protect investors. The BDA also argued that the guidance PFM is asking for would create an unbalanced competitive environment between dealer and non-dealer MAs, and we emphasized that the act of finding investors, even for a direct placement, is inherently BD activity.

Bond Dealers of America

June 28, 2019

BDA Submits Letter in Support of Recent FIMSAC Proposal.

Today, after consultation with various members and Committees, the BDA summited a letter to FIMSAC in favor of their recent proposal titled, "Preliminary Recommendation Regarding Certain Principal Transactions with Advisory Clients in Negotiated Municipal Underwritings."

In the letter, the BDA urges the FIMSAC to adopt the Municipal Securities Transparency Subcommittee's Recommendation for a rule change related to Section 206(3) of the Investment Advisers Act that would permit RIAs with affiliated BDs to offer negotiated municipal new issues to non-discretionary advisory clients under a streamlined compliance approach along the lines of Rule 206(3)-3T. The BDA also urges the SEC to act on the FIMSAC's recommendation promptly.

The letter can be found here.

Background

At its April 15, 2019 meeting, the SEC's Fixed Income Market Structure Advisory Committee (FIMSAC) discussed a recommendation made by the FIMSAC's Municipal Securities Transparency Subcommittee. The recommendation is to reinstate in amended form a change to SEC Rule 206(3) under the Investment Advisers Act. Under current rules a member of a negotiated municipal underwriting syndicate is prohibited from selling the bonds to its non-discretionary advisory clients "without disclosing to such client in writing before the completion of such transaction the capacity in which he/she is acting and obtaining the consent of the client to such transaction." These disclosures and consents have to be undertaken for each transaction. From 2007 through 2016, the SEC

implemented on a temporary basis SEC Rule 206(3)-3T. This temporary amendment allowed broker-dealers to sell their non-discretionary advisory clients certain securities on a principal basis that might not be available on an agency basis, or might be available on an agency basis only on less favorable terms, while protecting clients from conflicts of interest as a result of such transactions. 206(3)-3T expired in 2016.

The FIMSAC is considering recommending that the SEC consider a rule that permits members of negotiated underwriting syndicates to meet the requirements of section 206(3) of the Advisers Act when acting in a principal capacity to sell new-issue municipal bonds during the negotiated order period. The FIMSAC did not come to a final decision on this recommendation at its April meeting. Instead, the group decided to further discuss the issue by phone and raise it again at the next FIMSAC meeting.

Bond Dealers of America

June 28, 2019

Fitch Rtgs: Coal Power Pressured Despite Affordable Clean Energy Rule

Fitch Ratings-New York-25 June 2019: The US Environmental Protection Agency's (EPA) new Affordable Clean Energy rule has a limited near-term effect on public power issuers and will not change the long-term pressure on most public power utilities to reduce carbon dioxide (CO_2) emissions, says Fitch Ratings. The new rule may result in a slower decline in coal-fired generation; however, it will not change the dynamics that have driven dramatic increases in both natural-gas fired and renewable generation. Competition from natural gas, state level renewable mandates and increasing interest in renewables from consumers, local governments and investors are expected to drive public power issuers toward emission reduction strategies.

The rule allows states to set carbon emission standards for coal-fueled power plants. States have three years to submit plans. The timeframe and the flexibility provided to the states allow coal-dominant public power issuers more leeway as they pursue economic dispatch of their resources. Issuers could opt to delay plans to shutter coal-fired capacity, benefitting from the continuance of capacity payments. Public power and cooperative utilities operating in states subject to high electricity and carbon reduction costs will benefit the most in the short to medium term from the new rule, as compliance costs will be less onerous.

Any increased flexibility, however, is expected to be short lived as cheaper natural gas and renewable energy, state carbon reduction targets, and consumer and investor decisions will increasingly pressure fossil-fired generation and facilitate the move toward lower CO_2 emissions. There are 20 states that adopted renewable energy standards or goals applying to municipal and/or cooperative utilities. These initiatives, together with voluntary policies aimed at limiting investment in thermal coal, will push issuers to consider resource strategies and capital investments promoting reduced emissions. Furthermore, existing EPA rules, including those designed to reduce mercury, air toxins, effluent emissions and address risks related to the disposal of coal combustion residuals are expected to weigh on coal-fired power plants over time, requiring meaningful capital investment and limiting or raising the cost of operations.

The US Energy Information Administration forecasts that coal-fired generation as a share of US total utility electricity generation will continue to decline, averaging 24% in 2019 and 23% in 2020, down

from 27% in 2018. Approximately 69 gigawatts (GW) of coal-fired capacity were retired since 2007. Existing coal-fired capacity totaled 239 GW at YE 2018. Total capacity is expected to decline to 223 MW by YE 2020 reflecting anticipated retirements.

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

Fitch Publishes U.S. Housing Finance Agency Loan Program Rating Criteria.

Link to Fitch Ratings' Report(s): U.S. Housing Finance Agency Loan Program Rating Criteria

Fitch Ratings-New York-27 June 2019: Fitch Ratings has published a consolidated master criteria report titled "U.S. Housing Finance Agency (HFA) Loan Program Rating Criteria". The report replaces the following existing criteria, which will be withdrawn upon publication of the master: "U.S. State Housing Finance Agencies: Single-Family Mortgage Program Rating Criteria" (dated Feb. 4, 2019); "U.S. State Housing Finance Agencies: MBS Pass-Through Bond Rating Criteria" (dated April 29, 2019); and "U.S. State Housing Finance Agencies: Pooled Multifamily Housing Bonds Rating Criteria" (dated Dec. 14, 2018).

The master criteria report sets out broad attributes for each key rating driver that is part of Fitch's general methodology for assigning ratings for HFA affordable housing loan securitization programs. The three appendices, formerly stand-alone criteria reports, more fully define the key attributes and provide indicative metrics and stress levels for the following HFA loan programs: (1) single-family loan programs; (2) pooled multifamily loan programs; and (3) mortgage backed security (MBS) pass-through programs.

As part of the consolidation, the scope of the criteria was broadened to include bonds issued by local HFAs that are similar to those of state HFAs in terms of portfolio size, debt outstanding, and management oversight (in the criteria, all referred to as 'HFAs').

No changes to the ratings of existing transactions are anticipated as a result of the application of the consolidated rating criteria.

The full report is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Opioid Judge Calls Proposed Settlement Group a 'Novel Approach.'

- **Judge wants input from state AGs, some defendants on idea**
- **Such classes are usually formed only after reaching deal**

A judge backed a push by U.S. cities and counties suing opioid makers such as Purdue Pharma LP and Johnson & Johnson to negotiate a settlement as a group but put off until August a final decision on the request.

U.S. District Judge Dan Polster, overseeing more than 1,900 lawsuits by U.S. municipalities, said Tuesday that the idea of creating a negotiating class of local governments to spur settlement talks was an innovative one. Normally, such classes are formed only after a tentative deal has been struck.

Reaching an accord in a case where cities and counties seek hundreds of billions of dollars from makers and distributors of opioid painkillers "may need a novel approach," the judge said at a hearing in Cleveland. He delayed his final ruling until Aug. 6 so he could hear comments about how the class should be structured.

But some state attorneys general, along with opioid distributors such as McKesson Corp. and Cardinal Health Inc., asked Polster to hold off on approving the class. They say that it's too early in the case to create such a group and that it could force some municipalities to join the litigation when they're not yet ready.

Setting up this type of class "constitutes a new and novel procedure that could result in a grave miscarriage of justice and do significant harm to the ability of states to protect their own people," Attorney General Ken Paxton of Texas said in a letter to Polster.

Kristin Hunter Chasen, a McKesson spokeswoman, didn't return a call seeking comment on whether the company opposes the creation of the class. Brandi Martin, a Cardinal Health spokeswoman, didn't have an immediate comment.

The governments, along with some Native American tribes, fault opioid makers and distributors for creating a national public-health crisis by illegally promoting and handing out the addictive painkillers despite multiple warning signs that they were being abused. The cases have been consolidated before Polster for pretrial information exchanges and test trials. The first two cases are set to be heard by juries in Cleveland in October.

Settlement talks involving the companies, states and local governments have been ongoing for more than two years, but they've snagged because opioid makers and distributors want to resolve all of their liability in one deal.

"Everyone agrees these cases can't be settled piecemeal," Polster told a packed courtroom. "The defendants won't settle without closure. There needs to be a vehicle to do that."

The proposed class would bring together the more than 24,000 U.S. municipalities –- the vast majority of which haven't yet filed suit –- for negotiation purposes. The only way cities and counties can escape the class is to file a so-called opt-out notice.

Some of the companies involved the cases consolidated before Polster have already settled some state claims against them. Purdue Pharma LP agreed in March to pay $270 million to Oklahoma to pay for opioid treatment efforts.

Teva Pharmaceutical Industries Ltd. followed suit last month and agreed to pay $85 million to settle the state's claims over its opioid painkillers. Attorney General Mike Hunter of Oklahoma is pressing ahead with a trial against J&J over its handling of the opium-based drugs.

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

Bloomberg Business

By Jef Feeley

June 25, 2019, 11:50 AM PDT

Wall Street Muni Analysts Say Best of 2019 Is Already Behind Us.

- **Market largely seen steadying after best start since 2014**
- **No dramatic shifts seen, with yields seen holding low**

An unbroken flow of cash into the municipal-bond market since early January has driven the securities to a 5.1 percent return, the best start to a year since 2014, according to Bloomberg Barclays indexes.

At the same time, the pace of new debt sales have yet to fully rebound from the steep slowdown of 2018, rising some 6 percent to about $164 billion. The mismatch between supply and demand helped push prices to record highs relative to Treasuries until last month, when the less volatile state and local government bonds lagged amid the rally set off by speculation that the Federal Reserve will cut interest rates.

Wall Street municipal-debt analysts foresee few dramatic shifts in the next six months, largely anticipating that most of the market's gains have already been reaped.

- Mikhail Foux, Barclays Plc: Says new debt sales may fall short of his initial target of $370-380 billion. Expects yields to end the year lower than they are now. But he doesn't anticipate that munis will gain as much as Treasuries and expects that the ratio of muni yields to Treasuries — a key measure of relative value — will rise. That would indicate the tax-exempt securities have gotten cheaper in comparison.
- Peter Block, Ramirez & Co: Expects a modest pickup in debt sales, with an additional $170-180 billion during the rest of the year. He said it's a "reasonable assumption" that mutual funds will continue to pull in cash, barring some dramatic change to the outlook for interest rates or the economy.
- Ian Rogow, Yingchen Li, Bank of America Corp.: Predict that muni prices will get more expensive, relative to Treasuries, pushing down yield ratios. New debt sales are on pace to fall short of their $365 billion annual target for 2019, despite an expected pickup in the next six months.
- Alan Schankel, Janney Montgomery Scott: Foresees only about $320 billion of debt sales this year, far short of his original expectations. Total returns should end year "somewhere in the neighborhood of 6%," largely because of coupon payments, not price appreciation, as benchmark yields hover around current levels. Expects 10-year yields to end the year at around 80% of Treasuries, roughly where they are currently.
- Chris Mier, Loop Capital Markets: Anticipates returns of "something like 6-8%" for the year and sales of $340 billion. He expects inflows to continue but says the rate may slow slightly, and envisions yields will end 2019 close to 75% of Treasuries. "I don't think we'll revisit the lows or set a new low for ratios, but we are likely to improve from where we are," Mier said.
- Patrick Luby, CreditSights: Expects positive returns in the second half, but said any specific target "would be too long of a guess." He said benchmarks yields could go lower, but not by a lot, and he wouldn't be surprised if muni prices richen from current valuations. Expects new sales to be in the lower end of his original forecast of $365-390 billion for the year.

Bloomberg Markets

By Donald Moore and Jon Dominick Querolo

June 27, 2019, 10:33 AM PDT

California Law Shedding Light on Public Bond Costs May Die Next Year.

- **State senator seeks rollback of disclosure law passed in 2017**
- **Law requires ballot question to include tax increase estimate**

Is too much public disclosure about municipal-bond elections a bad thing?

About a year after a new California law mandated that ballots disclose the fiscal impact of local bond and various tax measures, legislators are seeking to roll it back. Democratic state senator Scott Wiener's bill would remove that requirement for bond measures proposed by schools and other municipalities, as well as for those that affect certain taxes.

That's a setback for Republican assemblyman Jay Obernolte, who had pushed for the disclosure that took effect in 2018. He said voters should have all the information when they read the ballot questions — not just in voluminous election guides they may not review.

"It seems to me like the proponents only want to tell people all the good things that would be done with that money," said Obernolte, whose party is in the minority in the legislature. "They don't want

to be transparent about the fact that it is a tax increase and will actually result in higher taxes."

The way Wiener sees it, municipal boards already face challenges raising money, such as needing two-thirds approval for bonds slated for particular purposes. Trying to explain the fiscal impact in 75 words, the limit of a ballot question, creates confusion, may cause more measures to lose and makes it virtually impossible for tiered parcel taxes to pass, he said. His measure would delegate the description to the guide or another separate document.

"I believe strongly that we need to give local communities more tools to fund basic services," said Wiener, who noted that the word limit is a third of that for Twitter. "These laws are setting local governments up for failure."

The battle to win voters is particularly acute in California, where the Progressive-era initiative laws are frequently invoked to force citizens to weigh in on a wide range of issues, including agricultural policies such as the proper way to house hens. Voter guides issued by counties can easily run more than 100 pages.

Opponents of the disclosure law, such as school boards, wanted the details of the fiscal impact to remain solely in the guides, arguing that they have sufficient space for context.

Wiener's bill wasn't introduced at the start of the session. Instead, the language for the rollback replaced text of a different topic in one of his bills that had already moved through much of the legislative process, a technique known as "gut and amend." The practice would help improve the chances of a speedy adoption before the session adjourns in September, though it irks groups promoting good government.

Obernolte said he's willing to work with advocates to address their concerns, such as the fact that the amount raised by proposed taxes could vary over time.

"I certainly don't think that those things warrant taking the voter out of the loop when it comes to transparency," he said.

Bloomberg Business

By Romy Varghese

June 24, 2019, 9:13 AM PDT

SALT Cap Sparks Debate Over Which Party Cares About the Middle Class.

- **Republicans say repealing cap would help wealthy taxpayers**
- **Democrats say the tax law is harming schools, smaller cities**

The debate about the cap on federal deductions for state and local taxes has flipped the tables for lawmakers: Democrats are advocating for a large cut that would primarily benefit the wealthy. Republicans say no way.

The partisan squabbles over the SALT deduction put Republicans in a different position than they were for much of the past two years as they crafted, debated and defended their 2017 tax overhaul. Democrats say — and polls show that many people also believe — that the law did too much to benefit corporations and the wealthy.

Democrats are now pushing to undo the law's $10,000 cap on SALT deductions. More than half the benefit of removing that cap would go to those making $1 million, totaling a collective $40.4 billion annual windfall, according to numbers released Monday by the Joint Committee on Taxation.

"It's just fascinating to me that the folks on the other side of the aisle have painted this picture that they're for the working guy, they're for the downtrodden," Representative Tom Rice, a South Carolina Republican, said at a House Ways and Means panel hearing Tuesday. "But they put their boots on their neck. It's ridiculous.''

Democrats defended their desire to lift the cap, saying it unfairly hurts their residents in states where tax rates, home values and incomes tend to be higher.

House Ways and Means Democrats presented small-town mayors, local school administrators and a firefighter as witnesses who said that the deduction is pressuring their municipalities and states to cut taxes — and services.

"There are those who say SALT is for the rich. I say that is 100% poppycock," Representative Bill Pascrell, a New Jersey Democrat said. "I've never seen such punitive tax policy since I've been on this Earth."

The 2017 tax law limited the SALT deduction to pay for other cuts, leaving many people with state and local levies that they can't write-off on their federal returns.

Before the law, the deduction was technically unlimited. But other provisions to the tax code, such as the alternative minimum tax, mean that people can now deduct some of their SALT bill that they couldn't before.

Representative John Larson, a Connecticut Democrat, said the average SALT bill in his district is about $19,000, meaning that the average taxpayer can only deduct a little bit more than half of their total levy. A firefighter and school teacher married to each other could easily make more than $100,000, he said.

But the SALT issue has been one that has been tricky for Democrats to balance. Outside of pricey cities, there are fewer middle-class workers who have SALT bills beyond the $10,000 cap. The cost of fully restoring the deduction — $668 billion, according to the JCT — means Democrats would have to raise taxes on other groups to offset the SALT break.

Despite that, House Democrats are considering legislation that would remove the cap or make the deduction more generous, but leaders in the Republican-controlled Senate have already said any bill would be dead upon arrival.

"I think this hearing today is simply a stalemate,'' Rice said.

Bloomberg Politics

By Laura Davison

June 25, 2019, 11:08 AM PDT

In Absence of Federal Money, Local Governments Spend Millions to Help Asylum Seekers.

President Trump's ending of the safe release program is costing cities and counties. Congress is debating a bill that would at least partially reimburse them.

SPEED READ:

- Since President Trump ended the so-called safe release program last fall, local governments have been picking up the costs of handling asylum seekers.
- The expenses have cost San Diego County, Calif., an estimated $2.3 million so far.
- The problem isn't just along the southern border.

As Congress enters a standoff over a $4.6 billion border aid bill, scores of local governments say financial relief can't come fast enough.

Cities and counties, particularly along the border with Mexico, are spending millions of dollars screening people entering the country seeking asylum and placing them in a temporary home while they await their legal hearing. It's a job the federal government used to do until last fall when President Trump ended the so-called safe release program that processed asylum seekers and set them up with housing.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 28, 2019 AT 4:00 AM

Another Florida City Hacked: This Time for $490,000 Ransom.

Lake City, facing a ransomware demand, authorized the payment of $490,000 in bitcoin to a hacker in order to regain access to its phone and email systems.

The city, north of Gainesville, agreed to give the attacker 42 bitcoins, an untraceable electronic currency. As of Tuesday evening, that was worth $490,421. Lake City is on the hook for a $10,000 deductible on its insurance policy with the Florida League of Cities, which will pay the balance.

Ransomware is a malware program that hacks systems, making emails, files, telephones and other systems inoperable. Typically on attacks, a hacker infects computer systems with computer code that encrypts data. The only way to decrypt the data is to have access to a key, some code held in ransom by the hacker.

The attack hit the city on June 10 after being targeted with malware attack known as "Triple Threat." The ransom request came days later.

"It's not uncommon for them to wait, then they hit you with the request," said city spokesman Mike Lee.

Lake City immediately disconnected its systems within 10 minutes of the attack, Lee said, but were still unable to recover its email system. He said the city lost phone services for about a day, but was

able to reroute calls through the emergency system with no delays to incoming emergency calls.

The city approved the payment to the attacker, using its insurance provider, the League of Cities, during an emergency council meeting Monday night.

The ransom was paid Tuesday, giving the city a receipt of the decryption key from the attacker. Some emails have been restored as of Tuesday, but many are still inoperable. Law enforcement is investigating the attack, Lee said.

In May, Recorded Future published a report that showed ransomware attacks were a growing problem for local governments.

So far in 2019, more than 20 cities have received a ransomware attack, though some have been more successful in thwarting efforts than others.

Last week, Riviera Beach, a city of about 35,000 people, agreed to pay $600,000 for a ransomware request. Marion County in 2017 was also attacked but was able to quickly recover the two government computers impacted. The county maintains that no important information was jeopardized and that it has increased cyber security and developed counter measures.

Lee said Lake City is in the process of implementing changes, such as additional training, to prevent future attacks.

By Andrew Caplan

BY TRIBUNE NEWS SERVICE | JUNE 28, 2019 AT 8:23 AM

Coastal Cities Rethink Zoning Regulations in Fight Against Climate Change.

From Boston to Miami, coastal cities are changing where and how developers can build in order to protect homes and property from future flooding.

After Hurricane Matthew in 2016, the Virginia Beach City Council had a change of heart.

The storm dropped between 14 and 18 inches of rain in less than 12 hours, leading to severe flooding. A couple years later, when a developer wanted the city to rezone 50 acres of land to build 32 homes, the council said no, even though it had previously approved residential development near the proposed site.

Argos Properties promptly sued. But in April, a judge ruled that the council had the authority to deny the application.

Virginia Beach is far from alone.

As severe weather has increased, more and more coastal cities from Boston to Miami have revamped their flood maps and placed more scrutiny on zoning decisions in order to protect homes and property from the long-term impacts of sea level rise. According to a 2018 study published by the National Academy of Science, the sea level will rise by more than two feet by the end of the century.

Boston has been at the forefront of this move.

The city created the Green Ribbon Commission in 2013 to study policy solutions that will mitigate the impact of climate change. It is also in the process of creating a flood resiliency overlay district, where developers can build in areas that will be impacted by sea level rise but under special rules.

"In Boston, we are taking a proactive approach to planning for climate change and rising sea levels," says Molly McGlynn, a spokeswoman for the Boston Planning and Development Agency. "It is our goal that these guidelines will provide specific direction on implementing resilience measures to protect our waterfront and its residents for years to come."

Miami is making similar moves.

In April, the city council passed rules to literally lift some residents out of floodwaters. Miami once required new construction to be elevated at least one foot above the floodplain, but it will now elevate those new homes five feet above floodwaters. New retail construction and infrastructure improvements will also have to be elevated.

"These are high priorities for people looking at how to protect communities from the impacts of climate change," says David Cash, dean of the University of Massachusetts, Boston's McCormack Graduate School of Policy and Global Studies.

Zoning isn't the only aspect of resiliency that governments are rethinking, says Cash.

Boston, for example, once looked to a sea wall to fend off sea level rise, but the option was deemed too expensive and ineffective. Cash says permanent berms, such as river levees on the Mississippi or sand dunes near oceans, are a more effective option for dampening the impact of sea level rise.

GOVERNING.COM

BY J. BRIAN CHARLES | JUNE 27, 2019 AT 4:00 AM

Governmental Accounting Standards Board Proposes Updated P3 Guidelines: Ballard Spahr

The Governmental Accounting Standards Board (GASB) has released proposed expanded guidelines for public-private partnerships and public-public partnerships (both referred to as P3s) that recognize increased use of P3s in more varieties of agreements. GASB's existing guidance for these types of arrangements was issued in November 2010 and many newer P3 arrangements fall outside the limited scope of the 2010 guidance. The guidelines, which GASB released on June 13, also provide guidance for availability payment arrangements (APAs).

The primary objective of the guidelines is to improve financial reporting by addressing issues related to P3s and APAs. The guidelines provide uniform guidance on accounting and financial reporting for transactions that meet the expanded definitions of P3s and APAs set forth below.

P3s

P3s are defined in the guidelines as arrangements in which a government transferor contracts with a governmental or non-governmental operator to provide public services by conveying control of the right to operate or use an infrastructure or other nonfinancial asset for a period of time in an exchange or exchange-like transaction.

This definition expands on the 2010 guidance that covered service concession agreements, which are a type of P3 arrangement under which a private partner operates and maintains the infrastructure asset, collects revenues, and handles the debt payments.

APAs

APAs were not defined in the 2010 guidance, but are defined in the guidelines as arrangements in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying infrastructure or other nonfinancial asset for a period of time in an exchange or exchange-like transaction. Government payments are based entirely on the asset's availability rather than revenues or similar measures of demand.

Guidelines

In an effort to have more transparency and consistency, to allow users to understand the scale and importance of a government's P3, and to allow users to evaluate a government's future obligations and assets resulting from P3s, the guidelines require that governments report assets and liabilities related to P3s consistently and disclose important information about P3 transactions. The guidelines describe what the transferor and the operator should recognize on their respective financial statements for different P3 arrangements. For example, the guidelines provide that if a P3 asset is an existing asset of the transferor, at the commencement of the P3 term, the transferor should continue to report the underlying P3 asset and should continue to apply other accounting and reporting requirements, including depreciation. If, however, the P3 arrangement requires the operator to return the underlying P3 asset in its original or enhanced condition, the transferor should not depreciate the asset during the P3 term.

The guidelines provide more relevant and reliable information for financial statement users, including: (1) a general description of P3 arrangements; (2) the nature and amount of assets and deferred inflows and outflows of resources related to P3s that are recognized in the financial statement; (3) the discount rate(s) applied to the measurement of receivables for installment payments; (4) the amount of inflow and outflow of resources recognized in the reporting period for certain payments; and (5) the nature and extent of rights retained by the transferor or granted to the operator.

The guidelines provide guidance on how transferors should measure receivables, including fixed payments, variable payments, and amounts to be received under residual value guarantees, as well as how to measure deferred inflows. They also provide guidance on how operators should measure the liability for installment payments and right-to-use assets.

The guidelines would be effective for fiscal years beginning after June 15, 2021, and all reporting periods thereafter.

Comments are due on September 13, 2019.

by the Public Finance Group

June 27, 2019

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[Supreme Court Removes Obstacle For Plaintiffs Asserting Takings Claim In Federal Court: Day Pitney]

In a decision issued on June 21, in *Knick v. Township of Scott*, 588 U.S. ___ (2019), the Supreme Court of the United States eliminated a long-standing rule that a property owner may not seek redress in federal court for an actual or regulatory "taking" of its property by a state or local government until its claim has first been denied in state court.

Prior to *Knick*, the controlling precedent on this issue was set forth in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). In that case, the Court addressed the Takings Clause of the Fifth Amendment, which provides that "private property [shall not] be taken for public use, without just compensation." The Takings Clause is applicable when a public body takes actual possession of private property, and also when there is a regulatory taking, which means that government regulations have been applied to such a degree that the property owner is effectively deprived of the use or value of the property. In *Williamson County*, the Court's majority held that if a private owner contends that a state or local government has effected a regulatory taking, and there is an adequate procedure for the property owner to seek just compensation under state law, then the property owner must first avail itself of the state procedure, and be denied just compensation, before it can claim a violation of the Takings Clause of the Fifth Amendment in federal court.

The *Williamson County* rule was eliminated in *Knick*. Chief Justice John Roberts, writing for the majority, noted that the *Williamson County* rule had come under fire in light of the Court's more recent holding in *San Remo Hotel v. City and County of San Francisco*, 545 U.S. 323 (2005), providing that a state court's resolution of a claim for just compensation under state law will generally carry preclusive effect in any subsequent federal suit. In *San Remo* itself, four Justices—Chief Justice Rehnquist, Justice Kennedy, Justice O'Connor and Justice Thomas—issued a concurring opinion to note that the "justifications for [*Williamson County's*] state-litigation requirement are suspect, while its impact on takings plaintiffs is dramatic." Fourteen years later, a majority of the Court echoed those concerns in *Knick*. The Court reasoned that under *Williamson County* a "takings plaintiff … finds himself in a Catch-22: He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court." The *Williamson County* rule was therefore an "unjustifiable burden" on a property owner's right to seek federal review of its claim for unconstitutional treatment by state officials and, as such, was overruled. The new rule, as articulated by the *Knick* majority, is simply stated: "A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it." A property owner need no longer exhaust available state procedures to seek redress in federal court for an actual or regulatory taking by a state or local government. No more will "federal takings claims … be singled out to be confined in state court." *San Remo,* 545 U.S. at 351 (Rehnquist, C.J., concurring in the judgment).

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Municipal Debt and the Looming Recession Talks.

As the U.S. economy continues its longest period of growth and expansion, many leading economists have been warning investors of the inevitable slowdown of the economy, potentially leading to a recession.

Where some economic indicators such as the ISM manufacturing index, inflation and initial jobless claims suggest a strong growth continuation of the U.S. economy, other indicators suggest the opposite. In March 2019, one of the leading and most reliable recession indicators, the yield curve, witnessed an inversion where the yield on 10-year \treasuries fell below the 3-month yield for the first time since 2007 when the U.S witnessed one of the worst economic downturns in history.

In this article, we will take a closer look at the looming concerns for investors in municipal debt, some critical checks before investing in municipal debt instruments and a temperature check for local government leaders to see if they are prepared for an economic downturn in their respective jurisdictions.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jun 26, 2019

'There Are No Yachts in Falls Church': Debate Over State and Local Tax Deduction Flares.

GOP House members say Democrats' claim that eliminating the deduction has hurt ordinary taxpayers is a "false narrative."

Local government officials made a case to U.S. House lawmakers on Tuesday that the recently imposed cap on a federal deduction for state and local taxes is hurting their communities.

These claims elicited pushback from Republicans, who countered that restoring the so-called SALT deduction in full would mainly be a boon to wealthier Americans. The GOP lawmakers also suggested lower state and local taxes might help alleviate pain for taxpayers.

The local officials testified on Capitol Hill a day after the nonpartisan Joint Committee on Taxation released estimates showing that if the cap were repealed, about $40 billion of the $77 billion in reduced tax liability in 2019 would benefit people earning $1 million or more.

Continue reading.

Route Fifty

By Bill Lucia,

JUNE 25, 2019

Illinois Comptroller Lashes Out Over Late budgetary Post-Mortem from 2018.

"Illinois is, by far, the last state in the nation to release its CAFR and has only released it as late as July in 2009, when now-deputy governor Dan Hynes released Fiscal Year 2007's report on July 10. … According to the Chicago Tribune, two folders were taken from Burke's office in a federal raid that concerned Brian Hynes, the founder of the program and a longtime ally of House Speaker Michael Madigan."

Read the full article on: The Center Square

Cole Lauterbach | June 27, 2019

Paying a Hacker's Ransom Shouldn't Be a Crime.

A federal law outlawing the practice would be a very bad idea.

I recently suggested that Baltimore might perhaps consider giving in to ransomware demands by unknown hackers who so cleverly froze the city's computer network last month that much of it remains inaccessible. Then came last week's news that the much smaller city of Riviera Beach, Florida, agreed to pay $600,000 to get its own computer services unlocked. This entirely rational act has led to considerable online criticism — including an editorial in the Washington Post demanding "a federal law banning ransomware payments."

Well.

Let me suggest, as gently as possible, that this is a very bad idea. I'm not pro-ransomware; but I'm very much in favor of leaving difficult and complex decisions to those entrusted with making them.

To begin with, it's not entirely clear whether there actually is a crisis. News stories keep insisting that ransomware attacks targeting cities are on the rise, but without official data it's hard to tell. A May 2019 blog post from Recorded Future, a cybersecurity firm, found 46 attacks on 2016, 38 in 2017, 53 in 2018, and 21 during the first four months of 2019. Each attack imposes terrible costs, but these numbers hardly signal an epidemic.

Corporations, because they have the deepest pockets, remain the major targets. Nevertheless, as corporate security improves, it's only logical for hackers to try extorting other entities. Cities are an obvious target in large part because they're notoriously terrible at protecting their systems. For those whose protection systems are weak — or for that matter who can't get their employees to stop clicking on unsafe links while at work — ransomware attacks will only get worse.

Getting locked out of your own systems until you pay a hacker a bunch of bitcoins might seem like punishment enough for those with sloppy cybersecurity. So what's the argument for adding legal penalties when the target, out of options, decides that the path of least resistance is to give the hackers what they seek? Here's the Post: "Morally, taxpayer money should not be used to reward criminal enterprises. Practically, if cities collectively stop providing that reward, hackers may pack up their keyboards. Every dollar — or, more accurately, every bitcoin — that cities turn over to cybercriminals encourages them to continue attacking, and it also gives them the resources to do so more effectively and more often."

Each of these claims may be correct.1 But while they might add up to an argument against the wisdom of paying ransom, they don't explain why the target shouldn't be allowed to pay if it would rather regain control of its own systems than stand up and make a point. Security consultants concede that situations may arise in which paying the ransom makes the most sense.

Yes, giving in to demands generates more demands. And we can all hope for stronger spines — not only in the leaders of cities whose computers have been hijacked, but also in college administrators and presidential contenders and social media companies, all of whom too often display the distressing habit of yielding to the mob. In so doing they must surely encourage more mobs. But much as I might wish they'd more often stand up and fight back, I hardly want to make it illegal for them to give in.

It's fine to articulate a strong principle against yielding to extortion; as I have pointed out, frequent and clear articulation of this principle by those in positions of power might in and of itself serve as a deterrent. But principle is different from law, and by keeping them separate, we enable those who must actually make the decisions to weigh any of 100 factors that those drafting a statute can never take into account.

Consider, by analogy, the oft-stated principle that the U.S. does not negotiate with terrorists. Leaders repeat this rule time and again, but the rule does not actually mean what it says, because at times the U.S. does negotiate with terrorists. The existence of a strongly articulated and often repeated principle isn't hypocrisy; instead, it exerts strong pressure on decision makers to keep the exceptions rare. Still, those exceptions will arise, and we leave the determination to the judgment of the political actors of any given moment.

Surely the same rationale should be applied to municipal leaders (or corporate leaders or anyone else) who face a ransomware demand. Refusing to pay is often admirable. It's not at all clear, however, that it's the right answer in every case. The target might have a variety of perfectly sensible reasons for giving in, such as the expense in time and money. Citizens of a municipality that has been targeted can hardly be expected to bear the costs of someone else's principle.

Hijacking a computer system belonging to someone else is an outrageous violation of property and privacy rights. Such acts are prohibited under any number of federal statutes, including the Computer Fraud and Abuse Act and the Electronic Communications Privacy Act, and under a growing number of state enactments.2

But all these many laws punish only the hackers who seek to extort money from people or entities in return for giving back the target's own property — practical control over the hijacked system. None of them purport to punish the targets for how they choose to respond.

When one is facing extortion, it's often brave and admirable to stand up voluntarily to the demands of the extorter. It's wrong and overbearing to require such bravery by law.

1. OK, maybe not the implication that taxpayer funds (that is, monies held by governments) are more precious than, say, private funds.
2. Even in the absence of any special laws, to break into someone else's system would clearly constitute common law trespass, and perhaps common law conversion as well.

Bloomberg Opinion

By Stephen L. Carter

June 25, 2019, 6:00 AM PDT

Stephen L. Carter is a Bloomberg Opinion columnist. He is a professor of law at Yale University and was a clerk to U.S. Supreme Court Justice Thurgood Marshall. His novels include "The Emperor of Ocean Park," and his latest nonfiction book is "Invisible: The Forgotten Story of the Black Woman Lawyer Who Took Down America's Most Powerful Mobster."

Follow @StepCarter on Twitter

Michigan GOP's $1B Road Repair Idea: Pension Bonds.

"A conservative business group this week pitched Michigan Republican legislative leaders on a debt swap idea it says could free up nearly $1 billion annually to fix the state's crumbling roads without raising taxes. … The idea hinges on the assumption — a risky one, critics say — that the pension system would invest that $10 billion influx of cash and secure large enough returns to both pay down any remaining pension debt and cover the cost of bond interest payments."

Read the full article on: The Detroit News

Jonathan Oosting | July 1, 2019

TAX - CALIFORNIA

City and County of San Francisco v. Regents of University of California

Supreme Court of California - June 20, 2019 - P.3d - 2019 WL 2529253 - 19 Cal. Daily Op. Serv. 5742 - 2019 Daily Journal D.A.R. 5440

City petitioned for writ of mandate to compel state universities to collect and remit city taxes from users of universities' parking lots.

The Superior Court denied petition. City appealed, and the Court of Appeal affirmed. The Supreme Court granted review.

The Supreme Court held that:

- Parking tax ordinance was not invalid as applied to drivers who park in paid university parking lots, and
- Parking tax ordinance did not violate principles of state sovereignty embodied in the State Constitution.

Parking tax ordinance, which imposed tax on drivers who parked their cars in paid parking lots, was not invalid as applied to drivers who parked in paid state university parking lots, although the tax would have secondary effects on the universities' ability to provide accessible parking; parking accessibility was not a sufficient basis for setting aside a nondiscriminatory municipal tax.

Parking tax ordinance, which imposed tax on drivers who parked their cars in paid parking lots, as applied to state universities, did not violate principles of state sovereignty embodied in the State Constitution, although universities were responsible for collecting and remitting the parking tax, where universities maintained the autonomy to manage their property as they wished, and burden of collecting the tax was minimal.

TAX - ILLINOIS

McIntosh v. Walgreens Boots Alliance, Inc.

Supreme Court of Illinois - June 20, 2019 - N.E.3d - 2019 IL 123626 - 2019 WL 2536882

Customer brought class action against retailer alleging violation of Consumer Fraud and Deceptive Practices Act by unlawfully collecting city's bottled water tax on retail sales of beverages that were exempt from the tax.

The Circuit Court dismissed. Customer appealed. The Appellate Court reversed and remanded. Retailer appealed.

The Supreme Court held that:

- Statutory consumer fraud claims are not categorically exempt from the voluntary payment doctrine, overruling *Nava v. Sears, Roebuck & Co.*, 374 Ill.Dec. 164, 995 N.E.2d 303 and *Ramirez v. Smart Corp.*, 371 Ill.App.3d 797, 309 Ill.Dec. 168, 863 N.E.2d 800, and
- The fraud exception to voluntary payment doctrine did not apply.

SEC Approves Amendments Aimed At New Issue Transparency.

The Securities and Exchange Commission approved changes to Municipal Securities Rulemaking Board rules, requiring more information from underwriters about new offerings of bonds and eliminating the need for dealer financial advisors to provide the official statements to the underwriter.

The SEC approved the changes to amendments Rule G-11 on primary offerings and Rule G-32 on disclosures in connection with primary offerings late last week after a two-year review process by the MSRB.

Changes to the rules will increase transparency and improve access to information, said Margaret "Peggy" Blake, MSRB associate general counsel.

The compliance date for the amendments will be January 13, 2020. For amendments to Form-32, the MSRB will publish one or more notices within 180 days of June 25, 2019, specifying compliance dates for the changes after getting stakeholder outreach.

The MSRB published the draft amendments after a broader request for comment on primary offering practices, and received feedback from market participants in September 2018. The MSRB asked for SEC approval in March 2019.

The MSRB eliminated the requirement under Rule G-32(c) that a dealer financial advisor that prepares an official statement make it available to the managing or sole underwriter after the issuer approves it for distribution.

Underwriters will also be required to input more data in Form G-32 about new issue bonds, auto-populated from the New Issue Information Dissemination Service (NIIDS). The MSRB is adding 57 new data fields to Form G-32 to capture data already required to be entered into the NIIDS, and nine new data fields for manual completion.

The NIIDS system, developed by the Depository Trust Company at the Securities Industry and Financial Markets Association's request, collects information about a new muni issue from underwriters or their representatives in an electronic format and then makes that data immediately available to vendors that provide such information to market participants.

Form G-32 is submitted to the MSRB by underwriters and provides information about a new issuance, such as the underwriting spread, maturity date, initial offering price, minimum denomination, and more.

MSRB President and CEO Lynnette Kelly said that information would not be provided for the life of the bonds, just as of the date of a new issue. The MSRB will extract information from the NIIDS database so that the underwriter doesn't have to populate the information in both NIIDS and Form G-32.

In the past, market groups said the underwriter submitting the initial NIIDS data should have no obligation to update that information over the life of the bonds.

In addition to the data fields, the MSRB will also add nine data fields to Form G-32 to be manually completed by underwriters in NIIDS-eligible offerings.

In one of the data fields, the MSRB will ask for the underwriter to indicate yes or no at the time of an issuance whether the original minimum denomination for an issue can change.

In a 2018 comment letter, Mike Nicholas, CEO of Bond Dealers of America, said his group supports the yes/no indicator for changing minimum denominations.

The changes to Form G-32 will require identifying additional syndicate managers and municipal advisors on an underwriting, a provision which has been controversial in the past.. Currently, the data only shows syndicate managers.

In BDA's 2018 comment letter, Nicholas wrote that BDA objected to identifying municipal advisors, saying the information is obtainable from the final official statement.

The data field for adding identifying a municipal advisor will autofill or the MSRB will provide a drop-down function. Both options will include all municipal advisors registered with the MSRB and will include an option to enter "no municipal advisor."

Under changes to G-11, a senior syndicate manager will have to provide certain information to the issuer of a primary offering on designations and allocations of its municipal securities and also simultaneously communicate to the syndicate and selling groups when an issue is free to trade.

Changes to the rule would then eliminate any potential for unfair advantages in secondary market trading that could result from having advance notice that an issue is free-to-trade, the MSRB wrote.

The MSRB also announced that former MSRB Director of Systems Development Adam Cusson will be named chief information officer. Cusson will oversee IT operations, data and infrastructure management, enterprise architecture and systems development.

"He will be very instrumental along with other leaders in the IT department to help our transition to the cloud," Kelly said, referencing MSRB's efforts to transition to cloud-based data storage.

Al Morisato held the position of chief operations and technology officer and left the MSRB in April 2017. In the interim, Chief Operating Officer Mark Kim took the helm of IT operations.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 07/01/19 01:52 PM EDT

'Moneyball' Approach To Closing the $2 trillion Infrastructure Finance Gap.

This spring, President Trump and the Democratic leadership in Congress agreed on a number: $2 trillion is what it will take to get America's infrastructure a passing grade. The American Society of Civil Engineers' most recent report card gave it a D+.

While the negotiation has come to a stand-still, the degradation of our roads, bridges, water distribution systems and the like, has not. Rather than wait on Washington, I believe we can begin to solve these problems now. How? The answers lie in data — specifically in emerging 21st-century financing and business models that are informed by advances in infrastructure design itself, and the valuable data it can generate.

Think of it as a "Moneyball" approach. By mining and leveraging player performance data, Oakland A's manager Billy Beane challenged conventional wisdom of scouts to outsmart richer clubs. A data-driven investment approach in undervalued players resulted in a top baseball team on a limited budget. Bear with me.

Tomorrow's smart, sensor-based infrastructure will be capable of providing new kinds of data and insights. The value of this information is increasingly starting to outstrip that of the physical infrastructure itself. Information is trumping function. Cities and towns can harness this to unlock new cash flows and equity value from improved operations or new derivative products and services.

In the U.S., public financing of infrastructure relies on 19th and 20th century models such as municipal bonds funded by tax-payers or project-specific revenue streams, revolving loans and grants. Municipal securities that cities and states issue for water, energy, industrial development and transportation projects — a diverse $3.8 trillion market — have evolved over two centuries. But they continue to rely on taxes and fees at a time when tax revenue is decreasing, public deficits are increasing and inequality is rising.

Public-private partnerships and outright private financing might sound like reasonable alternatives, but there are obstacles. Often, the investor seeks to own the asset, but regulations can constrain that. In addition, they raise ethical questions about inequality of access to a public good.

Clearly, these models are insufficient. To close the infrastructure finance gap, we need new ideas. So, how do we rebuild our bridges, roads and water systems without raising taxes?

The Moneyball approach starts with operational performance data from infrastructure systems: Sensors on bridges monitor structural health, which informs how much capital will be needed for operations and maintenance, and by when. Pressure sensors in water distribution pipes, along with smart meters in homes and businesses, capture leak and consumption patterns.

The measurements at stormwater outflows in lakes and rivers show water quantity and quality. Add to this data from remote sensing platforms such as NOAA satellites, Google Earth and private drones to obtain new insights about green spaces in cities, soil moisture, heat signatures of industrial plants, contaminant emissions in air and water and analytics that reveal structural deterioration.

By “twinning” infrastructure into digital assets, we can uncover informational inefficiencies that change how we value, price and invest in infrastructure.

Innovations like this inherently carry risk, but risk is often rewarded in the market. For example, variable interest rate bonds can be informed by sensor measurements and engineering models that underpin performance-based yields. They are already being used to finance green infrastructure for stormwater management. Yields are based on their impact on city flooding and water quality of discharges in rivers. Risk transfer mechanisms such as insurance and swaps have committed capital to make infrastructure more resilient and adaptive. Auctions of infrastructure-derived data to third-party service providers such as autonomous vehicle operators and electric vehicle charging systems are bringing in new cash flows.

The attractiveness of these financing instruments should not be underestimated. For investors, performance-based bonds or securities are uncorrelated to the market and can hedge volatility. For cities and towns, smart systems attract new types of financing that can bridge the funding gap, and may cost less up-front or reduce long-term maintenance costs. New designs such as smart green stormwater infrastructures could cost less than upgrading pipes and pumping stations. Flex lanes on freeways are cheaper than building additional lanes, and have similar performance.

For citizens, taxes may decrease, not only due to potentially lower lifetime cost of nimble systems, but also because the new data value streams shift cash flows towards the data markets.

Beyond all this, data-driven financing has the potential to become an equalizer. In traditional financing, wealthier communities can afford to raise taxes to pay off new bonds and maintain infrastructure. They also have higher credit ratings, so capital is cheaper. Low-income communities are left at a disadvantage. Smart financing instruments can open up cash flows that rely less on fees or taxes.

These new models often stir up privacy and cybersecurity concerns. It is important to note that structural health, performance and resiliency data tend to be operational, not personal. Bridge sensors are not collecting your date of birth or social security number. Regardless, cities such as London, Helsinki and Toronto are exploring new regulatory structures to protect privacy.

Our aging infrastructure needs attention now. Smart infrastructure systems and data-driven financing can plug financial needs, enable an e new tech job market, and bridge the political divide. State treasurers and other public finance managers need to come together with infrastructure asset investors and efficient capital managers to move these innovations forward.

Let’s learn to play Moneyball.

THE HILL

BY PETER ADRIAENS, OPINION CONTRIBUTOR — 07/01/19 08:00 AM EDT

Peter Adriaens is director of the University of Michigan Center for Smart Infrastructure Finance, and a professor of environmental engineering and finance.

PACE Equity Deal First in Nation to Combine PACE Funding and an Opportunity Zone Fund.

MILWAUKEE, June 27, 2019 /PRNewswire/ — PACE Equity recently completed funding $4.3 million for the construction of a new Hyatt House hotel in Rochester, Minnesota. It is notably the first Opportunity Zone fund project in the nation to include PACE funding to date. The new federal Opportunity Zone program, part of the December 2017 Tax Cuts and Jobs Act, was established to spark development in federally designated areas by offering investors generous tax incentives.

The 175-key extended-stay hotel will be located at 315 First Ave., near Mayo Clinic's downtown campus. The property was the site of the former American Legion Post 92, where Mayo Clinic founders William J. Mayo and Dr. Charles H. Mayo were members in the early 1900s. The new Hyatt House will serve the patients and clients of Mayo Clinic, filling a great need in the area.

The developers, California-based EKN Development Group and their co-developer, initially did their own energy study which qualified them for only $400,000, 10 percent of the $4.3 million they desired to utilize PACE for. They then turned to PACE Equity, whose engineering and regulatory expertise enabled them to commit up front – and ultimately fund – the full $4.3 million. The remainder of the capital stack was provided by a construction loan of $29.7 million and $14.4 million equity.

"Using PACE Equity's funding to replace more expensive preferred equity to complete our capital stack was a game changer for us," said Ebbie Nakhjavani, the chief executive officer of EKN Development Group. "PACE Equity's capital not only boosted our overall returns, but their turnkey process and engineering prowess made working with them an easy choice."

PACE Equity's diligent preliminary analysis and up-front commitment are standard components of their turnkey service, which also includes a proprietary energy engineering study during their process. PACE Equity excels in pairing their capital with innovative and complex forms of financing such as historic and new markets tax credits, municipal ground lease structures and tax abatements.

"We are grateful for being able to participate in this project that represents another solid milestone for the industry. PACE Equity continues to hone its skills in complex real estate transactions having done the first commercial PACE projects with tax increment financing, new market tax credits, historic tax credits, and now an Opportunity Zone fund investment," said Beau Engman, PACE Equity founder.

By investing in an Opportunity Zone with PACE Equity funding, EKN and the co-developer were able to reduce their federal tax load and increase their investor return rate significantly. The developers can also take advantage of the additional perks the program offers, such as minimal limits on the types of properties or business investments that qualify and exemption from certain employment requirements.

Ground was broken for the Rochester Hyatt House Hotel on April 11, 2019, and the hotel is expected to be complete in summer 2020.

"For us to be part of the process with two quality developers has been a great opportunity. More importantly, to contribute to a project that is transformative in terms of growing Mayo Clinic's health care campus is very fulfilling. We look forward to many more," said PACE Equity Vice President of Hospitality Ron Adachi.

PACE Equity LLC

Jun 27, 2019

About PACE Equity

PACE Equity is the leading Property Assessed Clean Energy (PACE) funder of commercial real estate development projects in the U.S. PACE Equity is a resourceful addition to the capital stack to boost return on investment while making commercial buildings more sustainable through clean energy efficiencies. PACE Equity has unmatched expertise utilizing PACE in complex and innovative ways, having pioneered the use of PACE funding for projects in new construction, Opportunity Zones, historic and new markets tax credits, brownfield and those receiving a TIF. PACE Equity has a local presence in 20 markets and can fund projects on a national basis.

Webcast Replay: U.S. Not-for-Profit Higher Education Median Webcast

Jun. 26, 2019 | New York

S&P Global Ratings U.S Public Finance held a live webcast and Q&A discussion on Wednesday, June 26th at 2:00 pm Eastern Time on the U.S Not-for-Profit Higher Education sector, highlighting both the Fiscal 2018 Public University Median Report and the Fiscal 2018 Private University Median Report, which was published the week prior to the webcast.

View The Webcast Replay

The Long Odds of Getting Opportunity Zone Capital to Opportunity Zone Businesses.

Della Clark has been working against long odds for basically her entire life. For the past three decades, she's been president and CEO of The Enterprise Center, a nonprofit that supports small and mid-sized businesses in low-income communities throughout the Philadelphia region — a region where, despite 41 percent of the population being black, only 2.5 percent of businesses are black-owned.

Opportunity Zones, the new federal tax break for investing in areas defined as economically distressed, have been billed as a way to shorten the odds for businesses in low-income communities. When the U.S. Treasury confirmed the map of 8,762 census tracts designated as Opportunity Zones last year, Clark found many of her organizations' clients in the Philly region were already located in those tracts. But it was far from certain that the new investors drawn by the Opportunity Zone designation would care about any of the thousands of small and mid-sized business owners who have walked through The Enterprise Center's doors in West Philadelphia over the past 30 years.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO

JUNE 25, 2019

Opportunity Zone Fundraising and Public Comment Update for 2019: McGuireWoods

The advent of Opportunity Zones (OZ) offers players in the private finance and real estate communities a new way to enjoy tax incentives while helping economically distressed areas. Recently, the IRS and the Treasury Department provided new guidance impacting investments into Opportunity Zones, and requested public comment by July 1.

Enacted as part of the Tax Cuts and Jobs Act at the end of 2017, the OZ tax benefit was designed to facilitate capital investment by qualified opportunity funds (QOFs) into low-income and distressed areas designated as opportunity zones. Taxpayers that invest in QOFs are permitted to defer (and in some cases, reduce or eliminate) capital gains tax liability.

McGuireWoods' research, based on SEC filings and related public disclosures, shows fundraising with respect to investments in OZs has reached $6.9 billion for the first five months of 2019.

Our dedicated OZ team guides clients on the specific details and helps them work through vital decisions for initial investments into qualified opportunity funds, as well as the execution of the funds into development projects. Recent guidance from April 2019 provided the needed framework and path forward for increased investments into these qualified opportunity funds, as demonstrated by increased fundraising through the end of May 2019.

Although there can be no certainty that all of these dollars will be deployed, the OZ team at McGuireWoods is dedicated to keeping clients advised of new legislative and business developments as they occur.

Public Comment Period

The IRS and Treasury Department have requested public comment on further specifics of the OZ tax benefit, qualified opportunity zone funds and businesses, reporting requirements, further guidance on the anti-abuse rules, and the original use requirement. Such comments must be submitted no later than July 1, 2019. While some narrower questions remain, the outlined regulations from April 2019 alleviated many of the concerns presented to the investment community and have provided sufficient guidance for investors, developers and funds to continue moving forward with OZ-eligible projects. McGuireWoods' OZ team will provide updates on any new guidance developing from the public comment process.

by Mark A. Kromkowski, Douglas E. Lamb, Dennis W. Mensi, Jon G. Neal, Gregory A. Riegle and Carmelo Chimera

June 28, 2019

McGuireWoods LLP

Justin Wolk: The Biggest Problem with Opportunity Zones

What is the biggest problem in the Opportunity Zone space today? And why is there pushback from potential investors with…

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Opportunity Db

June 25, 2019

Reid Thomas: Third-Party Administration for OZ Funds

Should Qualified Opportunity Funds best practices include third-party administration? And what are some Opportunity Zone trends being noticed by the…

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Opportunity Db

June 27, 2019

Lawyers Pause Plan to Divide Any National Opioid Settlement.

CLEVELAND — State and local governments suing over the toll of a nationwide opioid crisis agree that companies in the drug industry should be held accountable, but they have differences on who should have the power to strike any settlement, and how it should work.

Those disputes had been mostly in the background until this week, when a majority of the nation's state attorneys general signed letters warning of problems with lawyers' plans for creating a mechanism to divide any settlement money among nearly 25,000 local and county governments — if a deal can be struck.

But at a hearing on Tuesday, any public feud was paused.

Lawyers for local governments, responding to those letters as well as objections from drug distributors and pharmacies and questions from local governments, asked if they could have two weeks to modify their plan.

Judge Dan Polster, who is overseeing lawsuits from nearly 2,000 municipal, county and tribal governments, agreed. After that, parties in the case and the state attorneys general will have time to respond to the reformulated plan. Polster scheduled a hearing on it for Aug. 6. At the hearing Tuesday, Polster called the matter "the most complex constellation of cases that have ever been filed."

Polster said he understands why city and county governments have filed their own lawsuits. "It's the legacy of the tobacco settlement," he said.

In the 1990s, states sued tobacco companies in cases with some parallels to the opioid cases. Local governments mostly stayed out of the litigation. In 1998, attorneys general worked out a settlement

that by 2017 had paid states a total of $126 billion, according to the Public Health Law Center, with less than 1% of that amount going to anti-smoking programs. Other funds went to shore up state budgets and other causes.

But attorneys general say that giving local governments too much authority complicates the opioid litigation. So far, 48 states have filed some kind of legal action against at least one drug company and the other two — Michigan and Nebraska — have publicly said they're investigating.

Attorneys general for most states said Monday in a pair of letters to Polster that such an arrangement could hurt their ability to reach a national settlement.

One of the letters warned that the deal would give communities elsewhere "functional veto power" over any settlement a state reached. The attorneys general said that is not acceptable for states.

The Centers for the Disease Control and Prevention found opioids, including prescription drugs and illicit versions such as heroin and fentanyl, played a role in nearly 48,000 deaths in the U.S. in 2017 — making them the nation's leading cause of accidental death.

The only case to go to trial over opioids is happening currently in Oklahoma, where the state is suing only Johnson & Johnson after two other drug companies — Purdue Pharma and Teva Pharmaceuticals — reached settlements with Oklahoma.

Polster has scheduled trials for October for lawsuits brought by Ohio's Cuyahoga and Summit Counties.

In the meantime, the judge is pushing the parties and states to reach settlements.

By The Associated Press

June 25, 2019

The Nuclear Option: Clearwater Condo Owners Push Back Against Bond Debt.

A community development district has gone to federal bankruptcy court over the $1,100-per-year assessments that condo owners pay to retire bonds that critics contend didn't bring anything of value.

CLEARWATER — On sunny days, the Grand Venezia at Baywatch condominiums offer a view of Old Tampa Bay that calms the mind.

"It's just gorgeous," resident Don Dwyer said recently. "One morning I sat on my balcony for two hours. I saw five manatees, 12 dolphins and I can't tell you how many stingrays."

But the history of Grand Venezia is anything but fun or soothing. Instead, it's complicated and contentious, with twists that just keep coming, starting with the two con men now serving 40 years in prison for running a nationwide Ponzi scheme.

Along the way, they talked about turning the Grand Venezia, which is east of U.S. 19 near Belleair Road and Clearwater's southern boundary, into a 5-star resort with a water park, canals with gondoliers, a hotel, spa, convention facilities and shopping to rival Rodeo Drive.

Continue reading.

The Tampa Bay Times

By Richard Danielson

- GASB Issues Implementation Guide on Fiduciary Activities.
- In Major Blow To Its Opponents, SEC Pay-to-Play Rule Survives D.C. Circuit Challenge.
- MSRB Podcast: Municipal Advisor Considerations in Preparing for Examination
- Nonprofit Colleges, Universities Must Promptly Report 'Triggering' Events: McGuireWoods
- Atlanta Environmental Impact Bond Breaks into Public Market.
- SIFMA's LIBOR Transition Briefing, July 15 in NYC
- *New York Republican State Committee v. Securities and Exchange Commission* – Court of Appeals upholds SEC pay-to-play rule governing political contributions of FINRA members who solicited government officials for investment advisory services contracts.
- And finally, Sure, It's Not My Favorite Vehicle Either, But Still is brought to us this week by *Reiber v. County of Gage, Nebraska*, in which a dude was arrested for "making 'punching-type motions' toward occupants of a minivan." The transcript of the initial interview with the arrestee produced this priceless exchange: "How do you spell your last name, Chad? Figure it out, you're an investigator, investigate." Touche. A question regarding a prior arrest was met with this succinct reply, "Terroristic threats, stabbed myself nine fucking times in the fucking chest … yeah, shit happens." Indeed it does, Chad. Indeed it does.

EMINENT DOMAIN - ALASKA

Kenai Landing, Inc. v. Cook Inlet Natural Gas Storage Alaska, LLC

Supreme Court of Alaska - May 24, 2019 - P.3d - 2019 WL 2237956

Public utility brought condemnation action, seeking land use rights necessary to construct underground natural gas storage facility.

The Superior Court held bench trial and awarded compensation. Landowner appealed.

The Supreme Court held that:

- Landowner was not entitled to compensation for condemnation of easement in native gas which was subject to lease;
- Landowner was not entitled to compensation for native gas discovered on property after date of taking;
- Evidence was sufficient to support finding that change in property's current storage capacity for gas was not reasonably probable in the near future, and thus trial court was not required to apply fullest extent rule to value property based on reservoir with greater storage capacity;
- Trial court permissibly included non-productive buffer zone at same compensation rate as the portion of gas storage land including useable pore space; and
- Trial court permissibly relied on testimony of particular expert in crafting valuation of landowner's property.

Even assuming that landowner had title to native gas in place, subject to lease held by lessee,

landowner was not entitled to compensation for public utility's condemnation of easement in that gas for duration of lease, for utility's building of underground natural gas storage facility, where landowner had no current right to extract native gas, to block its production, or to use the native gas in place for any purpose, and utility's use of gas was non-consumptive.

Landowner was not entitled to compensation for native gas discovered on property after date of taking, in condemnation action brought by public utility for land use rights necessary to construct underground natural gas storage facility; gas at issue was not just undiscovered as of date of taking, it was not present under landowner's property at all, since it came into pressure communication with the gas underlying landowner's property only after utility accidentally tapped into reservoir of undiscovered gas while working on project.

IMMUNITY - ARKANSAS

Dayong Yang v. City of Little Rock

Supreme Court of Arkansas - May 30, 2019 - S.W.3d - 2019 Ark. 169 - 2019 WL 2295048

Father, as administrator of child's estate, brought city, its employees, and its ambulance authority, alleging negligence and civil rights violations under § 1983, the Fourteenth Amendment to the United States Constitution, and Arkansas law, arising from the alleged mishandling of an emergency services call seeking rescue services for his son.

The Circuit Court denied city's and employees' motions for summary judgment. City and employees brought interlocutory appeal. The Supreme Court reversed and remanded. On remand, the circuit court granted summary judgment to city and employees and dismissed with prejudice. Father appealed.

The Supreme Court held that:

- City was entitled to municipal immunity from negligence claims;
- City did not have § 1983 liability for claims that it violated son's substantive and procedural due process rights; and
- § 1983 claims did not fall under state-created-danger exception to rule that government has no duty to render aid to those not in its custody.

City established that it did not have general liability insurance coverage to cover father's negligence claims regarding alleged mishandling of an emergency services call seeking rescue for his services for his son following an accident, which resulted in son's death, and thus, city was entitled to municipal immunity from negligence claims.

City did not have § 1983 liability for father's claims that city violated his son's substantive and procedural due process rights by failing to provide competent emergency services to son, since no constitutional violation had occurred at time of city's rescue efforts, as city had no constitutional duty to provide rescue services for the son.

Father's § 1983 claims that city's water-rescue-operations policy prevented any rescue attempts by others and deprived his son of his life and liberty interests in violation of the Fourteenth Amendment did not fall under state-created-danger exception to rule that government has no duty to render aid to those not in its custody, where father presented no evidence that a rescue attempt by any person, whether official or citizen, was arbitrarily prevented by city or that during its rescue efforts, city affirmatively placed son in position of danger that he would not otherwise have faced.

IMMUNITY - NEBRASKA

Reiber v. County of Gage, Nebraska

Supreme Court of Nebraska - June 7, 2019 - N.W.2d - 303 Neb. 325 - 2019 WL 2399549

Arrestee's mother brought negligence action against county, sheriff, and sheriff's employees under the Political Subdivisions Tort Claims Act (PSTCA) following arrestee's suicide in jail cell.

After a bench trial on issue of liability, the District Court entered judgment for defendants. Mother appealed.

The Supreme Court held that:

- Forensic psychiatrist's expert testimony that he would not have considered arrestee a suicide risk based on information known to jailers was admissible, and
- Defendants had sovereign immunity.

Forensic psychiatrist's expert testimony that he would not have considered arrestee a suicide risk based on information known to jailers concerned an issue of specialized knowledge and would have aided the factfinder, and therefore it was admissible in negligence action against county, sheriff, and sheriff's employees under Political Subdivisions Tort Claims Act (PSTCA) arising from arrestee's suicide in jail cell, even if psychiatrist had not reviewed jail protocol or examined arrestee in a clinical setting; psychiatrist was a medical professional with experience assessing suicidal risk, and he discussed many of the same assessment factors required under the jail's procedures for screening for a suicidal inmate.

Forensic psychiatrist's expert testimony that he would not have considered arrestee a suicide risk based on information known to jailers was admissible even if testimony embraced an ultimate issue to be decided by the trier of fact, in negligence action against county, sheriff, and sheriff's employees under Political Subdivisions Tort Claims Act (PSTCA) arising from arrestee's suicide in jail cell; psychiatrist did not offer the ultimate legal conclusion as to whether defendants were liable for arrestee's death, he did not offer testimony regarding the standard of care to be applied to a jailer, and he only offered a comparative point of view based on the more specialized and higher standard of care applicable to a psychiatrist.

County, sheriff, and sheriff's employees had sovereign immunity from negligence claim against them under Political Subdivisions Tort Claims Act (PSTCA) arising from arrestee's suicide in jail cell, where the standard procedures designed to detect an inmate's suicide risk were followed, arrestee did not present a known or reasonably foreseeable suicide risk, jail staff followed its policy of placing an intoxicated inmate alone in a safety cell, and officers began exercising the precaution of making frequent cell checks on arrestee.

EASEMENTS - PENNSYLVANIA

Schnarrs v. Rush Township Board of Supervisors

Commonwealth Court of Pennsylvania - May 31, 2019 - A.3d - 2019 WL 2306305

Property owners brought action against township board of supervisors alleging trespass and seeking damages for use of paved area that traversed property essentially connecting parallel streets adjacent to property.

The township filed a counterclaim seeking a declaration that paved area was a public road. The Common Pleas Court entered judgment in favor of board that paved area constituted prescriptive easement and that township's use of paved area did not constitute trespass, and property owners appealed.

The Commonwealth Court held that:

- Trial court did not sua sponte consider whether paved area constituted public road under prescriptive easement theory;
- Sufficient evidence in record supported conclusion that paved area was public road by prescription;
- Trial court's lack of use of phrase "clear and positive evidence" did not require reversal of its conclusion that board established public road by prescription; and
- Trial court did not abuse its discretion by accepting testimony of board's witness over property owners' witness.

Township board of supervisors' counterclaim, which sought to establish that paved area on private property was public road, cited facts and law pertaining to both second class township code and prescriptive easement, and thus, trial court did not sua sponte consider whether paved area constituted public road under prescriptive easement theory; board alleged that paved area had been used by residents and general public for over 30 years and that such use had been "open, notorious, continuous, uninterrupted, adverse, and hostile throughout such period," board noted that legal right of public to acquire prescriptive easement in lands of another, and board cited caselaw pertaining to prescriptive easements.

Sufficient evidence in record supported conclusion that paved area traversing private property that essentially connected parallel streets adjacent to property was public road by prescription; the public, school buses, snow plows, and delivery vehicles used paved area for more than 21 years, township maintained paved area over 21 years, township never received permission to use or maintain paved area, and testimony from representatives of broader population established that public use of paved area was exercise of property right.

Trial court's lack of use of phrase "clear and positive evidence" did not require reversal of its conclusion that township board of supervisors established public road by prescription of paved area traversing private property, since use or nonuse of specific phrase was not dispositive of legal issue, trial court findings were supported by substantial evidence, and township board of supervisors proved with clear and positive evidence that paved area was public road by prescription.

Trial court did not abuse its discretion by accepting testimony of witness for township board of supervisors over allegedly conflicting testimony offered by witness for property owners, in action by property owners for trespass and damages for use of paved area on private property, since trial court had authority to make credibility determinations and resolve conflicts in evidence, and trial court was free to believe all, part, or none of evidence presented.

EMINENT DOMAIN - TEXAS

University of Houston System v. Jim Olive Photography

Court of Appeals of Texas, Houston (1st Dist.) - June 11, 2019 - S.W.3d - 2019 WL 2426301

Professional photographer sued public university, alleging an unlawful taking based on the

university's unauthorized use of his copyrighted aerial photograph of the city on university webpages.

The District Court denied the university's plea to the jurisdiction, and university brought interlocutory appeal.

The Court of Appeals held that addressing an issue of apparent first impression, copyrighted photograph was not protected from government taking.

Copyrighted photograph was not protected from government taking, and thus professional photographer failed to state a viable claim against public university for unauthorized use of photograph on university's webpages; photographer never lost right to use or license his photograph, and university's single act of copyright infringement cost photographer no more than a licensing fee.

PAY-TO-PLAY - LOS FEDERALES

New York Republican State Committee v. Securities and Exchange Commission

United States Court of Appeals, District of Columbia Circuit - June 18, 2019 - F.3d - 2019 WL 2508986

State political parties filed petition for review of Securities and Exchange Commission (SEC) rule governing political contributions of Financial Industry Regulatory Authority (FINRA) members who solicited government officials for investment advisory services contracts.

After one party was dismissed, petition was transferred.

The Court of Appeals held that:

- Party suffered sufficient injury-in-fact to establish standing to challenge rule;
- SEC acted within scope of its statutory authority to uproot pay-to-play corruption in financial markets when it adopted rule;
- SEC did not act arbitrarily and capriciously when it adopted rule; and
- Rule did not violate Free Speech Clause.

State political party suffered sufficient injury-in-fact to establish standing to challenge Securities and Exchange Commission (SEC) rule governing political contributions of Financial Industry Regulatory Authority (FINRA) members who solicited government officials for investment advisory services contracts, even though party was not regulated by challenged rule, where placement agent covered by rule averred that he would solicit contributions for party if rule were no longer in effect.

Securities and Exchange Commission (SEC) acted within scope of its statutory authority to uproot pay-to-play corruption in financial markets when it adopted rule prohibiting Financial Industry Regulatory Authority (FINRA) members who acted as placement agents from accepting compensation for soliciting government business from certain candidates and elected officials within two years of having contributed to such official's electoral campaign or to transition or inaugural expenses of successful candidate, even though Federal Election Campaign Act (FECA), which gave Federal Election Commission (FEC) general authority to regulate political contributions, did not bar contributions from placement agents.

Securities and Exchange Commission (SEC) did not act arbitrarily and capriciously when it adopted rule prohibiting Financial Industry Regulatory Authority (FINRA) members who acted as placement agents from accepting compensation for soliciting government business from certain candidates and elected officials within two years of having contributed to such official's electoral campaign or to transition or inaugural expenses of successful candidate, despite contention that SEC failed to show that rule targeted corruption beyond that already prevented by federal and state laws against bribery or by Federal Election Campaign Act (FECA); pay-to-play corruption addressed by rule encompassed conduct not prohibited by bribery laws, and SEC was aware of several instances in which placement agent's contribution to government official—lawful under FECA—influenced that official's decision to award advisory services contract.

Securities and Exchange Commission (SEC) rule prohibiting Financial Industry Regulatory Authority (FINRA) members who acted as placement agents from accepting compensation for soliciting government business from certain candidates and elected officials within two years of having contributed to such official's electoral campaign or to transition or inaugural expenses of successful candidate was closely drawn to further compelling governmental interest in preventing pay-to-play corruption or appearance of corruption, and thus did not violate Free Speech Clause.

ESTABLISHMENT CLAUSE - UNITED STATES

American Legion v. American Humanist Association

Supreme Court of the United States - June 20, 2019 - S.Ct. - 2019 WL 2527471

Organization and individual residents brought § 1983 action against Maryland-National Capital Park and Planning Commission, alleging that the prominent display of a 32-foot tall Latin cross on public land, which was erected as a memorial to area soldiers who died serving in World War I, as well as the Commission's ownership and maintenance of the memorial, violated the First Amendment's Establishment Clause. Veterans organizations intervened as defendants.

The United States District Court for the District of Maryland granted summary judgment to defendants, and plaintiffs appealed. The United States Court of Appeals for the Fourth Circuit reversed and remanded. Following the denial of rehearing en banc, certiorari was granted.

The Supreme Court held that the cross did not violate the Establishment Clause.

Where categories of monuments, symbols, and practices with a longstanding history follow in the tradition of the First Congress, in demonstrating respect and tolerance for differing views, engaging in an honest endeavor to achieve inclusivity and nondiscrimination, and recognizing the important role that religion plays in the lives of many Americans, they are likewise constitutional under the Establishment Clause.

A 32-foot tall Latin cross sitting on a tall pedestal on public land, which was erected as a memorial to area soldiers who died serving in World War I, did not violate the Establishment Clause; although the cross was undoubtedly a Christian symbol, it had taken on an added secular meaning as a symbol of the sacrifice of American soldiers killed in the war, it also had acquired additional layers of historical meaning in subsequent years, as it now stood among memorials to veterans of later wars, there was no evidence of discriminatory intent in the selection of the design of the memorial or the decision of state agency to maintain it, and its removal or radical alteration would be seen by many not as a neutral act but as the manifestation of a hostility toward religion.

EMINENT DOMAIN - UNITED STATES

United Affiliates Corporation v. United States

United States Court of Federal Claims - May 29, 2019 - Fed.Cl. - 2019 WL 2276703

Landowner and mineral rights lessee brought action against Government, asserting categorical and regulatory takings claims following Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed certain mining-generated waste disposal operations.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that:

- Lessee adequately alleged that it possessed cognizable property interest;
- Landowner adequately alleged that it possessed cognizable property interest;
- Lessee and landowner failed to state claim for categorical taking by failing to allege physical invasion of property or that property had been deprived of all economically beneficial or productive use; but
- Lessee and landowner adequately alleged regulatory taking.

Lessee of property's mineral rights adequately alleged property interest cognizable for Fifth Amendment takings claim against Government based upon Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed waste generated from mining leased property to be disposed of in neighboring hollows through which streams ran; lessee alleged that it and property owner had entered into lease agreement that covered mining of property and that, thereafter, lessee had applied to EPA for permit to dispose of waste in hollows, with submission of such application having required lessee to affirm its ownership interest in hollows.

Property owner adequately alleged property interest cognizable for Fifth Amendment takings claim against Government based upon Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed waste generated from mining property to be disposed of in neighboring hollows through which streams ran; owner alleged that it owned mined land and most of the coal that could be mined, that it was entitled to receive certain tonnage royalties from mineral rights lessee pursuant to lease agreement whereby it permitted lessee to mine land, and that, in applying to EPA for permit to dispose of waste in hollows, lessee had affirmed its ownership interest in hollows such that property owner had interest in hollows to extent it held royalty fee arrangement.

Landowner and mineral rights lessee adequately alleged taking, as element of regulatory Fifth Amendment takings claim against Government based upon Environmental Protection Agency's (EPA) withdrawal of permit issued under Clean Water Act (CWA) which had allowed waste generated from mining property to be disposed of in neighboring hollows through which streams ran; landowner and lessee alleged that after EPA had issued permit to lessee, lessee had invested millions of dollars in developing property to carry out operations which permit had specifically authorized, only for EPA to, in unforeseeable act without precedent, withdraw permit, foreclosing use of land for mining and resulting in deprivation of millions of dollars in economically beneficial or productive use of property.

With More Storms and Rising Seas, Which U.S. Cities Should Be Saved First?

WASHINGTON — As disaster costs keep rising nationwide, a troubling new debate has become urgent: If there's not enough money to protect every coastal community from the effects of human-caused global warming, how should we decide which ones to save first?

After three years of brutal flooding and hurricanes in the United States, there is growing consensus among policymakers and scientists that coastal areas will require significant spending to ride out future storms and rising sea levels — not in decades, but now and in the very near future. There is also a growing realization that some communities, even sizable ones, will be left behind.

New research offers one way to look at the enormity of the cost as policymakers consider how to choose winners and losers in the race to adapt to climate change. By 2040, simply providing basic storm-surge protection in the form of sea walls for all coastal cities with more than 25,000 residents will require at least $42 billion, according to new estimates from the Center for Climate Integrity, an environmental advocacy group. Expanding the list to include communities smaller than 25,000 people would increase that cost to more than $400 billion.

Continue reading.

The New York Times

By Christopher Flavelle

June 19, 2019

Wells Fargo Parent is Dismissed from Lawsuit by Philadelphia, Baltimore.

NEW YORK (Reuters) – Wells Fargo & Co was dismissed as a defendant in a lawsuit brought by the cities of Philadelphia and Baltimore, which accused large banks of conspiring to inflate interest rates for variable-rate demand obligations (VRDO), a type of tax-exempt bond.

The dismissal came after Wells Fargo represented that it did not remarket, provide letters of credit for, or manage money market funds that invested in the bonds, according to a Tuesday filing in federal court in Manhattan.

Other Wells Fargo entities remain defendants. Goldman Sachs Group Inc and JPMorgan Chase & Co were previously dismissed from the case, though affiliates of those banks remain defendants, according to court records.

The remaining defendants include Bank of America Corp, Barclays Plc, Citigroup Inc, and Royal Bank of Canada, the records showed.

Philadelphia, which said it issued more than $1.6 billion of VRDOs, and Baltimore, which said it issued $261 million, stated that the collusion enabled banks to collect hundreds of millions of dollars in fees they did not earn.

The cities said this reduced critical funding for hospitals, power and water supplies, schools, transportation and other municipal services. Their proposed class action covers the period from

February 2008 to June 2016.

The case is Philadelphia et al v Bank of America Corp et al, U.S. District Court, Southern District of New York, No. 19-01608.

Reporting by Jonathan Stempel in New York; Editing by Bernadette Baum and Jeffrey Benkoe

JUNE 18, 2019

Municipal Bonds Are in Short Supply. Here's Where Investors Can Find Value.

Once again, U.S. municipal-bond investors will be awash with cash this summer as bonds mature and get called. Strategists in UBS's wealth management division have suggestions for where investors can put that money.

Summer is normally the heaviest season for municipal-bond maturities and redemptions. This year should be no different, as $117 billion of bonds should mature in June, July and August—and that isn't counting the bonds that are called.

The supply of muni bonds isn't expected to keep up with the demand this year. While that should support prices in the market, it also makes it harder for investors to find good deals.

Continue reading.

Barron's

By Alexandra Scaggs

June 17, 2019 7:00 am ET

Supreme Court Sides With Property Owners in Local Land-Use Case.

In 5-4 decision, high court eases property owners' ability to challenge local regulations in federal court

WASHINGTON—The Supreme Court on Friday made it easier for property owners to challenge land-use regulations and seek compensation from the government, a ruling that revealed deep divisions between the court's conservative and liberal camps.

The court, in a 5-to-4 decision written by Chief Justice John Roberts, sided with a Pennsylvania woman who challenged a requirement by the rural community of Scott Township that she provide public access to a gravesite on her 90-acre property.

The chief justice, writing for the court's conservative majority, said landowner Rose Mary Knick could file a federal lawsuit that challenged a town ordinance on gravesite access and sought compensation for a "taking" of her property.

The decision overturned court precedent from 1985 that required property owners such as Ms.

Knick to file litigation in state court first. Chief Justice Roberts said that requirement had proven to be “an unjustifiable burden” on property owners.

“Takings claims against local governments should be handled the same as other claims” for federal constitutional violations, the chief justice wrote in a 23-page opinion striking down the state-cour--first requirement.

The ruling is likely to give federal judges more oversight of local land-use regulations since property owners will no longer need to initially go to state courts. Property-rights advocates have viewed state courts as more sympathetic to municipal officials than to landowners.

The ruling “gives property owners an opportunity to forum-shop” for courts more sympathetic to their arguments, said Michael Blumm, a professor at Lewis & Clark Law School. He said federal courts may be more willing to curb state and local land-use regulations, particularly with the recent infusion of conservative Trump appointees, than state courts in California and other areas with strong environmental laws.

The court’s newest justice, Brett Kavanaugh, appeared to provide the tiebreaking vote in Ms. Knick’s favor. An eight-justice court first considered the case last October before Justice Kavanaugh was confirmed to his seat. The court later scheduled the case for re-argument in January, a move that suggested it needed its new member to break a deadlock.

Also joining the majority were Justices Clarence Thomas, Samuel Alito and Neil Gorsuch.

The court’s four liberal justices dissented and, for the second time in recent weeks, chided their conservative colleagues for overturning precedent.

Justice Elena Kagan, writing for the dissenters, quoted Justice Stephen Breyer, who last month criticized the court for overruling precedent in a state-sovereignty case.

“Today’s decision can only cause one to wonder which cases the court will overrule next,” Justice Breyer wrote in the earlier dissent.

On Friday, Justice Kagan doubled down. “Well, that didn’t take long,” she wrote. “Now one may wonder yet again.”

The Wall Street Journal

By Brent Kendall and Jess Bravin

Updated June 21, 2019 5:37 pm ET

Property Rights Claims Against Local Governments Gain Clearer Path to Federal Court.

The U.S. Supreme Court on Friday overturned a precedent that has pushed many of the cases into state-level proceedings.

Lawsuits alleging that local governments have unconstitutionally taken private property now have a more direct path to federal court, after a divided U.S. Supreme Court ruling on Friday scrapped a

34-year-old legal precedent.

The 5-4 ruling, with the court's conservative bloc in the majority, comes in Knick v. Township of Scott. Rose Knick challenged a local ordinance the Pennsylvania township enacted in 2012 requiring her to grant daytime public access to a small cemetery plot on her land.

The legality of the ordinance and how it was enforced was not at the center of the Supreme Court case. It instead focused on a legal precedent that the high court established in 1985 in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

June 21, 2019

Nonprofit Colleges, Universities Must Promptly Report 'Triggering' Events: McGuireWoods

Nonprofit higher education institutions now must report to the U.S. Department of Education the occurrence of certain "triggering" events that bear on the institution's financial strength within 10 days of the occurrence of the event.

These reporting requirements, part of the Obama-era borrower defense regulations that stalled under the Trump administration, have implications for any institution that participates in federal student aid programs. The regulations are designed to protect the Department of Education should it need to forgive student loans due to closure, fraud or misrepresentation by the institution.

The National Association of College and University Business Officers (NACUBO) released Advisory Guidance 18-05, which details the new regulations and triggering events and recommends certain steps business officers should take to ensure compliance with the new reporting requirements.

The borrower defense regulations set forth two categories of triggering events that will lead to the Department of Education re-evaluating an institution's financial standing: "automatic" and "discretionary" events.

Previously, the Department of Education evaluated a school's standing by reviewing the institution's audited financial statements, which schools provided within nine months of the end of the fiscal year. Now, the Department of Education will re-evaluate an institution's financial standing upon notice of a triggering event. An institution must provide such notice initially within 10 days of the occurrence of the event. Depending on the type of event, such as a lawsuit, an institution also may be required to provide follow-up notices.

Automatic triggering events are: (1) debts stemming from judicial or administrative proceedings or settlements, (2) borrower defense-related lawsuits, (3) other (not specified) litigation, (4) accrediting actions requiring a teach-out plan when closing (including closing a branch), and (5) gainful employment programs that could become ineligible for federal aid in the next award year.

Discretionary triggers are: (1) significant year-to-year fluctuation in the amount of Pell Grant or direct loan funds the institution receives, (2) citation by a state licensing agency for failing requirements, (3) failing a (to be developed) stress test, (4) high annual dropout rates, (5) accreditation issues, (6) financing document violations that allow a creditor to increase collateral, and (7) pending borrower relief claims or borrower defense lawsuits.

While the regulations do not provide detailed consequences for failing to report, they do provide the consequences for failing to meet required financial responsibility standards. These consequences include providing the Department of Education with a surety or letter of credit, and disclosing to students and prospective students the occurrence of a triggering event.

Business officers should coordinate with internal and external team members to put systems in place to ensure they are notified if a triggering event occurs. Such reporting systems will help promote compliance with the 10-day reporting requirement.

by Thomas William Bruno

June 20 2019

McGuireWoods LLP

In Major Blow To Its Opponents, SEC Pay-to-Play Rule Survives D.C. Circuit Challenge.

The U.S. Court of Appeals for the D.C. Circuit yesterday issued a long-awaited opinion upholding, on the merits, a recent update to the SEC's pay-to-play rule. While the case involved only a narrow piece of the rule, the decision's logic is worded more broadly and could apply to the SEC rule as a whole, making future challenges to the rule much more difficult, at least in the D.C. Circuit.

For years, opponents of the SEC pay-to-play rule have tried to obtain a court ruling declaring the rule unlawful or unconstitutional. Until now, those challenges had been stymied on procedural grounds. Yesterday, these opponents to the rule narrowly overcame these procedural obstacles only to be a dealt a substantive, precedent-setting defeat.

Background: 25 Years of Challenges To Pay-to-Play Rules

To understand the significance of yesterday's opinion, we need to travel back to 1994, when the Municipal Securities Rulemaking Board ("MSRB") adopted a "pay-to-play" rule to reduce the role of political contributions in the awarding of municipal securities business. The rule effectively restricted broker-dealers and those affiliated with them from making certain political contributions. The rule was challenged shortly thereafter but, in an important case called *Blount v. MRSB*, the D.C. Circuit rejected a constitutional challenge to this rule on the merits.

Having survived a constitutional challenge, the MSRB rule became the predicate for the well-known pay-to-play rule for investment advisers, adopted by the Securities & Exchange Commission ("SEC") in 2010. That rule, among other things, prohibits investment advisers from providing paid investment advisory services to a government entity within two years of a political contribution to certain government officials by the adviser and certain "covered associates" of the adviser.

In 2015, the Financial Industry Regulatory Authority ("FINRA") adopted a similar pay-to-play rule for

FINRA members. Pursuant to the rule, FINRA members may not "engage in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity within two years after a contribution to an official of the government entity is made by a covered member or a covered associate" of the FINRA member. The rule also prohibits FINRA members and their covered associates from "solicit[ing] or coordinat[ing] any person or political action committee" to make any contributions to a covered official or certain political parties. As a result of the rule, certain individuals affiliated with FINRA members are effectively barred from making or soliciting certain political contributions, even if their motive for making the contribution or solicitation was purely ideological and unrelated to their work for FINRA members.

The SEC approved the FINRA rule in 2016 and two state Republican parties then challenged that SEC order in the 11th Circuit. The 11th Circuit transferred the case to the D.C. Circuit. In a consequential decision, instead of dropping the case, the parties decided to pursue the challenge in the D.C. Circuit, notwithstanding the bad, on-point precedent in Blount.

The D.C. Circuit's Decision

Yesterday's decision, authored by Judge Ginsburg, reached the merits of the challenge for the first time. The court found that the political parties had standing because they had submitted an affidavit from a regulated placement agent stating that he would have solicited friends and family to donate to the parties but for the rule. This possible loss of future contributions was sufficient to establish injury-in-fact and standing, in the court's view. (Judge Sentelle dissented, arguing that any such injury was too speculative and that parties had therefore not established standing.)

Turning to the merits, the court dismissed the parties' legal arguments one-by-one. First, the court concluded that the rule fell "within the authority of the SEC to reduce distortion in financial markets." It concluded that, notwithstanding Congress's choice to set contribution limits directly in the Federal Election Campaign Act ("FECA"), Congress did not "reserve[] to itself the authority to determine when a political contribution poses a risk of corruption": "In our view, that the Congress has increased the contribution limits to keep pace with inflation and that it has prohibited certain groups from making contributions is not evidence of a 'clear congressional intention' to preclude the SEC from limiting campaign contributions that distort financial markets." The court also held that FECA and the SEC pay-to-play rules "can peacefully coexist" notwithstanding an earlier (and arguably later-superseded) D.C. Circuit opinion invalidating a postal regulation that imposed political mail disclosure requirements beyond those imposed by FECA.

The court next rejected the claim that the pay-to-play rule was arbitrary and capricious in violation of the Administrative Procedure Act because the rule was a reasonably-drawn "prophylactic" attempt to reduce corruption or its appearance. Further, because the court concluded that the rule was "closely drawn to serve a sufficiently important governmental interest" — preventing corruption and its appearance — the parties' First Amendment arguments also failed. In reaching this constitutional decision, the Court relied heavily on *Blount*, which, as noted above, upheld the very-similar MSRB rule against constitutional challenge.

Recognizing that the pay-to-play rules impose another federal limit on contributions to candidates on top of the per-candidate limits, the parties argued that the Supreme Court undermined *Blount* in the *McCutcheon* case, a case in which the Court struck down aggregate contribution limits, criticizing the then-existing overlap between per candidate and aggregate limits as a "prophylaxis-upo- -prophylaxis approach" to reducing corruption and its appearance. The D.C. Circuit rejected this argument, concluding that *Blount* was still good law.

It also rejected perhaps the best argument of petitioners — that the pay-to-play rule has a "disparate impact … on candidates running for the same seat," "where one candidate is a covered official and the incumbent (or another candidate) is not." The court simply concluded that, even though there is a disparate impact, it is justified by the interest in preventing corruption and its appearance. Curiously, the court described this "disparate effect" "as a feature, not a flaw" of the rule.

What Comes Next?

So, what's next for pay-to-play rule challenges? While opponents of the pay-to-play rule have faced a string of defeats, this merits decision is the worst loss yet for the rule's opponents as it rejects their substantive arguments and sets a precedent from a highly-regarded appellate court, in an opinion supported by judges appointed by Presidents from both parties.

As next steps, the political party committees may seek *en banc* review or petition the Supreme Court to take the case, but the absence of a circuit split and the composition of the D.C. Circuit panel may make both options difficult. A challenge to the rule could be pursued in another circuit, although the likelihood of success for such a challenge has decreased with yesterday's D.C. Circuit opinion. Opponents might instead try a more targeted attack on the rule. Instead of seeking the wholesale abandonment of the rule, opponents might decide to bring a tailored challenge to the most constitutionality vulnerable parts of the rule, such as the extremely broad definitions of covered "officials" and "covered associates," the low *de minimis* thresholds, or the ban on solicitations, which restricts direct political speech.

Regardless of what happens next, for opponents of the SEC rule, the hill got much steeper yesterday.

by Zachary G. Parks

June 19 2019

Covington & Burling LLP

[Atlanta Environmental Impact Bond Breaks into Public Market.]()

IN BRIEF

- IN JANUARY 2019, ATLANTA CLOSED A $14 MILLION ENVIRONMENTAL IMPACT BOND (EIB) for stormwater management in the city's Proctor Creek watershed.
- ATLANTA'S BOND WAS OFFERED PUBLICLY, A FIRST FOR MUNICIPAL EIBS and an innovation its architects hope will help pave the way for EIBs to become a mainstream investment and financing tool.
- THE RESULTS FROM THE ATLANTA OFFERING COULD BE SEEN AS VALIDATION of market appetite for EIBs: the Atlanta bond was fully subscribed, mostly by mainstream institutional investors.

The city of Atlanta has new funds for green infrastructure. In January 2019, the city — in partnership with impact investing intermediary firm Quantified Ventures — closed a $14 million environmental impact bond (EIB) for stormwater management in the city's Proctor Creek watershed. The city plans to use the funds for green infrastructure projects that aim to control stormwater flow and improve water quality.

“Proctor Creek is an area that has repeatedly flooded, and as a result has caused a lot of problems with poor housing stock in that community,” said Stephanie Stuckey, Atlanta’s former chief resilience officer and current director of sustainability services at the Southface Institute. According to Stuckey, these issues have caused damage to housing as well as health problems, including a case of West Nile virus.

Atlanta’s EIB follows in the path of the bond set up by DC Water in 2016, but carries an important distinction. The DC deal was privately placed and sold to Goldman Sachs and the Calvert Foundation; Atlanta’s bond was offered publicly, an innovation its architects hope will help pave the way for EIBs to become a mainstream investment and financing tool.

Funding Stormwater Management

The Atlanta bond was the result of a partnership between Quantified Ventures, the Rockefeller Foundation, and broker-dealer Neighborly. Aiming to expand EIBs into public markets, the Rockefeller Foundation put out a grant to cover the costs of structuring a public bond; Atlanta’s proposal was chosen among applicants from the 100 Resilient Cities network. The project will fund constructed wetlands, floodplain restoration, pervious pavers, and bioretention areas for stormwater runoff.

Proctor Creek passes through Atlanta’s downtown, and the watershed includes some of the city’s most economically distressed neighborhoods. According to Stuckey, it was chosen for the bond in part because it is the only major watershed to fall entirely within the Atlanta city limits, dodging the jurisdictional questions that could complicate a bond covering an area that spans multiple municipalities.

The watershed is ripe for intervention on stormwater management. “Proctor Creek has consistently been on the 303(d) impaired stream list with the state Environmental Protection department,” Stuckey said. It’s also a site of the Urban Waters Federal Partnership program operating in 19 cities, focused on urban, impaired, polluted streams in low-income communities.

Atlanta has faced issues in the past with combined sewer overflows. “We’re under a [federal] consent order,” said Stuckey, making the EIB a way to “control some of the flooding issues that we’re legally obligated to address, in a manner that’s not only more cost-efficient than some of the heavy gray infrastructure, but it’s also more environmentally sensitive.”

It’s also a financing mechanism that looks to help expand the city’s capacity to take on new projects. “Like most utilities, there’s a limited number of projects we can deliver, given the funding that is available,” said Mohamed Balla, deputy commissioner and CFO of Atlanta’s Department of Watershed Management. Resource constraints have ended up “pushing green infrastructure projects to the back of the line perpetually,” he said.

The bond has a ten-year term and two-tier structure, with an estimated base interest rate of 3.55%. At the end of the sixth year of the term, if the projects it funds have generated over 6.52 million gallons of new capacity for stormwater capture, investors will receive a performance payment totaling $1 million resulting in an estimated 4.67% effective interest rate. Quantified Ventures calculates a 28% probability of hitting the high-performance mark, which would result in an above-market net interest rate.

The city hopes more cost-effective green infrastructure can be passed as savings to taxpayers. Quantified Ventures estimates that the $14 million in financing will generate around $18 million in economic benefit, in the form of reduced flooding and better water quality. If the high-performance

criteria are met, it would represent an additional $1.8 million of value. The bond has been rated Aa3 by Moody's and A+ by S&P.

The two-tier set-up is also a departure from the DC model, which — in addition to base and high-performance rates — includes a provision that allows the city to recoup some of the EIB's proceeds from investors if the project underperforms. Atlanta's simplified tiers — just base rate and upside — are an alteration important for the bond's public structure.

Holders of a public bond may also resell it to other parties during the course of its term. For that reason, "it gets more complicated if you do a three-tier structure because once it's in the secondary market, it's more challenging to do that clawback in the case of underperformance," said Andrea Barrios, innovative finance analyst at the Rockefeller Foundation.

From Private to Public

If it's successful, the Atlanta bond could prove to be the next step in an ongoing evolution of EIBs as a tool for financing environmental and conservation projects. Private bonds, like the DC Water EIB, are sold to specific prearranged investors. In contrast, public bonds are offered on an open market — the Atlanta EIB was sold on Neighborly's online platform.

The Atlanta deal may help to build broader acceptance of the model pioneered by DC's EIB. Despite the potential represented by the DC deal, other cities were reluctant to follow suit, according to Barrios.

"DC Water was viewed as a highly sophisticated and resource-rich entity," she said. "Even the base interest rate that they used in their model was higher than [other] municipalities would use, and it scared away some of the smaller ones."

In addition, privately placed EIBs face limitations that may be inherent to their structure. They exist in "what often ends up being an overly engineered private investment world, which gets even more complex in the impact space," said Margot Kane, former senior advisor at Quantified Ventures. "There's another layer of requirements that have to do with social and environmental outcomes."

Private structures can also give outsized influence to single anchor investors and increase transaction costs, according to Kane. In contrast, Barrios hopes that the Atlanta deal will show that EIBs are a tool available to a wide variety of municipalities across the country. Its public offering was key to demonstrating proof of concept.

"It was really tested in the market," Barrios said. That is, Atlanta's bond posed an unanswered question: how would a municipal EIB sell without prearranged buyers? Moreover, only qualified investment buyers could purchase the bond, in increments no smaller than $100,000. This threshold priced out many smaller impact investing outfits that may have had a special affinity for an EIB, according to Barrios, testing the EIB with a segment of the market that less typically purchases them.

"When you talk about municipal debt as an asset class, a lot of people tend to be risk-averse and don't want to put their money into the new flashy innovative thing, they want to put their money into something that's tried-and-true," said Benjamin Cohen, director at Quantified Ventures.

Traditionally, EIBs have been "very boutique, very niche, principal-exposed," with philanthropic investors and complex evaluation structures, Cohen said. "As a company, we're trying to take that model from something that is pretty entrenched in academia and philanthropy and is pretty boutique and trying to turn it into a financial vehicle that can be recognized and adopted by the broader

capital market," he said.

The results from the Atlanta offering could be seen as validation of market appetite for EIBs: the Atlanta bond was fully subscribed, mostly by mainstream institutional investors, according to Cohen.

Replication

"Now that we have the Atlanta EIB in the public bond markets, our hope is that now there's one of these," Cohen said, "we hope to see more interest and more appetite from investors."

A further innovation that future bonds could aim for: one initial idea for the Atlanta bond was to make it available for retail sales, allowing any Atlanta resident to invest in their city's green infrastructure if they wished. This proved too challenging to implement, but could form a part of similar deals in the future, according to Cohen.

Broader acceptance of EIBs as tools available to municipalities would, of course, mean more municipalities using them. To continue to push the process forward, Rockefeller and Quantified Ventures are also supporting the city of Camden, New Jersey in developing an EIB to build a mini-grid for public buildings. Perhaps that will pave the way for cities to begin pursuing EIBs of their own accord.

"We'd love for the municipalities to take this on their own. It takes time for these bonds to be replicated, because people wait for the first, the second, the third, the fifth, the sixth," Barrios said. "What would be incredible is if you catalyze this across the entire country, or even internationally."

Conservation Finance Network

by Chris Lewis

June 24, 2019

Supply Constraints Help Municipal Bond ETFs.

Municipal bonds and related muni bond exchange traded funds are benefiting as U.S. states and cities cut back on new issues. For example, the VanEck Vectors AMT-Free Intermediate Municipal Index ETF (CBOE: ITM) is up nearly 5% this year.

Municipal debt and bond-related exchange traded funds have been used as a relatively stable fixed-income stream for many investment portfolios. Due to the 2017 changes in the tax code, some states are seeing soaring municipal bond valuations.

"While the 2017 Tax Cuts and Jobs Act penalized taxpayers in blue states, it helped their state governments' financing costs," reports Alexandra Scaggs for Barron's. "Blue state bond valuations have soared since the tax law's 2018 implementation. One reason: the tax law's limit on state and local tax deductions, which pushed investors in those high-tax states into the muni market in search of more tax-exempt income."

The $1.8 billion ITM allocates over 30% of its combined weight to bonds issued by California and New York with Illinois representing another 4.5%, according to issuer data.

Voracious Municipal Debt Appetite

Investors are displaying big appetites for municipal debt, but some states are having difficulty bringing sufficient supply to market.

"So far this year, investors have bought muni funds at a pace exceeded only during the financial crisis in 2009, according to Lipper data going back to 1992," according to Barron's. "There's a problem, however: State and local governments haven't been able to borrow enough to meet investors' appetite."

Since muni bond interest is exempt from federal taxes, muni ETFs are a good way for investors seeking tax-exempt income, especially those in higher tax brackets. Due to its tax-exempt status, the asset category is also best utilized in taxable accounts.

ITM has a 30-day SEC yield of 1.73%. The fund, which holds more than 2,800 bonds, has an effective duration of 6.43 years and a yield to worst of 1.95%. About 94% of ITM's holdings are rated AAA, AA or A.

"The muni market is now smaller than it was a decade ago, according to data from the Securities Industry and Financial Markets Association, or Sifma," reports Barron's. "There were $3.6 trillion of munis outstanding at the end of the first quarter, down from nearly $4 trillion in 2009. That's partly because the tax bill removed the tax exemption on bonds sold in so-called advance refundings, a popular method of refinancing muni debt."

ETF TRENDS

by TODD SHRIBER

JUNE 24, 2019

Why Insured Municipal Bonds Make Sense Today.

Role of Insurance

Municipal bond insurance is a guarantee from a monoline insurance company that the holder of a muni bond will receive scheduled interest and principal payments when due, even in the event of a default by its issuer. Municipal bond insurance is often described as a credit enhancement as it enables a municipality to effectively borrow the credit rating of the insurer, which is typically higher than its own on the rating scale. This credit enhancement can help to reduce the borrowing costs of the issuer.

The history of municipal bond insurance can be traced back to 1971 with the founding of Ambac, the industry's first monoline insurer. The industry gained traction in the mid-1980s after the Washington Public Power Supply System defaulted on $2.25 billion in revenue bonds and by 2005, insured bonds made up 57% of total municipal bond issuance and were guaranteed by nine firms, seven of which carried AAA ratings. Meanwhile, in the early to mid-2000s, the insurers diversified their businesses by insuring structured debt settlements that were backed by risky subprime mortgages.

When the subprime mortgage crisis took hold in 2007-2008 and severely impacted the structured debt market, most of the monoline insurers either fell into bankruptcy and folded or lost their AAA ratings. Today, Assured Guaranty and Build America Mutual are the only two firms writing new business and they were most recently rated AA. The market share of new municipal issues carrying

insurance dropped steeply and has hovered around 5-6% since 2014.

Continue reading.

Written by: Eric Snyder; Maria Rahni, CFA

June 17, 2019

IndexIQ

May Stock Swoon, Munis Rally: An Update On Why Muni CEFs Are In Your Portfolio

Summary

- Munis have been one of the best-performing asset classes this year while providing that downside protection that we expect from one of the safest asset classes.
- Portfolio construction is very important to us, so understanding the risks of each position and how it relates to the portfolio as a whole is extremely critical.
- Our analysis goes well beyond looking for negative z-scores or the highest yielding funds which most retail investors in the space use as deciding factors.
- We have a muni-only Core Income Portfolio that shows our Top Conviction funds – those that have the characteristics mentioned in this report that are most favorable.

Continue reading.

Seeking Alpha

Jun. 21, 2019 8:00 AM ET

Municipal Bonds Are in High Demand and Short Supply. Where Investors Should Look.

Everything is pricey in the San Francisco Bay area—even municipal bonds.

High prices are a good thing if you're a seller, like Sophia Skoda. She was in New York to help oversee a $162 million green bond sale by East Bay Municipal Utility District, the public water utility that employs her as its finance director. As underwriters at JPMorgan Chase tallied up the orders, they joked about increasing the offering size. Investors put in orders for 5.5 times the amount of the bonds on offer; for any corporate borrower, that would be a sign to borrow more.

But like most municipal borrowers, East Bay MUD isn't that flexible. The utility, which has been borrowing since 1923, plans debt sales years ahead of time. "We definitely benefited from the lack of paper in the California market right now," Skoda said. "We're very, very, very happy."

The two-year bonds were sold with a yield of 1.03%, below the AAA-rated muni benchmark yield of 1.31%. In theory, East Bay MUD's yields should be higher than the benchmark, since it's rated one notch below AAA.

Continue reading.

Barron's

By Alexandra Scaggs

June 21, 2019 5:32 pm ET

MSRB Podcast: Municipal Advisor Considerations in Preparing for Examination

Municipal advisors are periodically examined by the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, Inc. and other regulatory authorities for compliance with Municipal Securities Rulemaking Board rules. This episode discusses considerations for municipal advisors when preparing for a review by an examining authority.

Listen to the Podcast.

6/18/2019

GASB Issues Implementation Guide on Fiduciary Activities.

Norwalk, CT, June 17, 2019 — The Governmental Accounting Standards Board (GASB) has issued a new Implementation Guide that contains questions and answers about the GASB's recently issued standards on accounting and financial reporting for fiduciary activities.

Implementation Guide No. 2019-2, *Fiduciary Activities*, answers many questions about how to apply the provisions of GASB Statement No. 84, Fiduciary Activities. GASB Implementation Guides are intended to clarify, explain, or elaborate on the requirements of Board pronouncements.

The Guide is available for download at no charge on the GASB website, www.gasb.org. Printed copies will be available through the GASB Store in the coming weeks.

The questions and answers contained in GASB Implementation Guides constitute Category B authoritative guidance under generally accepted accounting principles (GAAP). The guidance is applicable to all state and local governments that follow GAAP when preparing their financial statements.

Fitch Ratings: Texas HB3 Boosts State K-12 Funding, Reduces Local Tax Rates

Fitch Ratings-Austin-19 June 2019: The recent increase in state aid to Texas school districts will provide a short-term boost to district revenue growth, but Fitch Ratings is concerned about the sustainability of the higher funding level over time. Fitch does not expect the funding changes to trigger immediate rating changes for Texas school districts.

Texas Governor Gregg Abbott last week signed into law House Bill 3 (HB3), which materially boosts state K-12 funding for the next biennium and shifts more of the funding responsibility to the state from local tax bases, reducing somewhat funding and operational pressures on local school districts. However, if the funding increase is not sustained following this biennium it could be disruptive to districts as they work the increased funding into new or enhanced programs.

Unless state aid continues to grow over time from the now elevated base it is unlikely to affect Fitch's assessment of long-term revenue growth prospects, a component of Fitch's U.S. Public Finance Tax-Supported Rating Criteria. The additional funding also has the potential to bolster local districts' operating profiles, a development that will vary by district and will likewise depend on the sustainability of the increased funding levels. Operating performance for the vast majority of Fitch-rated Texas school districts is already assessed at 'aaa', so sustained improvement would have the potential to affect only a few ratings.

HB3 provides for an $11.6 billion (roughly 20%) increase in K-12 funding. The increase includes $6.5 billion in additional aid for educational programs, primarily through an increase in the per student basic allotment to $6,160 from $5,140 previously (also a 20% increase). The bill requires districts to apply 30% of annual increased funding to full-time employee compensation increases (75% of which would go to teachers, counselors, nurses and librarians).

The increased funding also includes $5.1 billion to lower local school district property tax rates. For the vast majority of districts, maintenance and operations (M&O) tax rates will be compressed from $1.04 per $100 of taxable assessed valuation (TAV) to roughly $0.97 in 2020, the first year of implementation. It also requires districts to limit annual operating tax revenue increases to 2.5% (by requiring a reduction in the M&O rate if TAV increases by more than 2.5%), beginning in 2021. These tax rate-related changes will not affect Fitch's current assessment of Texas districts' legal ability to increase revenues, which is uniformly at the 'bb' level given their inability to increase M&O tax rates without voter approval. The legislation also revises the equalization formula, the goal of which has been to reduce the calculated wealth level of property-wealthy school districts to an equalized level; most districts accomplish this by either paying property tax revenues to the state or directly to less wealthy districts (recapture). The formula change is expected to reduce recapture payments made by property-wealthy districts by $1.6 billion in fiscal 2020 and $1.9 billion in fiscal 2021.

The boost in state aid under HB3 allows for a number of changes and reforms to the Texas K-12 educational system. These changes include full day pre-K for eligible children, increased funding for low-income student education, incentives for districts to offer dual language programs, and money for districts to develop merit pay programs for teachers.

Separate legislation (Senate Bill 12) increases state, district and employee contributions to the Teachers Retirement System of Texas (TRS), a state-sponsored pension plan. State contributions are increasing from 6.8% of salary currently to 8.25% by 2024, employee contributions are increasing from 7.7% currently to 8.25% by 2024, and district contributions will ramp up from 1.5% currently to 2.0% by 2025 (increasing .1% annually). The contribution increases are expected to keep the scheduled amortization of the plan at around 31 years, consistent with the projected amortization period that was in place prior to TRS board action in July 2018 that reduced the assumed investment/discount rated from 8.0% to 7.25%; this change increased the unfunded liability of $35 billion by $10 billion and extended the amortization period to 86 years. Fitch has previously noted the possibility of increased district contributions to TRS, but believes the increase from 1.5% of salary to 2.0% should not apply material pressure to districts' operations–particularly in light of the boost in basic allotment funding. However, additional increases of any magnitude could alter our assessment of this district obligation.

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Billions at Stake in Opioid Suits, But It's No Tobacco Windfall.

- **Compensation won't match 1998 tobacco settlement: Fitch**
- **Oklahoma seeking at least $10 billion in damages from J&J**

An Oklahoma case, the first of more than 1,600 lawsuits filed by U.S. state and local governments against opioid makers to go to trial, could serve as a key benchmark for governments hoping to recoup costs associated with the public health crisis.

However, verdicts and legal settlements resulting from the litigation are likely to be smaller than the 1998 global settlement with tobacco companies and won't significantly affect government budgets, according to Fitch Ratings.

The tobacco settlement with 46 states compensated them with more than $200 billion for decades of tobacco-related health-care costs, but wasn't enough to alter state and local government credit quality, according to Fitch. The opioid epidemic has taken place over a shorter time span, and hasn't resulted in as many deaths, according to Marcy Block, a Fitch analyst.

"It's severe, but it's less if you think about the amount of deaths through tobacco usage," Block said.

Ten Times

More than 47,000 Americans died from opioid overdoses in 2017, including heroin and fentanyl, a synthetic opioid, according to the National Institute on Drug Abuse. Cigarette smoking is responsible for ten times as many deaths annually, according to the Centers for Disease Control and Prevention.

Oklahoma sued Johnson & Johnson, Purdue Pharma LP and Teva Pharmaceutical Industries Ltd. in 2017, alleging the companies deceived the public by overstating the benefits of their drugs while downplaying the risk of addiction. Teva in May agreed to pay $85 million to resolve the suit. Purdue Pharma, the maker of OxyContin, agreed in March to pay $270 million.

Read more about how opioid makers are getting squeezed as cities try to form a negotiating group

The opioid litigation could cost the pharmaceutical industry between $5 billion and $50 billion, based on the 1998 tobacco deal and costs of the abuse epidemic, according to Bloomberg Intelligence analyst Holly Froum. Oklahoma is seeking at least $10 billion in damages and penalties for current and future outlays from Johnson & Johnson.

"The depth of evidence against the opioid manufacturers, including any potential evidence of fraudulent marketing, will be a key determinant not only of how this case is decided, but the thousands of additional cases against the industry, " wrote Rachel Barkley, a senior vice president at Loop Capital Markets earlier this month.

"Additionally, the size of any settlement would likely serve as a benchmark in future cases," she said.

Securtitized Proceeds

States and local governments issued tens of billions of dollars in muni bonds backed by the tobacco settlement and some used that money to plug budget gaps. The securities are repaid with the money they receive each year from cigarette companies under the settlement. The amount of the payments is based on annual cigarette shipments. There are currently $85 billion of tobacco bonds outstanding, including debt issued to refinance previously issued securities.

At least 42 states and more than 1,900 municipalities have sued opioid manufactures and distributors, blaming them for creating a national public-health crisis and demanding billions of dollars in damages.

A U.S. federal judge in Cleveland is overseeing opioid litigation brought by U.S. cities and counties and has set two trials for October. The scope of the litigation could result in a global settlement that mimics the resolution to the tobacco cases in the 1990s.

The CDC estimates that the total "economic burden" of prescription opioid misuse alone in the U.S. is $78.5 billion a year, including the costs of health care, lost productivity, addiction treatment and criminal justice involvement.

Factoring the economic value of lives lost, the White House's Council of Economic Advisers estimated the costs of the epidemic in 2015 totaled $504 billion.

Bloomberg Business

By Martin Z Braun

June 19, 2019, 10:30 AM PDT

[Late State Budgets Are Less Common This Year. There's 2 Big Reasons for

That.

Still, a few states may miss the July deadline, leading to a government shutdown in some.

SPEED READ:

- More states have passed or are close to passing a budget compared to this time two years ago.
- The rise of one-party states and of state revenues has eased the budget process.
  Some states may pass their budgets late, including New Jersey and Pennsylvania.

With less than two weeks before the new fiscal year starts for most states, there has been relatively little of the last-minute drama that's dominated budget debates in recent years.

As of Tuesday, 39 states had either passed a budget or had one awaiting a governor's signature, according to the National Conference of State Legislatures. That's a far cry from 2017 when 11 states started the fiscal year without a signed budget and another 10 had to call a special session to approve one after missing the initial deadline.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 19, 2019 AT 4:00 AM

New California Debt Financing Guide for Public Agencies: Orrick

The California Debt and Investment Advisory Commission (CDIAC), in partnership with Orrick's Public Finance Group, recently published its California Debt Financing Guide (the "Guide"). The Guide offers an approach to understanding the responsibilities and obligations of issuers and the elected and appointed officials who are ultimately responsible for the use of debt financing by their agency. It also provides a comprehensive discussion of the legal and statutory requirements for debt issuance while employing a framework that supports the deliberative process issuers undertake before, during, and after issuing debt.

The Guide is produced in an interactive, electronic format that can be accessed here.

Orrick

Public Finance Alert | June.13.2019

The Lingering, Unresolved Battle Over Short-Term Rentals in One California City.

Almost a year after San Diego first passed restrictions on rentals marketed on Airbnb and other platforms, only to rescind them months later, the issue is still unsettled. Now, it has moved to the state Legislature.

In San Diego, like other California cities, affordable homes are in scarce supply, with some in the

city placing part of the blame on the abundance of short-term vacation rentals marketed on websites like Airbnb. After a decade-long debate over how to regulate vacation rentals, the San Diego City Council passed a sweeping new ordinance last July. Supporters of vacation rentals—a longstanding sector for this coastal community—called the law a de-facto ban, but similar ordinances later followed in Los Angeles and Washington, DC. The law's backers heralded it as a major success—and then it wasn't.

Just four months later, the San Diego City Council voted 8-1 to repeal the ordinance that the same council members had passed, in response to a successful petition to put the law on the 2020 ballot, delaying it until voters could weigh in. At the moment, the fight has moved to the state Legislature, where a bill would limit platforms advertising vacation rentals to 30 days a year for residentially-zoned properties in the coastal zone. The measure would only apply to San Diego county. The State Assembly passed the bill in late May and it is now before the State Senate, although its prospects there remain uncertain as some lawmakers say they are hesitant about preempting local governments with state-level legislation.

It's worth asking how the vacation rental issue became so intractable. It wasn't bogged down in partisan gridlock—members of both parties have found themselves on both sides of the issue. While dysfunctional government has sometimes been a problem for San Diego, this doesn't appear to fit into that trend. State Assembly member and mayoral candidate Todd Gloria, a Democrat, coined the term "San Diego special" for a situation in which "obvious solutions to long-running problems die for lack of vision, leadership, and action." But the Airbnb battles don't look like a San Diego Special: there was no shortage of legislative proposals, and lawmakers came together to take action (and then undo it).

Continue reading.

Route Fifty

By David Hervey

JUNE 21, 2019

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Florida Zoning Appeals Law: Miami-Dade County Special Exception Denial Quashed .

In the recent decision of Publix Supermarkets, Inc., v. Miami-Dade County, Case No. 17-082 AP, the 11th Judicial Circuit Court in and for Miami-Dade County held: (i) the applicant successfully carried its burden in a quasi-judicial hearing before the zoning appeals board of Miami-Dade County (the "County"); and, (ii) that the opposition failed to establish the required "competent, substantial evidence" to deny the application. Thus, the circuit court granted the applicant's Petition for Writ of Certiorari, quashed the resolution that denied the application, and remanded the case to the zoning appeals board.

Publix Supermarkets, Inc., ("Publix") applied for a special exception to permit a liquor store less than 1,500 feet from an existing liquor store pursuant to Section 33-311(A)(3) of the Miami-Dade County Code of Ordinances (the "Code") and a non-use variance to permit alcohol sales on Sundays pursuant to Section 33-311(A)(4)(b) of the Code.

Importantly, the County staff recommended approval of the special exception and the non-use variance with conditions limiting alcohol sales to certain hours and requiring that Publix obtain a certificate of use.

At the public hearing, both the attorney for and owner of T-Rexx Liquor Store ("T-Rexx"), a competing liquor store, spoke against the application. The attorney submitted a petition signed by 705 individuals opposing the application and argued that if the application was approved, T-Rexx's business would be damaged and likely close.

On appeal, the circuit court was charged with determining: (1) whether procedural due process was provided; (2) whether the essential requirements of law were observed; and, (3) whether the administrative findings and judgments were supported by competent substantial evidence, in accordance with City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982); Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000).

Publix argued that once it successfully demonstrated compliance with Code requirements, the burden then shifted to require T-Rexx "to present competent, substantial evidence that the criteria were not actually met or that the proposed liquor store was actually adverse to public interests."

In reaching its decision, the circuit court turned to Jesus Fellowship, Inc. v. Miami-Dade County, 752 So. 2d 708, (Fla. 3d DCA 2000), in which the Third District Court of Appeal held:

"An applicant seeking special exceptions and unusual uses need only demonstrate to the decision-making body that its proposal is consistent with the county's land use plan; that the uses are specifically authorized as special exceptions and unusual uses in the applicable zoning district; and that the requests meet with the applicable zoning code standards of review. If this is accomplished, then the application must be granted unless the opposition carries its burden, which is to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest."

Ultimately, the circuit court determined that the submittal of a petition in opposition to the project and the project's potential negative impact on a competing business in the neighborhood were not

sufficient to establish the standard of substantial competent evidence required to defeat the application. Accordingly, the court granted Publix's Petition for Writ of Certiorari, quashed the resolution denying Publix's application, and remanded the matter to the zoning appeals board.

As this case demonstrates, applicants should be apprised of their rights and what burden they must carry when seeking a special exception or unusual use, or any other relief, at a public hearing. It is critical to recognize that for special exceptions and unusual uses, once the applicant meets its burden of proof, that burden then shifts to the opposition to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest. This case provides another example of the need to seek redress from the court to overturn an improper municipal ruling that impinges private property rights.

Anthony De Yurre and Jennifer E. Fine

June 20 2019

Bilzin Sumberg

A Common Economic Language for Development.

Transportation and land-use agencies often don't work with the same data as economic development offices. A new tool aims to bridge that gap.

Planning and development director of Metro, the regional government of greater Portland, Ore.
In an age of data and disruption, cities and regions need modern tools to visualize how their economies operate across their landscapes. That reality was made quite clear during the recent Amazon HQ2 sweepstakes, in which the company defined a region's competiveness not just by its traditional economic assets, such as tech talent, but also by how well transit connectivity and neighborhood livability created a platform for long-run economic growth.

The problem is that most transportation and land-use agencies struggle to frame their decisions through an economic lens. The de facto standard is that those agencies measure such items as travel volumes and acres of developable land, while leaving questions such as where income inequality may be growing or where high-tech firms have begun to cluster to economic development offices. This narrow approach creates a major weakness: If transportation and land-use staff don't have a way to translate economic values into their operational DNA, how can we ever expect to build the kind of places we all want to live in?

One way to bridge this data gap is to build new tools that create a common language. Call it a Rosetta Stone between economic development professionals and their peers in land use and infrastructure.

Over the past 18 months, the Brookings Institution's Metropolitan Policy Program and Metro, the regional government and planning organization serving greater Portland, Ore., set out to build such a translational tool. The result is the country's first Economic Value Atlas (EVA), which uses mapping technology to simultaneously evaluate economic, social and land-use conditions at the neighborhood scale and relate them to metropolitan trends. It's a solution that could scale to any metropolitan area.

It's not hard to see how land-use and transportation decisions impact economic competiveness.

Domestic and global trade connections are essential to allow industries to grow. Commuting choices and local walkability help attract new talent to a region. A range of housing types is essential to hedge against displacement and discrimination. Sustainable urban design better positions a region to withstand threats from climate change. And history tells us that getting these decisions wrong can have detrimental effects, from promoting decay in the urban core to spatial mismatch on the periphery.

Not only are our policy frameworks not designed for that kind of multidisciplinary thinking, but they also fail to leverage impressive new data capabilities. The country has never had a better feel for how metropolitan economic performance compares across places. Economic data at the neighborhood scale is also richer than ever, whether through federal sources such as the Census Bureau or private providers such as real-estate firms.

By providing a common mapping platform that is available to the public and can make calculations in seconds, the EVA creates a common economic language to inform local conversations. And we're just now beginning to see what's possible.

For example, the EVA can manage questions around the rise of e-commerce and where to put all those new warehouses. By stacking three critical variables at once — freight market connectivity, labor access and developable industrial land — the EVA map of Portland revealed hotspots especially attuned to warehousing's needs. What amazed us is that the EVA pinpointed the exact neighborhood where Amazon ended up building its Portland facility: a logistics- and land-rich area with easy access for entry-level workers.

Or let's consider gentrification, which is a major issue in Portland's central-city neighborhoods. We decided to stack five variables: rental housing affordability, housing construction, walkability, median income growth and high non-white populations. Not only did the map reveal where gentrification may have already occurred but it also revealed diverse, livable places that, due to housing construction and rising incomes, could soon price certain groups out.

These maps are intriguing, but what's most exciting is how the tool's outputs can impact local decision-making. Consider, for example, the landmark affordable-housing bond measure approved by the Portland region's voters last year. A tool like the EVA can help Metro target funding by geographies, populations and community needs. Similarly, as the region evaluates where a future transportation funding measure should invest its precious capital, the EVA can help policymakers better understand and communicate which investments provide which benefits. That kind of economic accountability can help build public trust.

We can no longer afford the outdated model of making decisions in silos and behind closed doors. Fortunately, we have new data and planning capabilities to meet not only today's challenges but also those of the coming decades. Tools like the EVA are just the beginning.

governing.com

By Adie Tomer & Elissa Gertler

JUNE 19, 2019 AT 4:00 AM

Why Are Residents Leaving Illinois in Droves?

It's known here as The Exodus.

People are leaving Illinois in droves. Republicans blame the state's high taxes and its unfunded pension liability, which tops $130 billion. Democrats believe it's the state's lack of investment in education and infrastructure.

One thing is certain: Illinois' population has declined by 157,000 residents over the past five years, making it one of only two states — West Virginia is the other — to lose people over the past decade.

Illinois' predicament is a perfect storm of declining manufacturing, stagnant immigration, declining birth rates, young people leaving for college and never coming back, long-standing economic discrimination against black residents, high housing costs, and the continued draw of residents to the Sun Belt.

What's happening in the Prairie State may offer national lessons about the deindustrialized economy and how that creates inequity issues in wages and housing, said Matthew Wilson, a senior research specialist at the University of Illinois at Chicago's Great Cities Institute.

For a Rust Belt state to thrive, Wilson said, officials have to focus on retaining and growing its manufacturing sector by training workers, providing affordable housing and attracting new businesses. Building up the manufacturing sector has to go hand in hand with attracting high-paying jobs, he said.

Illinois has struggled with all of that.

A 2016 poll by Southern Illinois University found that nearly half of Illinois residents wanted to move to another state, citing taxes, weather, ineffective and corrupt local government and a lack of middle-class jobs. A March poll from the university found that two-thirds of Illinois residents think the state is going in the wrong direction.

Between 2017 and 2018, 114,000 more residents left Illinois than moved in from other states. Those who left mostly moved to Florida, Texas and Indiana, IRS data shows.

Chicago's population has dropped slightly, largely because black residents are leaving for areas with lower housing costs and more jobs that don't require higher education. In downstate Illinois, the population loss has come largely from a decrease in manufacturing jobs.

Tale of Two Cities

Nearly 15 miles south of the famed Magnificent Mile in the booming downtown Loop is another stretch of Chicago's Michigan Avenue. Up until the 1980s, this part of the Roseland neighborhood was "the place to be" for black residents, lined with stores and restaurants. But many of those are gone now, leaving only the boarded-up facades and a distant memory.

As Abraham Lacy drove down the street earlier this month, the new father and Chicago resident described the "heart-wrenching" state of the area since its decline began 50 years ago.

This was a manufacturing hub. But those jobs are gone. Nearly 28% of the population lives below the poverty level, according to the U.S. Census Bureau.

"There's no hope," he said. "It brings me to tears. Here we are in the third-largest city in the country."

Lacy is the executive director of the Far South Community Development Corporation, a nonprofit that brings commercial investments from public and private partnerships to local low-income, majority-black neighborhoods like Morgan Park, West Pullman and Roseland to alleviate poverty.

Since peaking in 1980 at nearly 1.2 million people, the black population of Chicago has dropped by more than 400,000 people, and the trend continues. Black residents are leaving Chicago for the suburbs and for neighboring states such as Indiana, Iowa and Wisconsin.

Some are reversing the Great Migration of the first half of the 20th century, returning to Southern cities including Atlanta, Dallas and Houston, said Pete Saunders, an urban planning consultant based in the Chicago area who has written extensively on this issue.

"They just feel frozen out of opportunity," he said. "They feel Chicago is a closed system. They can't get ahead here. It's designed for others to get ahead."

Chicago is still attracting educated people seeking jobs in law, finance and tech, and many neighborhoods of the city are thriving. But there's a growing divide between high-paying jobs and low-wage, "dead-end" work, with not many jobs in between, said David Wilson, a geography professor at the University of Illinois at Urbana-Champaign.

Real estate development is booming along Lake Michigan and in the Loop. Gentrification, he said, "is spreading its tentacles across the city," including the traditionally poorer South Side and West Side. In other parts of the city, including Roseland, residents lacking economic opportunity are leaving.

"There's something wrong here," said Jawanza Malone, executive director of the Kenwood Oakland Community Organization, a South Side grassroots group currently leading a rent control campaign "to stem the tide of displacement."

Chicago is among a handful of metropolises that are losing their black residents, including Los Angeles, San Diego and San Jose.

The high rate of black residents leaving is the main cause for Chicago's stagnant population, and the drain could get worse, several fair housing advocates and urban demographers said.

More than a third of young adults want to leave Chicago, a January survey from the University of Chicago's GenForward Project found. Participants, especially African Americans, said the biggest reason for wanting out was racism and how that affects policing, job opportunities and neighborhood development.

Chicago's new African American mayor, Lori Lightfoot, seems keenly aware of this challenge, calling it "the proverbial canary in the mine shaft" when asked in April about the city's population decline by the Chicago Tribune.

"We've got to create real opportunities and incentives for businesses and for all neighborhoods to prosper," she added.

Chicago's population is staying afloat because of a continued influx of Asian immigrants. The number of Chicago-region residents born in Asia has increased by 60,000 since 2010, while the number of Chicago-region residents born in Latin America has decreased by 18,000, according to a Chicago Metropolitan Agency for Planning analysis of U.S. Census Bureau data.

While some traditionally Mexican Chicago neighborhoods like Pilsen have been hit by gentrification pressures, Chinatown and other neighborhoods south of the downtown Loop have generally been

shielded, said David Wu, executive director of Pui Tak Center, a church-based community center next to the Chinatown gate.

After the 2020 census, the city will have its first majority-Chinese ward, Wu said. The area in 2017 elected Democrat Theresa Mah, the Illinois General Assembly's first Chinese American member.

"These neighborhoods are defined by an ethnic identity," he said, sitting in the neighborhood's new public library, where half of the books are in Chinese. "Whereas other communities are defined by socioeconomic class."

President Donald Trump's strict immigration policy might halt this growth, however. In an attempt to keep some of this immigrant base in Illinois, state lawmakers last month passed a bill that offers financial aid to undocumented immigrants attending public colleges or universities.

But development in the South Loop is spreading south and could make Chinatown and other Asian American enclaves less affordable.

Keeping Manufacturing

Vincent Flaska wanted to expand his forklift manufacturing business in 2015. He could have either kept Hoist Liftruck in Illinois, where the company was based since 1994, or moved it just over the Indiana border to East Chicago.

He chose Indiana.

"The environment that has been created in Illinois is not supportive of those blue-collar jobs," he said.

With the move, Flaska saved $1.75 million annually on workers compensation insurance and an additional $1.5 million on state taxes — on top of the $15 million in financial incentives from Indiana. The company is now closer to the steel mills it relies on. Some of his workers bought their first homes after the company relocated.

The move "was a no-brainer," he said. Earlier this year, Flaska's business was acquired by Toyota Industries North America — a move, he said, that couldn't have happened if it was still in Illinois.

There has been "chronic and concentrated joblessness in manufacturing" in Illinois, said Teresa Córdova, director of the Great Cities Institute. Because of changes to rural and manufacturing jobs in the state, working-age people are having a harder time finding work in downstate communities, she said.

Four out of five counties statewide, many anchored by manufacturing, are losing population.

As manufacturing has steadily declined in the Rust Belt over recent decades, states have scrambled to keep businesses from going overseas or to other places within the United States.

For states such as Indiana, that means promoting its lower tax rates and offering special tax incentives, like it did for Hoist Liftruck. For Illinois, that means promoting its workforce and logistical hub of Chicago.

But Moody's found that Illinois manufacturers will face "daunting competition," as companies look to lower-cost areas to keep competitive. The decline in manufacturing in Illinois, the report said, "will prevail."

Manufacturing is responsible for 592,000 jobs in the state, according to the Illinois Manufacturers Association. From 2001 to 2016, the state lost 30% of its manufacturing jobs, according to a Chicago Metropolitan Agency for Planning analysis.

Lake County, just north of Chicago along the Wisconsin border, is one of many in Illinois that have lost population in recent years. But leaders there have concentrated on retaining and growing pharmaceutical and advanced life sciences manufacturing sectors, said Kevin Considine, the president and CEO of Lake County Partners, a public- and privately funded business development corporation.

"I won't kid you," he said. "You drive through southeast Wisconsin and you see a lot of brands that were Illinois companies.

"I'm not saying that nobody is moving, but I think we're doing a pretty good job over the last four years at making the case at why companies should grow here instead of move."

While neighboring states such as Wisconsin and Indiana have "been very good at playing the incentive game," attracting businesses with tax incentives and infrastructure grants, Considine said the skilled workforce in Illinois "is far and away our greatest strength."

But in order to keep that workforce competitive, the state must retain educated young people, encouraging them to pursue careers in biochemistry or welding, he said. Waukegan is one of three cities in the country to offer an advanced manufacturing curriculum for high school students, training 200 skilled technicians a year.

The reality, however, is that Illinois has a brain drain problem.

Nearly half of Illinois college-bound public high school students chose to go to out-of-state universities and colleges in 2017, according to a March analysis by the Illinois Board of Higher Education. In 2002, that number was under 30%. Indiana, Iowa and Wisconsin continue to take in more college students than they lose, U.S. Department of Education data show.

When young people go out of state for college, they are less likely to return home after graduation, said Nyle Robinson, the board's interim executive director. This is especially concerning for the rural, downstate regions that have been losing residents.

Illinois ranks second nationally in losing college students to other states, topped only by New Jersey, according to the U.S. Education Department. "It's certainly concerning," Robinson said.

Robinson especially cites the education funding cuts that came from the 2015-2017 budget impasse in Illinois as a contributing factor to this outmigration of young people. Both high- and low-income students are leaving the state, he said.

Robinson was encouraged to see the Illinois legislature this month approve $1.9 billion for the University of Illinois System — the largest funding increase in nearly two decades. The funds are designated for new buildings, renovations and other capital investments. Democratic Gov. J.B. Pritzker signed the budget.

Some neighboring states have tried to take advantage of some of the political turmoil in Illinois and negative press around high taxes and population loss.

Speros Batistatos, the president and CEO of the South Shore Convention & Visitors Authority, helped launch a digital campaign to lure Illinoisans to move to Northwest Indiana, targeting young

families and empty nesters with the promise of fewer taxes and an easy commute to Chicago.

"We're not trying to bash our friends next door," he said. "We're just trying to be a competitive suburb of Chicago."

The campaign seems to be working. Peter Novak, the CEO of the Greater Northwest Indiana Association of Realtors, said, "Builders can't build homes fast enough."

By Matt Vasilogambros

STATELINE | JUNE 19, 2019 AT 8:39 AM

Puerto Rico Debt Plan Leaves Investors With a Choice: Lose Money or Fight

If a plan to restructure $35 billion of Puerto Rico's bonds is approved, investors who own nearly $6.3 billion of debt will have a tough choice: Taking a haircut, or spending time and money on litigation against the Commonwealth.

The plan, released Sunday, is the result of three months of negotiations between the federal board overseeing Puerto Rico's bankruptcy and investors who hold about $3 billion of its bonds. The board expects to file the plan with the bankruptcy court within 30 days.

If creditors and the judge approve the plan, it would reduce the cost of the island's debt by 46% over the next three decades, including the cost of servicing its sales-tax bonds.

Continue reading.

Barron's

By Alexandra Scaggs

June 17, 2019

Executive Director of Puerto Rico's Oversight Board Defends Proposed Restructuring Deal.

KEY POINTS

- The agreement is on the framework for the plan of adjustment and would slash the amount of Commonwealth related bonds outstanding by more than 60% to less than $12 billion.
- "I believe this is part of a process and you have to begin somewhere and you have to reach an agreement with some group, which we've done with the groups that were announced yesterday," Natalie Jaresko told CNBC. "And now that it's become public, we are very eager, willing to continue these discussions with all the other groups of creditors as well as the bond insurers."

The executive director of Puerto Rico's Oversight Board is standing by the restructuring agreement that it reached with a portion of bondholders to address $35 billion of Puerto Rico's debt, despite the island's government and a key creditor saying they will not sign on to the deal.

The agreement, which was unveiled late on Sunday, is on the framework for the plan of adjustment and would slash the amount of Commonwealth related bonds outstanding by more than 60% to less than $12 billion.

“I believe this is part of a process and you have to begin somewhere and you have to reach an agreement with some group, which we’ve done with the groups that were announced yesterday,” Natalie Jaresko told CNBC’s Leslie Picker in an exclusive interview. “And now that it’s become public, we are very eager, willing to continue these discussions with all the other groups of creditors as well as the bond insurers,” Jaresko said.

The Plan Support Agreement has the support of creditors who hold approximately $3 billion in total of the island’s constitutionally guaranteed claims. However, the government of Puerto Rico and Assured Guaranty, a monoline insurer that has $1.5 billion of net par exposure to the bonds covered in the proposed deal, have rejected the deal.

“This ‘deal,’ backed by barely 10 percent of Commonwealth guaranteed and GO creditors, who bought positions at prices substantially below par, failed to include the largest general obligation creditors who have supported Puerto Rico for decades, and is a disservice to the residents and long term stakeholders of the island,” Assured Guaranty said in a written statement provided to CNBC.

When asked about this point, Jaresko said “I don’t think we should look at it as 90% of them not signing on, in the sense that there are different classes and different interests and you have to look at each class individually.” Jaresko, who was appointed executive director of the Oversight Board in March 2017, continued by saying the group of bondholders that have signed on to the proposed deal account for “a significant amount” and believes that making the deal public last night will help build further creditor support.

Almost immediately following the release of the proposed deal, the government of Puerto Rico issued a statement rejecting the deal, citing the administration’s strong opposition to any cuts to retiree’s benefits.

“The government of Puerto Rico seems determined to not support this agreement though this agreement provides for sustainable, affordable debt and secures pensions,” Jaresko said. “They seem to be determined regardless of whether it’s in the interest of the Commonwealth or not….this agreement focuses and assures the single most important thing that current and future administrations do not undermine again the financial stability of the pension system.”

Assured Guaranty also stated that the company could not support “an agreement that would prolong expensive litigation, while harming Puerto Rico’s long-term economic success and the national municipal bond market.”

Jaresko, who is anticipating the plans of adjustment to be filed within thirty days, does note that the proposed terms of the plan of adjustment are not set in stone and says, “there can be amendments going forward.”

“There’s still quite a bit of room to work with bondholders here to bring in additional classes, and to reach an even more consensual agreement,” Jaresko said.

Assured Guaranty says that the company “continues to encourage the start of negotiations among Puerto Rico’s most important stakeholders,” but warns the Oversight Board that it is prepared “to litigate this to the fullest extent to protect our rights, those of municipal bond investors, and the rule of law.”

"I look forward to working with the other groups of creditors to bring this to a close as soon as possible," Jaresko said.

CNBC.COM

by Dawn Giel & Leslie Picker

JUN 17 2019

Road to Success is Being Paved with Public-Private Partnerships.

Ground was broken this month on an anxiously awaited highway project outside of Washington, D.C., one of the latest examples of the public and private sector acting as partners to advance critical state and local infrastructure projects.

The June 6 launch of the Fredericksburg Extension Project – a 10-mile extension of express toll lanes on the Interstate 95 corridor in Northern Virginia nicknamed the "FredEx" – featured the leadership of a public-private partnership (P3) that will get the $565 million job done by the end of 2022. The state's governor and its transportation secretary launched the project as the public side of the P3, and executives from toll-road operator Transurban would be the private side of the partnership.

"Not only will this project reduce congestion and provide important corridor improvements, but as a result of this joint commitment from our public and private sector partners, this project is also estimated to create 9,100 jobs and generate $1.1 billion in economic activity for this fast-growing region," Gov. Ralph Northam said during the ceremony, summing up the basic premise of P3s, which are increasingly being formed to push through road projects designed to ease traffic congestion in the high-growth areas where new jobs and taxpayers are clustering.

Transurban's role in the project is to ride to the rescue of cash-strapped states and other governments by financing increasingly costly and urgently needed traffic projects in exchange for operational control and the ability to collect tolls from thousands of annoyed drivers every day. The Australia-based corporation has toll roads around the world and said in its most-recent annual report that its toll revenues had increased 8 percent to more than $2.2 billion for the year.

And the FredEx is not the last the Beltway region is going to see of Transurban. The company earlier this year announced its official handshake with Virginia on another P3, the 495 Extension Project, which will add about two miles of express lanes toward the Maryland state line and will include what the state's news release termed "an extension of current dynamic tolling and traffic-management systems," and also "an investment of approximately US$1 billion by Transurban in the Greater Washington area for these projects."

A toll road is considered the classic model of a P3 because it features a visible revenue stream that will pay the private partner back for their initial investment without tapping into public funds. Tolls, however, may not be appropriate for a road that doesn't have enough daily traffic. In fact, new highway construction is not necessarily the crux of the ongoing U.S. infrastructure crisis. A greater issue is maintenance of existing highways, local streets, bridges, and ramps.

Washington and many state governments have come around in seeing the P3 model as a not only convenient means of financing, but also in many cases, the only option. There is no official tally of P3 projects underway in the United States, but it is growing into the preferred method of financing

highway improvements and other daunting infrastructure projects.

A 2018 report issued by the economic consulting firm The Brattle Group noted that the 2008 recession knocked many state and local governments back on their financial heels, which led to a surge in deferred maintenance that only caused roads and bridges to deteriorate further, which adds greatly to the cost of the eventual repairs. In addition, it is not permitted to use federal highway funds to pay for routine or even preventable maintenance. The third head of this highway hydra was a clause in the Trump administration's tax-reform bill that hamstrung the ability of local governments to refinance their highway bonds at lower rates, a practice known as advanced refunding that is similar to refinancing a home loan.

Brattle said the situation has left local governments with little choice besides joining up with the private sector in a joint effort to fix up roads and bridges that won't necessarily generate enough toll revenue to pay the tab. "Although the stereotypical P3 is a toll road, P3s need not involve user fees," Brattle report said. "They can be funded instead with government revenue, just like a conventionally procured, municipal bond financed project."

That funding is basically a contracted payment schedule in which the private-sector partner bankrolls construction and is also responsible for the maintenance and upkeep in exchange for a regular payment by the public side of the P3. For example, Pennsylvania's Rapid Bridge Replacement P3 teamed the state up with a private consortium of investment and construction firms to replace a whopping 558 bridges located along rural roads throughout the state. The $899 million project will have the consortium design, build, and finance the new pre-fabricated bridges in exchange for a 28-year payment schedule from the state.

The Southern Ohio Veterans Memorial Highway in the Appalachian region of southern Ohio was built toll-free by the Portsmouth Gateway Group, which will be paid by the state to maintain the 16-mile project for the next 35 years. A similar team led by the international heavyweight Fluor Corp. was selected in May to design and build the I-635 LBJ East Project in Dallas, which includes widening 11 miles of the highway connecting Dallas with neighboring Fort Worth and then collecting maintenance fees from the state.

Proponents of P3s say the concept's ability to unleash the private sector helps speed up road construction while keeping costs down.

But Brattle's report cautioned: "Projects that enter P3 procurement must be carefully selected and contracted with a payment mechanism that allocates risks appropriately for the project and the procuring government's needs. Avoiding financial failures and political backlash will be essential to encouraging state and local governments to bring more projects for P3 procurement."

TRANSPORTATION TODAY

BY HIL ANDERSON | JUNE 17, 2019

Can P3s Jumpstart Smart Cities?

While the intricacies of public-private partnerships can be tough to navigate, they have been successful in helping cities build the kind of digital infrastructure that's necessary for today's urban economy and society.

Reinventing a city is a challenge and a feat of such immense proportion that it can rival building a new city from the ground up. It requires no less than rethinking and rearchitecting everything that worked decades or centuries ago, for both present and future needs.

That's why public-private partnerships, or P3s, are enjoying a renaissance. They provide a real, practical solution to cities' most pressing problems. P3s are nothing new: Two of the most successful and most celebrated developments in U.S. history — the Erie Canal and the Transcontinental Railroad — date back to pioneering P3s of the 19th century. In one assessment, the Erie Canal was said to provide "a model of public-private partnerships that endure to this day."

Today's model for P3s is much the same as it was back then, but now is the engine behind the development and emergence of smart cities. At its heart, it's a simple alliance between government and private entities to achieve a common purpose, and a purpose that neither entity could be expected to achieve alone. In fact, P3s are being tested for their resilience as cities address their toughest challenges.

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GOVTECH.COM

BY ITAI DADON, DAN PFEIFFER / JUNE 17, 2019

Appleton Partners Announces New Municipal Opportunity Zone Credit Strategy.

Tax-Exempt Bond Offering Allows Investors to Benefit from Economic Opportunity Zones

BOSTON–(BUSINESS WIRE)–Appleton Partners, a $10.4 billion investment advisor, has launched a unique separate-account strategy designed to help investors benefit from the anticipated positive economic impact of Opportunity Zones, a tax-incentivized development initiative of the US Tax Cuts and Jobs Act of 2017. The liquid, investment-grade, fixed-income strategy invests in select tax-exempt bonds offered by municipal bond issuers that may be poised for credit upgrades and price appreciation sparked by increased capital investment in real estate and businesses within census tracts designated as Opportunity Zones.

"The creation of Opportunity Zones is unleashing new development potential in locations around the country where it is most needed," said Nathan Harris, CFA, Senior Vice President and Co-Director, Municipal Research at Appleton Partners. "While attention to date has largely focused on direct investment in these census tracts, we created the Municipal Opportunity Zone Credit strategy because we believe the economic dynamic generated by the Opportunity Zone initiative may also benefit select tax-exempt bond issuers."

The Municipal Opportunity Zone Credit strategy targets municipal bonds nationwide where Appleton's research has identified both underlying fundamental value and the potential for positive credit catalysts driven by increased business activity within Opportunity Zones. The strategy represents a new dimension for tax-exempt investing, capitalizing on the considerable potential originating from the Opportunity Zone program for municipalities with areas of economic need.

The new strategy is available to high net worth investors seeking tax-advantaged strategies with the potential to generate higher yields and greater capital appreciation than traditional investment

grade portfolios. This focused strategy can complement or replace a core municipal bond portfolio and is accessible through registered investment advisors, family offices, private banks and other wealth management platforms.

About Appleton Partners
Appleton Partners manages $10.4 billion (as of 6/20/19) in separately managed and private client accounts. The firm’s expertise in municipal fixed-income management includes short, intermediate, long, crossover and laddered strategies. With an emphasis on customization for individual clients, Appleton Partners invests in high-quality, liquid securities identified through rigorous proprietary research. For more information, please see www.appletonpartners.com.

June 24, 2019 11:15 AM Eastern Daylight Time

National P3 Update: Water and Sewer Infrastructure

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

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

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

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

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

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

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Ashley Tison: Operating Business OZ Fund Strategies

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Jessica Millett: QOF Formation Legal Considerations

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

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SIFMA's LIBOR Transition Briefing, July 15 in NYC

July 15, 2019 | SIFMA Conference Center, NYC

Registration Open

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

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

Attend the GFOA Leadership Academy.

Enhance your leadership skills and advance your career by attending GFOA Leadership Academy, **October 13-18 at the College of Charleston in Charleston, SC**. This weeklong training session provides ambitious public and government finance professionals an opportunity to bolster their

leadership and management skills to better serve their communities. The application deadline is June 30.

Click here to learn more.

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

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

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

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

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

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

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

Has the Ruling Helped State Budgets?

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

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

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

For starters, sales tax growth over the past fiscal year, which for most states will end on June 30, has exceeded expectations. According to the latest data from the National Association of State Budget Officers (NASBO), 32 states are collecting more than they anticipated. The tax is

outperforming budget forecasts by 1.4 percent, or $3.6 billion. That’s better than the income tax, which is exceeding forecasts by 0.6 percent.

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

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

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

What’s Next?

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

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

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

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

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

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

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

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

GOVERNING.COM

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

It's Been a Rough Year for Mass Transit.

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

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

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

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

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

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

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

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

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

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

them up in hopes of generating a revival.

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

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

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

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

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

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

What may matter more, however, is the price of gas and the rising level of car ownership. In the summer of 2008, a gallon of gas sold in much of the United States for more than $4; in the summer of 2018, the price was down below $2.75. A decade ago, I thought the effect of declining gas prices wouldn't be that elastic: Once people started

driving less to save money, they'd keep doing that. But they haven't. A spike in gas prices still cuts our driving significantly; a plunge in those prices puts millions of people back on the road quickly.

Just as important, there's evidence that once the 2008 recession ended, Americans started buying more cars. A study last year by researchers at the University of California, Los Angeles, found that in

the years from 2000 to 2015, but especially from 2010 to 2015, the number of household vehicles in metropolitan L.A. grew by 2.1 million — a higher rate than in previous decades. Most interesting of all: The growth was greatest among immigrant families.

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

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

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

GOVERNING.COM

By Alan Ehrenhalt | Senior Editor

JUNE 2019

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